



ANNUAL REPORT

2023

PREPARED BY:
MELISSA HARTMAN, EXECUTIVE DIRECTOR
COURTNEY ITALIA, ADMINISTRATIVE COORD.

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Board of Directors FY 2023

- Thomas E. Baines, *Chair*
- Michael Breeden, *Vice Chair*
- Daniel Castle
- Mark Cornell, *Treasurer*
- Jason Keding
- Timothy Meyers
- John Mills
- John Spears
- Jeremy Toth, *Secretary*

2023 Board Committees & Memberships

Audit & Finance:

- Mark Cornell, *Chair*
- Timothy Meyers
- John Spears

Governance:

- Jeremy Toth, *Chair*
- Michael Breeden
- Daniel Castle

Staff:

- Executive Director, Melissa Hartman
- Administrative Coordinator, Courtney Italia

Fiscal Year 2023 Meeting Attendance

Fiscal Year remained as Calendar Year in 2022 as determined by the Board of Directors. January 20, 2022

January 23, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, John Spears

Board Member(s) Absent Timothy Meyers, John Mills, Jeremy Toth

February 21, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, John Mills, Jeremy Toth John Spears

Board Member(s) Absent Timothy Meyers

March 21, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears

Board Member(s) Absent Timothy Meyers

April 18, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding John Mills, Jeremy Toth John Spears

Board Member(s) Absent Timothy Meyers

May 16, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears

Board Member(s) Absent Timothy Meyers

Fiscal Year 2023 Meeting Attendance

Fiscal Year remained as Calendar Year in 2022 as determined by the Board of Directors. January 20, 2022

May 31, 2023 (Special Meeting)

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth

Board Member(s) Absent Timothy Meyers, John Spears

June 20, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears

Board Member(s) Absent Timothy Meyers

July 18, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears, Timothy Meyers

***Timothy Meyers took no formal action. Attended via videoconference.*

Board Member(s) Absent

August 15, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears, Timothy Meyers

***Timothy Meyers took no formal action. Attended via videoconference.*

Board Member(s) Absent

No September Meeting

Fiscal Year 2023 Meeting Attendance

Fiscal Year remained as Calendar Year in 2022 as determined by the Board of Directors. January 20, 2022

October 17, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears, Timothy Meyers

***Timothy Meyers took no formal action. Attended via videoconference.*

Board Member(s) Absent

November 17, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears, Timothy Meyers

***Timothy Meyers & John Spears took no formal action. Attended via videoconference.*

Board Member(s) Absent

December 21, 2023

Board Member(s) Present: Thomas E. Baines, Michael Breeden, Mark Cornell, Daniel Castle, Jason Keding, John Mills, Jeremy Toth John Spears, Timothy Meyers

Board Member(s) Absent Timothy Meyers

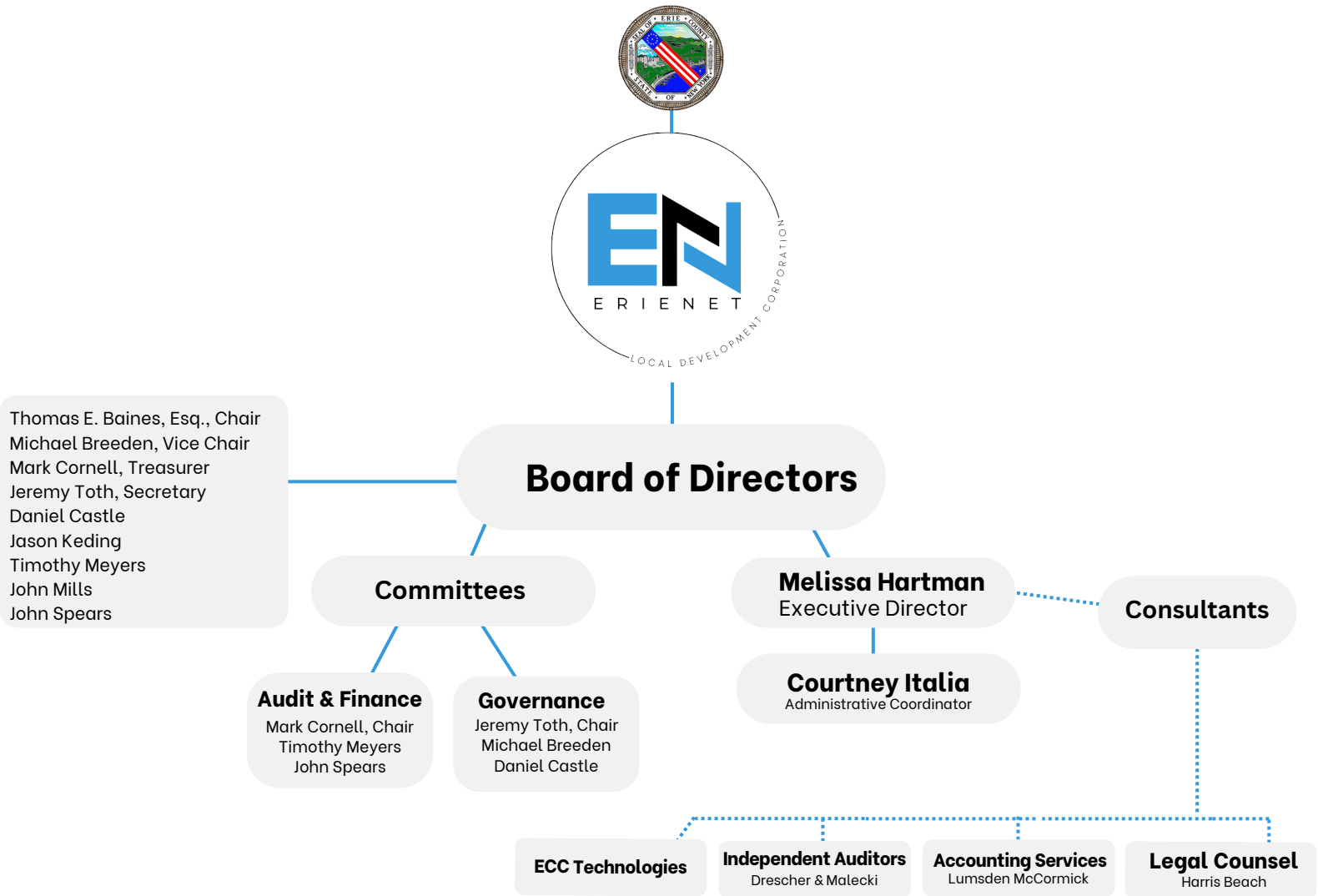
Compensation Schedule

In the fiscal year 2023, the Executive Director of ErieNet LDC was compensated more than one hundred thousand dollars (\$100,000) at a salary of \$104,708.

Board Member Evaluation

See Appendix A

Organizational Chart



Subrecipient Agreement

See Appendix B

Mission Statement and Measurement Report

The mission of ErieNet Local Development Corporation is to deliver affordable broadband access to unserved areas; improve services in underserved communities; and enable world-class broadband investment and deployment county-wide. Through the development of a state-of-the-art fiber optic network, ErieNet LDC will enhance economic development opportunities, promote better quality of life for Erie County residents, and position Erie County as a globally competitive community.

See Appendix C

Corporate Purpose

The purposes for which the Corporation is to be formed and operated are exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities, and lessen the burden of government and act in the public interest. In furtherance of said purposes, the Corporation's powers shall include:

- To foster the creation, retention and expansion of jobs and economic opportunities for the benefit of the County, New York State and local economies;
- To construct, acquire, rehabilitate and improve for use by others, facilities in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain and/or lease such facilities on its behalf or for others in such territory; to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto;
- To acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein;
- To apply for loans and borrow money without limit as to amount; to make, draw, accept, endorse, execute and issue negotiable bonds, debentures, notes and other obligations therefor;
- To sell, lease, mortgage or otherwise dispose of or encumber any such facilities or any of its real or personal property or any interest therein upon such terms as it may determine; (f) To enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of facilities and related businesses in the territory in which the operations of the Corporation are principally to be conducted;

- To apply for and make grants and loans and to execute any and all documents necessary in connection therewith;
- To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person;
- In general, to perform any and all acts and things, and exercise any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

Legislation that Forms the Statutory Basis of the Corporation

ByLaws - See Appendix D

Units or Subsidiaries of the Corporation

The Corporation had no units or subsidiaries in fiscal year 2023.

2023 Accomplishments

Setting up ERIENET's Operational Structure

2023 was basically the LDC's first year in existence. This year consisted of setting up the operational structure of ErieNet. January through March the Board of Directors began the RFP processes for engineering services, the purchase of fiber and cabinets, and construction contractors.

The search for the Executive Director started in January. BENLIC was hired to administer payroll and hiring services.

In March, the Board of Directors welcomed Supervisor Jason Keding.

In April, ErieNet hired its first employee, Executive Director, Melissa Hartman. ErieNet contracted with Graybar for the purchase of fiber and cabinets and hired DDS for engineering services.

The Executive Director started in May and the ErieNet Logo was created. The LDC moved into temporary space at the Erie County Downtown Library. The contract with CLW, the main construction company for the project was signed crossing off a major milestone for the fiber network.

In June, ErieNet invested \$28 million into treasury bonds where the LDC will realize over \$1 million in gains. The website was developed and went live to the public, establishing another major first year milestone for the LDC.

We began outreach to the municipalities in July. The community stakeholders are important partners with the project. Understanding their needs and fiber network abilities gave the LDC the opportunity to explore additional funding opportunities to expand our network to meet residential and business needs within each community.

In August, ErieNet hired its second employee, Courtney Italia for the Administrative Coordinator position. The first spools of fiber were delivered and stored within the County Highway Facilities.

In September, ErieNet moved into its permanent location at Seneca One Towers where the Board of Directors meetings will also be held.

October the LDC approved the first budget for both years 2023 and 2024. This month also saw the approval of the Personnel Policy that will drive a positive and inclusive work environment for all ErieNet employees. Underground construction started in Boston, New York in November.

December was busy with preparation for applying for additional grant funding through the NYS ConnectAll Office. This opportunity in 2024 will allow the LDC to apply for grants that could expand the network beyond the original background allowing for further access to residents and businesses throughout Erie County with no capital cost to the municipalities.

Operations Summary

A nine (9) member board governs the Corporation, all but one board member serve ex officio:

1. Erie County Legislature Majority Leader
2. Erie County Legislature Minority Leader
3. Erie County Deputy Budget Director
4. Erie County Chief Information Officer
5. Erie County Attorney
6. Erie County Commissioner of Environment and Planning
7. Director of the Buffalo and Erie County Public Library
8. Deputy Commissioner of Planning & Economic Development
9. The Town of Boston Supervisor (at-will)

In 2021, ErieNet retained the services of Harris Beach for legal counsel to the Corporation. The cost of legal services was paid for by the corporation.

ErieNet retained the firm of Drescher and Malecki LLP to perform the Corporation's independent audit for fiscal year 2023. The cost of auditor services was paid for by the Corporation. The audited financial statements for fiscal year 2023 are available on the Corporation's website www.erienet.com.

ErieNet retained the firm of Lumsden McCormick LLC as fee accountants since 2022. The cost of accountant services was paid for by the Corporation.

There were twelve (12) public meetings of the Board of Directors of the Corporation in fiscal year 2023.

Financial Plan

See Appendix F

Bonds

The Corporation has issued no bonds.

Grants & Subsidy Programs

The Corporation has no grant and subsidy programs.

Operating and Financial Risks

The Corporation currently has no operating or financial risks.

Long Term Liabilities

The Corporation has no long-term liabilities.

Real Property Schedule

The Corporation has no Real Property

Pending Litigation

The Corporation was not involved as a party to any litigation in fiscal year 2023.

Investment Guidelines

Investment Threshold:

Investments exceeding the amount of \$5 million will require prior approval from the Audit and Finance Committee in a public committee meeting before the funds can be committed. For all other investments falling below this threshold, approval shall be granted by ErieNet's Treasurer in consultation with a certified financial advisor.

Investment Reports:

A monthly investment report will be prepared and submitted to the Audit and Finance Committee monthly for their review and oversight. To ensure transparency and informed decision-making, the Board of Directors will receive these investment reports on a quarterly basis.

Investment Compliance:

Only investments compliant with the law and aligned with our investment policy will be considered permissible.

INVESTMENT COMPLIANCE:

This Investment Policy of the ErieNet Local Development Corporation (the "Corporation") shall apply to all operating funds, bond proceeds and other funds and all investment transactions involving operating funds, bond proceeds and other funds accounted for in the financial statements of the Corporation. Each investment made pursuant to this Investment Policy must be authorized by applicable law and this written Investment Policy. This Investment Policy is intended to comply with the Not-for-Profit Corporation Law of New York, the Public Authorities Law of New York, and any other applicable laws of New York State.

The Executive Director of the Corporation under the direction and oversight of the Treasurer shall establish a written system of internal controls and investment practices. The controls shall be designed to prevent losses of Corporation funds, to document those officers and employees of the Corporation responsible for elements of the investment process and to address the capability of investment management. The controls shall provide for receipt and review of the audited financial statements and related reports on internal control structure of all outside persons performing any of the following for the Corporation:

- (i) investing funds of the Corporation;
- (ii) advising on the investment of funds of the Corporation;
- (iii) directing the deposit or investment of funds of the Corporation; or
- (iv) acting in a fiduciary capacity for the Corporation.

A bank, savings and loan association or credit union providing only depository services shall not be required to provide an audited financial statement and related report on its internal control structure.

OBJECTIVES

The primary objectives, in order of priority, of all investment activities involving the financial assets of the Corporation shall be the following:

- (i) Safety: Safety and preservation of principal in the overall portfolio is the foremost investment objective;
- (ii) Liquidity: Maintaining the necessary liquidity to match expected liabilities and expenses is the second investment objective;
- (iii) Return: Obtaining a reasonable return is a third investment objective

OPERATIVE POLICY

The Corporation shall conduct its investment activities involving all operating funds, bond proceeds and other funds and all investment transactions involving operating funds, bond proceeds and other funds accounted for in the financial statements of the Corporation in a manner that complies with the Not-for-Profit Corporation Law and the Public Authorities Law of New York State.

Prior to making an investment of any operating funds, bond proceeds and other funds of the Corporation, other than those associated with a bank, savings and loan association or credit union involving a depository relationship only, the Corporation shall obtain at least three (3) bids and award the contract to the most responsible bidder whose bid most closely meets the objectives of this Investment Policy.

The Executive Director, the Treasurer and all officers and employees of the Corporation involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

The Executive Director/Treasurer shall submit to the Board an investment report that summarizes recent market conditions and investment strategies employed since the last investment report. The report shall set out the current portfolio in terms of maturity, rates of return and other features and summarize all investment transactions that have occurred during the reporting period and compare the investment results with budgetary expectations, if any.

INVESTMENTS & DEPOSITS

A. Investments

1. Permitted Investments

Pursuant to the Not-For-Profit Corporation Law ("N-PCL"), the Corporation is authorized to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- a. Special time deposit accounts;*
- c. Obligations of the United States of America;**
- d. Obligations guaranteed by agencies of the United States of America where payment of principal and interest are guaranteed by the United States of America;**
- e. Obligations of the State of New York;*

*Special time deposit accounts and certificates of deposit are permitted investments provided that (1) they shall be payable within such time as the proceeds shall be needed to meet expenditures for which the moneys were obtained and (2) they are collateralized in the same manner as set forth in paragraph (B) below for deposits of public funds.

**All investment obligations shall be payable or redeemable at the option of the Corporation within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Corporation within two years of the date of purchase.

2. Authorized Financial Institutions and Dealers

The Corporation shall maintain a list of financial institutions and dealers, approved for investment purposes and establish appropriate limits to the amount of investments which can be made with each financial institution or dealer. All financial institutions with which the local government conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Corporation. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Chairman or Chairperson of the Board of Directors is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

3. Purchase of Investments

The Corporation may contract for the purchase of investments:

- a. Directly, including through a repurchase agreement, from an authorized trading partner.
- b. By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the board of Directors.

All purchased obligations, unless registered or inscribed in the name of the Corporation, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the Corporation by the bank or trust company shall be held pursuant to a written custodial agreement as described in the N-PCL.

The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for, the Corporation, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the Corporation a perfected interest in the securities.

4. Repurchase Agreements

Repurchase agreements are authorized subject to the following restrictions:

- a. All repurchase agreements must be entered into subject to a Master Repurchase Agreement.
- b. Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.
- c. Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America
- d. No substitution of securities will be allowed.
- e. The custodian shall be a party other than the trading partner.

B. Deposits

1. Collateralization of Deposits

All deposits of the Corporation, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured:

- a. By pledge of "eligible securities" with an aggregate "market value" as provided by the N-PCL, equal to the aggregate amount of deposits from the categories designated in Exhibit A attached hereto.
- b. By an eligible "irrevocable letter of credit" issued by a qualified bank other than the bank with the deposits in favor of the Corporation for a term not to exceed ninety (90) days with an aggregate value equal to 140% of the aggregate amount of deposits and the agreed upon interest, if any. A qualified bank is one whose commercial paper and other unsecured short-term debt obligations are rated in one of the three highest rating categories by at least on nationally recognized statistical rating organization or by a bank that is in compliance with applicable federal minimum risk-based capital requirements.

- c. By an eligible surety bond payable to the Corporation for an amount at least equal to 100% of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims-paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations. The terms and conditions of any eligible surety shall be approved by the Board of Directors.

2. Safekeeping and Collateralization

Eligible securities used for collateralizing deposits shall be held by the depository bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure Corporation deposits together with agreed upon interest, if any and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events, which will enable the Corporation to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Corporation, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Corporation or its custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company, or agent of and custodian for, the Corporation, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Corporation a perfected interest in the securities.

Appendix A

Summary of Confidential Evaluation of Board Performance FY 2023

Board members have a shared understanding of the mission and purpose of the Authority
9 responses



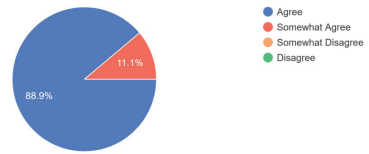
Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.
9 responses



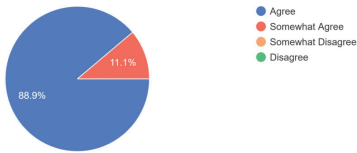
The policies, practices and decisions of the Board are always consistent with this mission.
9 responses



Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.
9 responses



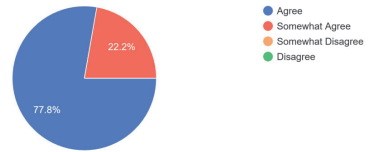
Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.
9 responses



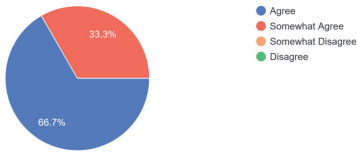
The Board has adopted policies, by-laws, and practices for the effective governance, management and operations of the Authority and reviews these annually.
9 responses



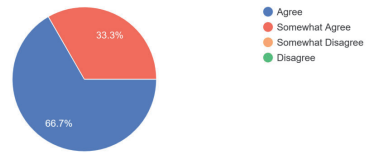
The Board meets to review and approve all documents and reports prior to public release and is confident that the information being presented is accurate and complete.
9 responses



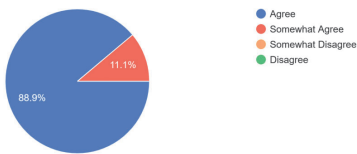
The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.
9 responses



The Board knows the statutory obligations of the Authority and if the Authority is in compliance with state law.
9 responses

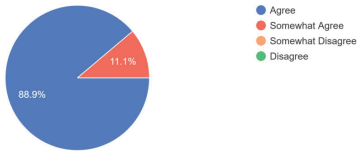


The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.
9 responses



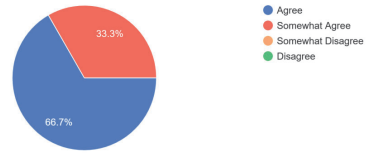
Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.

9 responses



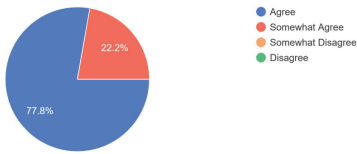
The Board has identified the areas of most risk to the Authority and works with management to implement risk mitigation strategies before problems occur.

9 responses



Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.

9 responses



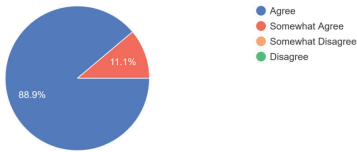
Board members demonstrate leadership and vision and work respectfully with each other.

9 responses



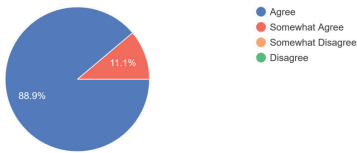
Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.

9 responses



The Board exercises appropriate oversight of the Executive Director and other executive staff, including setting performance expectations and reviewing performance annually.

9 responses



Appendix B

Intermunicipal Agreement

AMERICAN RESCUE PLAN ALLOCATION AGREEMENT

BETWEEN THE COUNTY OF ERIE

AND

ERIENET LOCAL DEVELOPMENT CORPORATION

THIS AMERICAN RESCUE PLAN ALLOCATION AGREEMENT (together with all exhibits attached hereto, if any, collectively referred to as the “Agreement”) is made as of the __ day of December, 2022, by and between the COUNTY OF ERIE, a municipal corporation with offices located at 95 Franklin Street, Buffalo, New York 14202 (hereinafter, the “County”) and ERIENET LOCAL DEVELOPMENT CORPORATION, a New York State not-for-profit corporation with offices presently located at 95 Franklin Street, Buffalo, New York 14202 (hereinafter, the “ENLDC”). The County and ENLDC are collectively referred to in this Agreement as the Parties and individually referred to as a “Party”.

WITNESSETH

WHEREAS, throughout the County, large and small business, governments and government agencies, indigenous nations, and low income persons are found to be in need of affordable high speed internet to interact, participate in education, and to compete in the business world; and

WHEREAS, the County has received federal American Recovery Plan (“ARP”) funding in the amount of \$34,000,000 (the “ARP Funds”) to study, design, and engineer an Open Access Network and to ultimately install internet services within and throughout the County to ensure growth, equity, and prosperity for the County (the “Project”); and

WHEREAS, the County engaged ECC Technologies to design and engineer the Project (the “Project Plan”); and

WHEREAS, ENLDC, an affiliate of the County, with the County being its sole member, is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest and was specifically created and empowered by the County to undertake the Project on behalf of and for the benefit of the County; and

WHEREAS, the County desires to allocate the ARP Funds to ENLDC to facilitate the undertaking of the Project, said allocation to be governed by applicable federal ARP rules and guidelines (the “ARP Rules and Guidelines”), and all other applicable federal, State and local laws; and

WHEREAS, ENLDC desires to fulfill its public purpose and undertake the Project consistent with the Project Plan for the benefit of the County and its residents, and related thereto, desires to timely receive and deploy the ARP Funds in a manner consistent with the federal ARP Rules and Guidelines as so required to undertake the Project; and

WHEREAS, the Project Plan has yet to be completed, such that the final design, engineering, site layout and location is speculative, and specific Project related implementation determinations are unable to be made at this point in time; and

WHEREAS, upon completion of the Project Plan, and prior to taking any action related to implementing the Project Plan, ENLDC will undertake the appropriate environmental assessment related thereto pursuant to Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereto at 6 NYCRR Part 617 (collectively referred to as “SEQRA”); and

WHEREAS, in recognition of the importance of cooperation in achieving their shared interests and goals, the Parties desire to enter into this Agreement so that the County may transfer the ARP Funds to ENLDC to implement the Project Plan.

NOW, THEREFORE, in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the County and ENLDC, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

Section 1. **The Project Funded**

1.0 The County hereby allocates to ENLDC the ARP Funds, received from the federal government, for the design and implementation of the Project.

1.1 The Project, and all expenditures of ARP Funds allocated pursuant to this Agreement, shall fully comply with the United States’ Department of the Treasury’s Final Rule concerning the expenditure of American Rescue Plan funding (the “Final Rule”, which is published at [SLFRF-Final-Rule.pdf \(treasury.gov\)](#)). In accordance with said Final Rule, the Project upon its completion will reliably meet or exceed symmetrical 100 Mbps download and upload speeds, except where it is not practicable, because of the excessive cost of the Project or geography or topography of the area to be served and in such a case, the Project may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds, as set forth in greater detail in the Final Rule.

1.2. Subject to limitations set forth in the Final Rule, the Project includes, and allocated ARP funds may be permissibly used for, direct and indirect administrative expense, in the design and implementation of the Project.

Section 2. Required Compliance with All Applicable Laws, Rules, Regulations, and Additional Terms of this Agreement

2.1 While Project funds may initially be used for the procurement of design and payment of design and engineering and other professional services directly related to implementation of the Project, as well as purchase of equipment and materials for implementation of the Project, and administrative expenses directly related to implementing the Project, physical alterations of land may not occur, or be undertaken in furtherance of the Project until after there has been full compliance SEQRA.

2.2 In expending ARP Funds, and implementing the Project, ENLDC shall comply with all applicable statutes, ordinances, rules, orders, regulations, codes and requirements of the Federal, State, County and local governments, as well as its own adopted procurement policies if more restrictive. This shall include, but not be limited to, any and all Federal, State and local procurement laws; County Local Law No. 3-2018 known as the Erie County Workforce Development and Diversification New York State Certified Worker Training Program; and General Municipal Law provisions concerning the procurement of goods and services.

a. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

b. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

2.3 ENLDC, its, contractors, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits

recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or Agreement.

2.4 ENLDC is required to include M/WBE participation goals of 10% MBEs and 2% WBEs in all bids for capital projects estimated to exceed \$100,000.00 or, in the alternative, the M/WBE goals of the ENLDC, whichever is more stringent. The selected contractor will be required to use good faith efforts to meet the participation goals. In the event that the ENLDC (or ENLDC's contractor) is unable to meet the M/WBE goals, the ENLDC is required to request a waiver from the County's Director of Equal Employment Opportunity (EEO) outlining the reasons why the goals cannot be met. The Director will review each waiver request on an individual basis and determine whether a whole or partial waiver is appropriate. An M/WBE Utilization report, in the form set by the County, which shall be submitted by the ENLDC on a quarterly basis to the Department.

2.5 ENLDC shall require that all Contractors, and sub-contractor's receiving funds allocated through this Agreement pay the workers performing work in furtherance of this contract, no less than the locally prevailing wages and benefits paid on similar projects, applying a presumption that the Davis Bacon Act wage provisions (40 U.S.C. 3141 et seq) apply, and in the event there is determined to be no applicable prevailing rate for the work performed, the wages paid shall be no less than the amount determined by City of Buffalo Living Wage Commission determined to be the Living Wage in implementing Buffalo City Code § 96-19, even though most of the work performed is anticipated to be outside the City of Buffalo.

2.6 ENLDC understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c), and that such conflict of interest policy is applicable to each activity funded under this award. ENLDC must disclose in writing to United States Department of the Treasury, and the County, any potential conflict of interest affecting the ARP Funds in accordance with 2 C.F.R. § 200.112

2.7 In the case of a violation of the failure to abide by any applicable federal or state, or local law, rule, or regulation, or any other provision of this Agreement, the funds allocated herein shall be subject to recoupment.

2.8 ENLDC shall acknowledge the federal government's, and the County's, contribution towards the Project on any signs or publications mentioning the Project, and shall cause any publications or signs produced with ARP Funds from this award to display the following language: "This project [is being] [was] supported, in whole or in

part, by federal award number SLT0205 awarded to Erie County, NY by the U.S. Department of the Treasury.”

Section 3.0 Required Procurement Process.

3.1. For the purchase of goods funded by this Agreement, ENLDC shall show it either publicly bid for the procurement of the goods and selected the lowest responsible bidder, or solicited bids from at least three (3) vendors and chose the lowest responsible bidder, or otherwise followed a procurement process determined by the ENLDC as one that would have satisfied the provisions of New York State General Municipal Law Section 103, had the property being improved been a Public Facility; and for the procurement of services being funded by this Agreement, ENLDC must demonstrate a competitive procurement for those service through the solicitation of at least three (3) potentially responsible service providers, or that the services were provided by a service provider with specialized and unique expertise necessary to the Project task at hand and that said service provider provided he best value for the service sought. In addition to the foregoing ENLDC shall show it complied with its own adopted procurement policies.

Section 4.0 Defense, Indemnification and Insurance

4.1. In addition to, and not in limitation of the insurance requirements contained in the County’s “Standard Insurance Provisions”, attached hereto within Exhibit A and made a part hereof, ENLDC agrees:

(a) that to the extent permitted by law, except to the extent such claims, suits, actions, damages, costs, expenses are caused by the negligent acts or omissions of the County, the ENLDC shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys’ fees or loss arising directly or indirectly out of the development, maintenance, operation, security and/or repair of the Project, and the acts or omissions hereunder by ENLDC or third parties under the direction or control of ENLDC; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

4.2. ENLDC shall procure and maintain insurance coverage for its design, maintenance, operation and/or buildout of the Project as specified in Exhibit A attached hereto and made a part hereof, and proof of required insurance shall be provided to the Erie County Attorney’s Office for their review prior to the commencement of any work contemplated under the terms of this Agreement. No work shall proceed until the Erie County Attorney’s Office transmits by writing, or electronically that the proof of the required insurance is acceptable. Said insurance must remain in effect until all work contemplated by this Agreement is completed or terminated.

4.3. During the term of this Agreement, for the work to be performed and to be paid by the ARP Funds, ENLDC agrees to cause its consultants, sub-consultants and vendors to maintain insurance coverage consistent with the insurance certificate attached hereto with Exhibit A and to name the “County of Erie” as an additional insured on all such insurance policies, and to provide to the County Attorney certificate(s) of insurance evidencing such insurance coverage prior to the commencement of such work.

4.4. To the fullest extent authorized by law, ENLDC, and its contracted design and construction professionals 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, reasonable attorney’s fees or loss arising directly or indirectly out of the responsible Party’s acts or omissions in the performance or failure to perform hereunder, except to the extent such liability, damage, claims, demands, costs, judgments, fees, fees or loss is caused by the negligent acts or omissions of the County.

Section 5.0 Proof of Compliance and Right to Audit

5.1 Until all funds are expended, or otherwise recouped or repaid under this Agreement, and for six years thereafter, or the latter of such events, ENLDC shall maintain written proof of compliance with the terms of this Agreement and make the same available for review and copying by the County, and its agents upon thirty days request.

Section 6.0. Responsibilities of The County.

6.1 The County shall have no responsibility for the operation, and maintenance of the Project.

Section 7.0. Notices

7.1. 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 sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses 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.

To Erie County
Commissioner of Environment & Planning
95 Franklin Street
Buffalo, New York 14202

with copies to:

County Attorney
95 Franklin Street, Room 1634

Buffalo, New York 14202

To ENLDC:

Thomas Baines, Esq,
95 Franklin Street
Suite 1062
Buffalo, NY 14202
(Or such other person and location as ENLDC shall designate by further Notice to the County)

with copies to:

Robert G. Murray, Esq.
Harris Beach PLLC
Larkin Exchange
726 Exchange St.
Buffalo, NY 14210

MISCELLANEOUS

Section 8.0. Miscellaneous

8.1. Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void.

8.2. The failure of the County to insist upon strict performance of any term, condition or covenant herein shall not be deemed a waiver of any rights or remedies that the County may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, or covenants herein.

8.3. It is mutually understood and agreed that the terms, covenants, conditions, and agreements herein contained shall be binding upon the parties hereto and upon their respective successors, legal representatives and assigns.

8.4. This Agreement and its attachments constitute the entire Agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, and writings. This Agreement 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.

8.5. It is recognized and understood that ENLDC is not an agent of the County and in accordance with such status, ENLDC, its consultant(s), its subcontractor(s), and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement neither hold themselves out as, nor claim to be acting

in the capacity of officers, employees, agents, representatives or servants of the County, nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

8.6. In the event that any one or more provisions, sections, subsections, clauses or words of this Agreement are for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid section, subsection, clause or word has not been contained herein.

8.8. This Agreement shall be deemed executory only to the extent of funds appropriated and made available for the purpose of this Agreement and no liability on account thereof shall be incurred by the County beyond the amount of such appropriated funds.

8.9. All covenants, stipulations, promises, agreements and obligations of the ENLDC and the County contained herein shall be deemed to be stipulations, promises, agreements and obligations of ENLDC and the County and not of any member, officer or employee of the ENLDC or the County in such a person's individual capacity and no recourse shall be had for any obligation or liability herein or any claim based thereon against any member, officer or employee of ENLDC or the County or any natural person executing this Agreement.

8.10. This Agreement may be executed in any number of like counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement. This Agreement may be executed and binding with signatures transmitted by facsimile, e-mail or PDF ("Electronic Signatures"). Nonetheless, any Party providing an electronic signature shall, upon request, provide the other Party with the original signature.

8.11. Failure of any Party to insist upon strict performance of any term, condition or covenant of this Agreement shall not be deemed to constitute a waiver or relinquishment of such term, condition or covenant for the future right to insist upon and to enforce by injunction or by other legal or appropriate remedy strict compliance by any other Party with such term, condition or covenant.

(Remainder of page intentionally left blank)

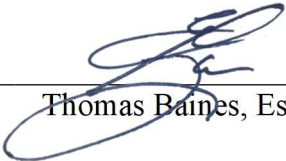
(Signature page to American Rescue Plan Allocation Agreement)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

COUNTY OF ERIE

By: 
Deputy County Executive, Lisa M. Chimera

ERIENET LOCAL DEVELOPMENT CORPORATION

By: 
Thomas Baines, Esq., as Chairperson

Approved as to Substance

/s/ Daniel Castle
Commissioner of Planning

Approved as to Form

/s/ Richard E. Stanton
Assistant County Attorney

Appendix C

Measurement Report

Performance Measurement Report FY 2023

Mission Statement: The mission of ErieNet Local Development Corporation is to deliver affordable broadband access to unserved areas; improve services in underserved communities; and enable world-class broadband investment and deployment county-wide. Through the development of a state-of-art fiber optic network, ErieNet LDC will enhance economic development opportunities, promote better quality of life for Erie County residents, and position Erie County as a globally competitive community.

For all measurement purposes, FY 2023 was the LDC's first year in existence mainly used for building administration, planning, and securing contracts for 2024 construction and fiber build out. The make-ready process was our only active effort towards the fiber network.

- **Deliver affordable broadband access to unserved areas.**
 - In 2022, ErieNet was given \$34 million to build and operate a fiber optic based open access network county-wide. The network's design includes rural and inner-city areas that are considered unserved and underserved, bringing accessibility to much needed regions.
 - The network will be a resource for existing and new Internet Service Providers to affordably expand their services to areas of the County. This will bring competition for ISP services which is intended to drive costs down and improve service levels.
- **Enable world-class broadband investment and deployment county-wide.**
 - Construction design, securing contractors and engaging/preparing municipalities for implementation has been the main focus of 2023. Underground and aerial construction contractors have been engaged. Fiber optic cable has been purchased and received. Underground conduit construction began in 2023. Pole attachment agreements were established. Make ready work to prepare pole lines to which ErieNet strand and fiber optic cable will be attached has begun.
 - A sales team has been established to approach ISP carriers, healthcare, educational and financial Institutions, as well as libraries and municipalities and other potential users of the network. The ErieNet website was created www.erienet.com. Sales processes have been established and documented with key measurement criteria to determine the viability of each sales opportunity.
 - The county-wide network will connect all towns, cities, and villages as well as bringing a faster and more secure public safety network. Municipalities have been and continue to be approached to identify how best each municipality can leverage the network for their individual needs.
- **Through the development of a state-of-art fiber optic network, ErieNet, LDC will enhance economic development opportunities, promote better quality of life for Erie County residents and position Erie County as a globally competitive community.**
 - The design reflects all municipalities, and the majority of their buildings will be connected. It is also designed to be at or near school districts, healthcare facilities and all public safety buildings.
 - The fiber backbone will bring economic growth opportunities where they previously did not exist. A secure and robust fiber network that is open to anyone will attract businesses to the area, fostering job development and development in rural and inner-city locations.
 - The ErieNet design targets specific economic development sites, bringing critical infrastructure to these sites enabling growth of businesses and local jobs to these areas.
 - The network is expected to attract new businesses through access to a robust and secure network connection allowing businesses to operate efficiently.
 - Local Entrepreneurs and small business will be able to obtain broadband services through a number of competing ISPs that use the network. This empowers local businesses to grow and create jobs within the community.
 - Existing businesses in Erie County can expand their operations more efficiently, creating job opportunities for local residents.

Appendix D

By-Laws

BY-LAWS

OF

ERIENET LOCAL DEVELOPMENT CORPORATION

Adopted on the 12 day of September, 2022

BY-LAWS
OF
ERIENET LOCAL DEVELOPMENT CORPORATION

ARTICLE I - THE CORPORATION

SECTION 1. NAME.

The Corporation shall be known as “ERIENET LOCAL DEVELOPMENT CORPORATION” (hereinafter, the “Corporation”), as established within that certain Certificate of Incorporation establishing the Corporation as filed with the New York Secretary of State on _____ April 26 , 2022 (the “Certificate”).

SECTION 2. OFFICES.

The principal office of the Corporation shall be located in the County of Erie, New York (the “County”). The Corporation may also have offices at such other places within the State of New York as the Board of Directors may from time to time determine or the activities of the Corporation may require.

SECTION 3. PURPOSES.

The Corporation shall have such purposes as are now or hereafter set forth in its Certificate of Incorporation.

ARTICLE II - MEMBERSHIP

SECTION 1. COMPOSITION OF MEMBERSHIP.

The sole member of the Corporation (the “Member”) shall be the County of Erie acting by and through the Erie County Executive, ex officio.

SECTION 2. RIGHTS AND POWERS OF THE MEMBER(S).

The Member shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York, the Certificate of Incorporation and the By-Laws of the Corporation.

SECTION 3. ANNUAL MEETING OF THE CORPORATION.

The Member shall hold an annual meeting of the Corporation within six months after the end of each fiscal year at a convenient time and place designated by the Member. At the annual meeting, the Member shall receive the annual report if and to the extent required under Section 4 of these By-Laws and transact such other business as may properly come before the meeting, including the appointment of Directors when appropriate.

SECTION 4. ANNUAL REPORT TO THE MEMBER.

At the annual meeting of the Member(s), the Directors or designated officer of the Corporation shall present an annual report showing in appropriate detail the following information:

- (a) A complete audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation; and
- (b) A summary of the activities of the Corporation during the preceding year.

The annual report shall be filed with the minutes of the annual meeting.

SECTION 5. SPECIAL MEETINGS OF THE MEMBER.

The Chair, Executive Director, and/or the Treasurer may, when he/she deems it desirable, and shall, upon the request of the Member, call a special meeting of the Membership of the Corporation for the purpose of transacting any business designated in the call. The call for a special meeting may be given personally to the member or may be mailed to the business or home address of the member, or sent via electronic mail, not less than ten (10) days nor more than fifty (50) days prior to the date of the special meeting. Waivers of notice may be signed by the member for failing to receive a proper notice. At such special meeting no business shall be considered other than as designated in the call, but if the member is agreeable thereto, with or without notice thereof, any and all business may be transacted at such special meeting.

SECTION 6. PLACE OF MEETINGS; ORGANIZATION

All membership meetings shall be held at the principal office of the Member(s) or at such other convenient location as may be determined by the Member(s). The Secretary, or, in his or her absence, a person chosen by the Member, shall keep complete and accurate minutes of the meeting.

SECTION 7. NOTICE OF MEMBERSHIP MEETINGS; WAIVERS

- (a) Notice of each membership meeting shall state the purpose or purposes for which the meeting is called, the place, date and time of the meeting and, unless it is the annual meeting, shall indicate that it is being issued by or at the direction of the person or persons calling the

meeting. Such notice shall be given either personally, by mail or e-mail to the Member, not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, the notice is given when deposited in the United States mail, with postage thereon prepaid, directed to a Member at his or her address as it appears on the records of the Corporation or, if he or she shall have filed with the Secretary a written request that notices be mailed to some other address, then directed to such other address.

(b) Formal notice of meeting need not be given to a Member if he or she executes a waiver of notice, either before or after the meeting. The attendance of a Member at a meeting, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice.

SECTION 8. NO ACTION BY MEMBER WITHOUT A MEETING.

Whenever the Member is required or permitted to take any action by vote, no such action may be taken without a meeting where the Member entitled to vote thereon is present.

SECTION 9. PROPERTY RIGHTS OF MEMBERS.

No Member shall have any rights or interests in or to the property or assets of the Corporation.

ARTICLE III - BOARD OF DIRECTORS

SECTION 1. POWER OF BOARD OF DIRECTORS.

The Corporation shall be managed by its Board of Directors, which shall establish all general policies governing its operations.

SECTION 2. NUMBER, ELECTION AND TERM OF DIRECTORS.

(a) The number of Directors shall be no less than seven (7) and no more than fifteen (15). Each Director shall be appointed by and serve at the pleasure of the Member of the Corporation. Directors shall continue to hold office until his or her successor is appointed by the Member. For the avoidance of all doubt, the initial number of Directors shall be seven (7), consisting of the following as follows: Erie County Legislature Majority Leader, ex officio, Erie County Legislature Minority Leader, ex officio, Erie County Deputy Budget Director, ex officio, Erie County Chief Information Officer, ex officio, Erie County Attorney, ex officio, Erie County Commissioner of Environment and Planning, ex officio, Buffalo and Erie County Public Library Director, ex officio, and any additional person(s) as so appointed by the Member. Any subsequent increase or decrease in the size of the Board of Directors will require the unanimous approval of the Member and the affirmative vote of a majority of the Director.

(b) All Directors of the Board shall participate in training approved by the State of New York regarding their legal, fiduciary, financial and ethical responsibilities as Directors

within one (1) year of appointment to the Board. Thereafter, the Directors shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of the Corporation and to adhere to the highest standards of responsible governance.

(c) As soon as practicable and in compliance with Section 2825 of the Public Authorities Law, the majority of the Directors shall be Independent Directors, as such term is defined in paragraph (f) below.

(d) Independence. For the purposes of these By-Laws, except for ex officio Directors, an Independent Director means any person who:

(i) is not, and in the past two (2) years has not been, employed by the Corporation or another corporate body having the same ownership and control of the Corporation in an executive capacity;

(ii) is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars (\$15,000.00) for goods and services provided to the Corporation or received any other form of financial assistance valued at more than fifteen thousand dollars (\$15,000.00) from the Corporation;

(iii) is not a relative of an executive officer or employee in an executive position of the Corporation or another corporate body having the same ownership and control of the Corporation; and

(iv) is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Corporation or another corporate body having the same ownership and control of the Corporation.

(e) Board Offices. A Chair and Vice-Chair shall be elected from among the Directors of the Board at the organizational meeting and subsequent annual meetings of the Board of Directors. The Chair shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation. The Chair shall submit his/her recommendation and such information as he/she shall deem pertinent concerning the business, affairs, and policies of the Corporation at each meeting of the Board. In the event of a vacancy on a committee of the Corporation, the Chair may designate a successor to fill the unexpired portion of the term. In the event of a vacancy in the chair of a committee of the Corporation, the Chair will designate a successor to fill the unexpired portion of the term.

SECTION 3. RESIGNATIONS AND REMOVAL OF DIRECTORS.

(a) Any Director of the Corporation may resign at any time by giving written notice to the other Directors or to the Chair or the Secretary. Such resignation shall take effect at the

time specified therein or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

(b) Any Director may be removed from the Board with or without cause by the Member(s) or for cause by vote of a majority of the Directors provided there is a quorum of not less than a majority of the entire Board present.

SECTION 4. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Newly created directorships resulting from an increase in the number of Directors shall be filled as described in the resolution of the Member approving such increase. Newly created directorships resulting from any vacancies occurring for any reason shall be filled by the Member. In each case, such appointments shall be made as soon as practicable but in no event later than sixty (60) days after the increase or vacancy occurs. A Director appointed to fill a vacancy caused by resignation, death, disability or removal shall hold office for the unexpired term of his or her predecessor in office and until a successor is appointed and takes office.

SECTION 5. ANNUAL MEETING.

The annual meeting of the Board of Directors shall be held after the annual meeting of the Member of the Corporation described in Article II, Section 3 above at a convenient time and location designated by the Board. Written notice of the annual meeting shall be mailed, emailed, or delivered to each Director of the Corporation prior to the meeting.

SECTION 6. - ANNUAL REPORT.

The Executive Director or the Treasurer shall present at the annual meeting of the Board of Directors a copy of the annual report described in Article II, Section 4 above.

SECTION 7. MEETINGS AND NOTICE.

(a) Regular meetings of the Board of Directors may be called at any time by the majority of Directors or by the Chair or the Executive Director. Notice of each meeting shall state the place, date and time of the meeting and, unless it is the annual meeting, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Such notice shall be given either personally, by mail or e-mail to the Member, not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, the notice is given when deposited in the United States mail, with postage thereon prepaid, directed to a Member at his or her address as it appears on the records of the Corporation or, if he or she shall have filed with the Secretary a written request that notices be mailed to some other address, then directed to such other address. If electronic notice of said meeting is utilized, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

(b) Special meetings of the Board of Directors may be called at any time by a majority of Directors or by the Chair, the Executive Director, or any other officer of the

Corporation. At least one (1) days' written notice of any special meeting of the Board of Directors shall be given to each Director, either personally or by e-mail. Said notice shall state the purpose(s), time and place of the special meeting and that no business other than that specified in the notice may be transacted; provided, however, if by unanimous consent all of the Directors present at such meeting elect to transact business not previously described in the aforementioned notice, then the Directors may transact such other business. If electronic notice of said meeting is utilized, the transmission of the consent must be sent by e-mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

SECTION 8. WAIVERS OF NOTICE.

Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

SECTION 9. PLACE OF MEETINGS.

The Board of Directors may hold its meetings at such place or places within or outside the State of New York as the Directors may from time to time by resolution determine.

SECTION 10. OPEN MEETINGS.

The Corporation is subject to Open Meetings Law and the Corporation shall comply with the Open Meetings Law of the State of New York, as set forth within Article 7 of the New York State Public Officers Law.

SECTION 11. FREEDOM OF INFORMATION.

The Corporation is subject to the Freedom of Information Law and the Corporation shall comply with the Freedom of Information Law of the State of New York, as set forth within Article 6 of the New York State Public Officers Law.

SECTION 12. PUBLIC AUTHORITIES ACCOUNTABILITY ACT.

The Corporation is subject to the Public Authorities Accountability Act of 2005, as amended by Chapter 506 of the Laws of 2009 (collectively, the "PAAA"), and shall comply with the PAAA, as set forth within the New York State Public Authorities Law.

SECTION 13. QUORUM AND ADJOURNED MEETINGS.

(a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at meetings of the Board. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any Director(s).

(b) A majority of the Directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. Notice of the adjourned meeting shall be given to all Directors.

SECTION 14. ACTION BY THE BOARD OF DIRECTORS.

Any corporate action to be taken by the Board of Directors means action at a meeting of the Board. Each Director shall have one vote regarding any corporate action to be taken by the Board. Except as otherwise provided by law or these By-Laws, the vote of a majority of the Directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board of Directors. All references to actions of the Board of Directors herein and in the Certificate of Incorporation shall mean the affirmative vote of a majority of the Directors present at the time of the vote at a duly convened meeting at which a quorum is present.

SECTION 15. ORGANIZATION.

At each meeting of the Board of Directors, the Chair, or, in his or her absence, the Vice-Chair, shall preside. The Secretary, or, in his or her absence, a person chosen by a majority of the Directors present, shall keep complete and accurate minutes of the meeting.

SECTION 16. ATTENDANCE AT MEETINGS.

Attendance at each meeting of the Board shall be recorded by the Secretary or the designated Director in the minutes thereof.

SECTION 17. COMPENSATION.

The Directors shall serve in their capacity as Directors of the Corporation without compensation. All Directors may be reimbursed for reasonable expenses incurred in the performance of corporate duties.

SECTION 18. ANNUAL INDEPENDENT AUDIT.

The Audit Committee shall present to the Board upon its completion, the annual independent audit report performed in accordance with the requirements of the PAAA and generally accepted government auditing standards certified by a firm of independent public accountants. The certified independent public accounting firm that performs the annual independent audit shall timely report to the Audit Committee the following:

(i) the assets and liabilities, including the status of reserve, depreciation, special or other funds including the receipts and payments of such funds, of the Corporation as of the end of the fiscal year;

(ii) the principal changes in assets and liabilities, including trust funds, during said fiscal period;

(iii) the revenue or receipts of the Corporation, both unrestricted and restricted, to particular purposes during said fiscal period;

(iv) the expenses or disbursements of the Corporation for both general and restricted purposes, during said fiscal period; and

(v) a schedule of the bonds and notes of the Corporation outstanding during said fiscal period, including all refinancings, calls, refundings, defeasements, and interest rate exchange or other such agreements, and for any debt issued during the fiscal period, together with a statement of the amounts redeemed and incurred during such fiscal period as a part of a schedule of debt issuance that include the date of issuance, term, amount, interest rate, means of repayment and cost of issuance.

Furthermore, the certified independent public accounting firm that performs the annual independent audit shall timely report to the Audit Committee the following:

(i) all critical accounting policies and practices to be used;

(ii) all alternative treatments of financial information within generally accepted accounting principals that have been discussed with the management of the Corporation, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm;

(iii) other material written communications between the certified independent public accounting firm and the management of the Corporation, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

SECTION 19. PROPERTY RIGHTS.

No Director of the Corporation shall, by reason of that position, have any rights to or interest in the property or assets of the Corporation.

ARTICLE IV - COMMITTEES

SECTION 1. STANDING COMMITTEES.

Except as otherwise provided in these By-laws, the chairs and all members of the committees shall be appointed by the Board at the annual meeting of the Board, and shall serve until the next annual meeting and until their successors are duly appointed and qualified. Committee members appointed to fill vacancies shall serve until the next annual meeting of the

Board and until their successors are appointed and qualified. The Standing Committees of the Board shall be as described below. Except as otherwise provided by these By-Laws, each Standing Committee shall consist of at least three Directors. In the event of a vacancy on a committee of the Corporation, or a vacancy in the chair of a committee of the Corporation, the Chair may designate a successor to fill the unexpired portion of the term. No Standing Committee shall have authority as to the following matters:

- (i) The submission to the Member of any action requiring its approval;
- (ii) The filling of vacancies on the Board of Directors or any committee;
- (iii) The amendment or repeal of these By-Laws or the adoption of new By-Laws; or
- (iv) The amendment or repeal of any resolution of the Board which by its terms is not so amendable or repealable.

SECTION 2. FINANCE AND AUDIT COMMITTEE.

(a) The Finance & Audit Committee shall be comprised of the following:

(i) At least three (3) independent individuals whom, to the extent practicable, shall be familiar with corporate financial and accounting practices, appointed with the consent of the Board at the annual meeting of the Board.

(b) The committee chair for the Finance & Audit Committee shall be designated by a majority of the Board.

(c) The Finance & Audit Committee shall be responsible:

(i) To provide assistance to the Board in fulfilling its fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices;

(ii) To maintain a direct line of communication between the Board and the Corporation's independent accountants and auditors to provide for exchanges of views and information;

(iii) To maintain, as appropriate, a direct line of communication between the Board and the governmental authorities having audit authority or official oversight of the Corporation; and

(iv) To approve the budget of the Corporation for submission to the Board.

Particularly, and without limiting the generality of the foregoing, the Finance & Audit Committee shall be responsible for recommending to the Board the level of cash reserves and the level of fund balances. The Finance & Audit Committee shall also recommend to the Board the

hiring of a certified independent accounting firm, establish the compensation to be paid to such accounting firm, provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes and receive reports from such accounting firm. The Finance & Audit Committee shall report to the Board on a periodic basis, at least annually, the findings of its independent accountants and auditors. These reports shall include careful consideration of the actions taken by management on the independent accountants' and auditors' suggestions for correcting weaknesses, if any, in the Corporation's internal controls, regulatory compliance, organizational structure and operations. These reports may include the adequacy of the audit effort by the Corporation's independent accountants and auditors, the financial and regulatory compliance reporting decisions of management, the adequacy of disclosure of information essential to a fair presentation of the financial affairs and regulatory compliance efforts of the Corporation, and the organization and quality of the Corporation's system of management and internal accounting control.

(d) The Finance & Audit Committee shall be comprised of not less than three independent members, within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as amended from time to time. In the event that the Corporation has less than three independent members of its Board, the Corporation may appoint non-independent members to the Finance & Audit Committee, provided that the independent members must constitute a majority of the members of the Finance & Audit Committee.

SECTION 3. GOVERNANCE COMMITTEE.

(a) The Governance Committee shall be comprised of the following:

(i) At least three (3) independent individuals appointed with the consent of the Board at the annual meeting of the Board, who shall serve for terms of one (1) year.

(b) The committee chair for the Governance Committee shall be designated by a majority of the Board.

(c) The Governance Committee shall be responsible to:

(i) Keep the Board informed of current best governance practices;

(ii) Review corporate governance trends;

(iii) Update the Corporation's corporate governance principles; and

(iv) Advise those responsible for appointing members to the Board of the skills and experience required of potential Board members.

(d) The Governance Committee shall be comprised of not less than three independent members, within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as amended from time to time. In the event that the

Corporation has less than three independent members of its Board, the Corporation may appoint non-independent members to the Governance Committee, provided that the independent members must constitute a majority of the members of the Governance Committee.

SECTION 4. SPECIAL COMMITTEES.

The Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may create Special Committees, which shall have only the powers specifically delegated to them and shall in no case have powers which are not authorized for Standing Committees.

SECTION 5. MEETINGS.

Meetings of committees shall be held at such times and places as shall be fixed by the respective committee chairpersons, or by vote of a majority of all of the members of the committee. Written notice shall be mailed (via regular mail or electronic mail) or delivered to all members of the committee prior to each meeting. Written minutes of the proceedings shall be kept at all committee meetings. Formal notice of meeting need not be given to committee members if he or she executes a waiver of notice, either before or after the meeting. The attendance of a committee member at a meeting, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice.

SECTION 6. QUORUM.

Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business.

SECTION 7. MANNER OF ACTING.

Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the committee. Action by a committee shall be taken by majority vote at a meeting.

ARTICLE V - OFFICERS

SECTION 1. EXECUTIVE DIRECTOR; TREASURER; OTHER OFFICERS.

The Corporation may have an Executive Director, a Treasurer, and a Secretary and other officers and assistant officers as the Board of Directors may determine. The offices of Executive Director and Secretary shall not be held by the same person. The officers shall have such duties as may be prescribed by these By-Laws and the Board of Directors.

SECTION 2. TERMS OF OFFICERS.

The officers shall be appointed by the Board of Directors at its annual meeting. Unless a shorter term is provided in the resolution of the Board appointing such officer, the term of office of each officer shall extend for one year after his or her appointment and until a successor is appointed and qualified. Officers shall be eligible to serve an unlimited number of consecutive terms.

SECTION 3. ADDITIONAL OFFICERS.

Additional officers may be appointed for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

SECTION 4. REMOVAL OF OFFICERS.

Any officer may be removed by majority vote of the Directors, with or without cause, at any time, provided there is a quorum of not less than a majority of the entire Board of Directors present at the meeting at which such action is taken.

SECTION 5. RESIGNATION.

Any officer may resign at any time by giving written notice to the Board of Directors, the Executive Director or the Secretary; provided, however, the Executive Director must provide written notice of his or her intent to resign to the Board of Directors and the Secretary must provide written notice of his or her intent to resign to the Chair or the Board of Directors. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

SECTION 6. VACANCIES.

A vacancy in any office of the Corporation shall be filled by the majority vote of the entire Board of Directors.

SECTION 7. EXECUTIVE DIRECTOR.

The Board of Directors shall appoint the Executive Director by resolution, which resolution shall set the Executive Officer's annual compensation. The Executive Director shall generally supervise all affairs of the Corporation. The Executive Director shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors.

SECTION 8. SECRETARY.

The Board of Directors shall appoint the Secretary by resolution, which resolution shall set the Secretary's annual compensation. It shall be the duty of the Secretary to supervise the

preparation of minutes of all meetings of the Member and the Board of Directors and its committees, the giving of all notices required to be given by the Corporation, and the keeping of a current list of the Members of the Corporation, Directors and officers and their residence addresses. The Secretary shall be responsible for supervising the preparation and maintenance of the books and records of the Corporation. The Secretary shall attend to such correspondence as may be assigned to him or her and perform all the duties customarily incidental to that office and such other duties as may be assigned to him or her by the Board of Directors or the Executive Director. From time to time, the Board of Directors may employ or contract with an appointed Acting Secretary to whom the Board of Directors may designate certain duties of the Secretary and other such duties as may be assigned to him or her.

SECTION 9. TREASURER.

The Board of Directors shall appoint the Treasurer by resolution, which resolution shall set the Treasurer's annual compensation. It shall be the duty of the Treasurer of the Corporation to oversee the financial affairs of the Corporation, report at each regular meeting of the Board of Directors, and participate in preparing the annual report of the Corporation and the filing of all required tax returns and other regulatory reports. The Treasurer shall perform such other duties as may be assigned to him or her by the Board of Directors or the Executive Director.

ARTICLE VI - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

SECTION 1. EXECUTION OF CONTRACTS.

The Board of Directors may on its own, except as these By-Laws otherwise provide, or may authorize any officer or officers, agent or agents, employee or employees, in the name of and on behalf of the Corporation, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Directors, or expressly authorized by these By-Laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

SECTION 2. LOANS.

No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board of Directors.

SECTION 3. CHECKS, DRAFTS, ETC.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, must be signed on behalf of the Corporation by two of following persons: the Executive Director, the Treasurer or the Chair of the Board.

SECTION 4. DEPOSITS.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Treasurer may recommend and the Board of Directors approves.

SECTION 5. INVESTMENTS.

The Board of Directors may authorize the Corporation to contract with an investment advisor and custodian to manage its investments in accordance with an investment policy established by the Board.

ARTICLE VII - GENERAL

SECTION 1. SEAL.

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

SECTION 2. BOOKS AND RECORDS.

There shall be kept by the Corporation (1) correct and complete books and records of account, (2) minutes and statements of written action by the Member, (3) minutes of the proceedings of the Board of Directors and its committees, (4) a current list of the Members, Directors and officers of the Corporation and their residence addresses, (5) a copy of the Certificate of Incorporation, and (6) a copy of these By-Laws. The foregoing items shall be subject to inspection and/or audit at any time by or at the direction of the Board of Directors.

SECTION 3. INDEMNIFICATION.

The Corporation shall indemnify each Member, each Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the Not-For-Profit Corporation Law.

SECTION 4. INTERESTED DIRECTORS AND OFFICERS.

The Board of Directors may adopt a policy regarding conflicts of interest which shall apply to all directors and officers.

SECTION 5. LOANS TO MEMBERS AND OFFICERS.

The Corporation, either directly or indirectly, including through any subsidiary, is prohibited from extending or maintaining credit, arranging for the extension of credit or renewing any extension of credit, in the form of a personal loan to or for any Member, Director,

or Officer, or to any other company, corporation, firm, association or other entity in which one or more of the Member, Directors or Officers of the Corporation are members, director or officers or hold a substantial financial interest.

ARTICLE VIII - FISCAL YEAR

The fiscal year of the Corporation shall commence on the first day of January of each calendar year and end on the last day of December.

ARTICLE IX - RULES OF ORDER AND BYLAW CHANGES

SECTION 1. RULES OF ORDER.

The Member shall preside over meetings of the Member. The Chair shall preside over all meetings of the Board of Directors. The chair of a committee shall preside over all meetings of such committee.

SECTION 2. BY-LAW CHANGES.

The By-Laws may be adopted, amended or repealed by the affirmative vote of at least a majority of the individuals then serving as directors or by the affirmative vote of the Member of the Corporation.

Appendix E

Financial Plan

EXHIBIT A

ErieNet Local Development Corporation (ENLDC) 2024 Budget Report

	2022 Budget (Estimated)	2023 Budget (Adopted)	2024 Budget (Proposed)	2025 Budget (Proposed)	2026 Budget (Proposed)	2027 Budget (Proposed)
REVENUE & FINANCIAL SOURCES						
Operating Revenues						
Charges for services	\$ -	\$ -	\$ -	\$ 1,706,025	\$ 2,963,463	\$ 4,087,100
Rental & financing income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other operating revenues	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Nonoperating Revenues						
Investment earnings	\$ -	\$ 364,065	\$ 779,000	\$ -	\$ -	\$ -
State subsidies/grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Federal subsidies/grants	\$ -	\$ 7,388,693	\$ 20,318,013	\$ 5,709,606	\$ 583,688	\$ -
Municipal subsidies/grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Public authority subsidies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other nonoperating revenues	\$ -	\$ 1,457,199	\$ 7,368,743	\$ -	\$ -	\$ -
Proceeds from the issuance of debt	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenues & Financing Sources	\$ -	\$ 9,209,957	\$ 28,465,756	\$ 7,415,631	\$ 3,547,151	\$ 4,087,100
EXPENDITURES						
Operating Expenditures						
Salaries and wages	\$ -	\$ 89,500	\$ 178,000	\$ 194,000	\$ 205,000	\$ 218,000
Other employee benefits	\$ -	\$ 42,000	\$ 99,150	\$ 108,300	\$ 118,100	\$ 128,350
Professional services contracts	\$ -	\$ 595,100	\$ 891,752	\$ 1,261,883	\$ 1,170,179	\$ 1,156,778
Supplies and materials	\$ -	\$ 1,500	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Other operating expenditures	\$ -	\$ 74,350	\$ 795,446	\$ 976,506	\$ 1,007,405	\$ 1,035,796
Nonoperating Expenditures						
Payment of principal on bonds and financing arrangements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest and other financing charges	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subsidies to other public authorities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital asset outlay	\$ -	\$ 8,043,442	\$ 25,721,408	\$ 4,873,942	\$ 1,045,467	\$ 1,547,176
Grants and donations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other nonoperating expenditures	\$ -	\$ 364,065	\$ 779,000	\$ -	\$ -	\$ -
Total Expenditures	\$ -	\$ 9,209,957	\$ 28,465,756	\$ 7,415,631	\$ 3,547,151	\$ 4,087,100
Capital Contributions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Excess (deficiency) of revenues and capital contributions over expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

This 2024 Budget report was approved by the current ErieNet Board of Directors dated on 10/19/2023.

Appendix F

Code of Ethics / Conflict of Interest Policy

ERIENET LOCAL DEVELOPMENT CORPORATION

CODE OF ETHICS AND CONFLICTS OF INTEREST POLICY

This Code of Ethics and Conflicts of Interest Policy (“Policy”) shall apply to the ErieNet Local Development Corporation (the “Corporation”).

The members of the board (the “Board”) of the Corporation, with the officers and staff of the Corporation, shall comply with and adhere to the provisions of this Code of Ethics and Conflicts of Interest Policy (“Code”) adopted pursuant to and in accordance with Section 2824 of the Public Authorities Law.

ARTICLE I

Conflicts of Interest

A conflict of interest is a situation in which the financial, familial, or personal interests of a member, director, officer or employee come into “actual” or “perceived” conflict with their duties and responsibilities with the Corporation.

“Perceived” conflicts of interest are situations where there is the appearance that a member, director, officer or employee can personally benefit from actions or decisions made in their official capacity, or where a member, director, officer or employee may be influenced to act in a manner that does not represent the best interests of the Corporation. The perception of a conflict may occur if circumstances would suggest to a reasonable person that a member, director, officer or employee may have a conflict.

“Actual” conflicts of interest are situations where a member, director, officer or employee can personally benefit from actions or decisions made in their official capacity, or where a member, director, officer or employee is influenced to act in a manner that does not represent the best interests of the Corporation.

Perceived and Actual conflicts of interest should be treated in the same manner for purposes of disclosure under Article III herein.

ARTICLE II

Standards of Conduct

1. No member, director, officer or employee of the Corporation should accept other employment which will impair their independence of judgment in the exercise of their official duties.

2. No member, director, officer or employee of the Corporation should accept employment or engage in any business or professional activity which will require them to disclose confidential information which they have gained by reason of their official position or authority.

3. No member, director, officer or employee of the Corporation should disclose confidential information acquired by them in the course of their official duties nor use such information to further their personal interests.

4. No member, director, officer or employee of the Corporation should use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.

5. No member, director, officer or employee of the Corporation should engage in any transaction as representative or agent of the Corporation with any business entity in which they have a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of their official duties.

6. No member, director, officer or employee of the Corporation should by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.

7. Each member, director, officer and employee of the Corporation should abstain from making personal investments in enterprises which they have reason to believe may be directly involved in decisions to be made by them or which will otherwise create substantial conflict between their duty in the public interest and their private interest.

8. Each member, director, officer or employee of the Corporation should endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of his or her trust.

ARTICLE III

Procedures for Disclosing a Conflict of Interest

All members, directors, officers or employees of the Corporation shall adhere to the following procedures:

1. All members, directors, officers and employees shall examine their specific facts and circumstances giving rise to the question of a conflict in order to determine:

- (i) whether such member, director, officer or employee can personally benefit from the actions or decisions made in their official capacity (i.e. Actual Conflict); or
- (ii) whether a member, director, officer or employee is influenced to act in a manner that does not represent the best interests of the Corporation (i.e. Actual Conflict);
or

- (iii) whether a reasonable person would conclude that such member, director, officer or employee may have a conflict (i.e. Perceived Conflict). In determining whether a reasonable person would conclude that there is a conflict, such member, director, officer or employee must assess the materiality within the context of the specific facts and circumstances. Provided that the event giving rise to the question of a conflict is material within the context of the specific facts and circumstances, then it would be reasonable for a person to conclude that there may be a conflict.

2. All Actual and Perceived conflicts of interest shall be disclosed in writing to the Ethics Officer as soon as practicable after learning of the Actual or Perceived conflict of interest. The written disclosure must (i) identify the matter before the Corporation, (ii) identify the Standard of Conduct in question and (iii) contain sufficient facts and circumstances in order to accurately convey the extent of the member's, director's, officer's or employee's interest in such matter. In addition, in the event a member of the board of directors of the Corporation has a conflict, he or she shall verbally disclose the conflict during a public session of a board meeting at which the matter creating the conflict appears on the agenda. Such verbal disclosure shall be recorded in the minutes of the meeting and be made part of the public record.

3. The member, director, officer or employee with the conflict of interest shall recuse themselves and refrain from participating in all discussions or decisions on the matter creating the conflict. In addition, in the event a member of the board of directors of the Corporation has a conflict, he or she shall, in addition to the foregoing, abstain from voting on such matter creating the conflict.

4. The member, director, officer or employee with the conflict of interest shall refrain from directly or indirectly attempting to influence the discussions, decisions, deliberations or vote on the matter giving rise to such conflict.

ARTICLE V

Penalties

Any employee that fails to comply with this Policy may be subject to termination. In addition, any member, director, officer or employee that fails to comply with this Policy may be penalized in a manner provided for in law.

ARTICLE VI

Ethics Officer

The Executive Director shall serve as the Ethics Officer of the Corporation. In the event of a vacancy, the Board Chair shall serve as the Ethics Officer until such time as the Corporation's Board appoints a successor.

The Ethics Officer shall report to the Board. The Ethics Officer shall have the powers and duties set forth below, and such other powers and duties as may be prescribed by the Board:

1. Advise in confidence each member, director, officer or employee of the Corporation who seeks guidance regarding ethical behavior and conflicts of interest.
2. Review matters concerning ethics and conflicts of interest and advise the Corporation accordingly.
3. Receive and record disclosures of conflicts of interest.
4. Receive and investigate complaints about possible violations of this Code of Ethics. Dismiss complaints found to be without substance.
5. Report to the governance committee.
6. Prepare investigative reports when deemed appropriate of his or her findings to be submitted for action by the Executive Director or the Board.
7. Seek consultation and guidance from counsel to the Corporation, the Corporation's governance committee, or any appropriate New York State Corporation.

ARTICLE VII

Whistleblower Policy

In accordance with Title 12 of Article 9 of the Public Authorities Law, the Corporation adopted a Whistleblower Policy to afford certain protections to individuals who, in good faith, report violations of the Corporation's Code of Ethics or other instances of potential wrongdoing within the Corporation. The Policy provides Corporation members, directors, officers and employees with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation. The Policy is provided and is accessible to all members, directors, officers and employees of the Corporation and is reviewed annually by the Corporation's Governance Committee. For additional information on this Policy, see "Whistleblower Policy & Procedures" on the Corporation's website.

Adopted this 12 day of September, 2022

Appendix G

Procurement Report FY 2023

2023 PROCUREMENTS

TOTAL AMOUNT EXPENDED FOR FISCAL YEAR:
\$12,858,631.76

VENDOR	AMOUNT EXPENDED IN FISCAL YEAR	CONTRACT DATE
BRISBANE CONSULTING SERVICES, INC.	\$15,080.00	03/2/2023
CHARTER COMMUNICATIONS OPERATING	\$248,464.02	Sole Source
DDS ENGINEERING AND SURVEYING LLP	\$169,496.00	08/09/2023
ECC TECHNOLOGIES, INC.	\$280,000.00	05/01/2023
GRAYBAR ELECTRIC COMPANY, INC.	\$547,322.82	06/12/2023
HARRIS BEACH, PLLC	\$288,833.53	11/22/2022
LEIDOS ENGINEERING OF NEW YORK P.C.	\$92,470.00	Sole Source
LUMSDEN MCCORMICK, LLP	\$18,750.00	11/22/2022
M & C UTILITES, LLC.	\$179,790.89	03/03/2023
NATIONAL GRID	\$7,000.00	Sole Source
NY STATE ELECTRIC GAS CORPORATION	\$566,311.00	Sole Source
VERIZON NY LAG	\$445,113.50	Sole Source

Appendix H

Investment Report FY 2023

Schedule of Corporation Investments FY 2023

Annual Investment Report - §2925(6) of Public Authorities Law of the State of New York requires that each public authority must annually prepare an investment report which shall include (a) investment guidelines, (b) amendments to such guidelines since the last investment report, (c) an explanation of the investment guidelines and amendments, (d) results of the annual independent audit, (e) the investment income record of the corporation, and (f) a list of the total fees, commissions or other charges paid to each investment banker, broker, dealer and adviser rendering investment associated services to the Corporation since the last investment report.

- Investment guidelines—The Corporation’s investment policies are governed by State statutes. All investments are maintained in bank deposit accounts which are federally insured. The Corporation’s deposits are held at quality institutions.
- Amendments to guidelines—None.
- Explanation of guidelines and investments—These guidelines restrict investment of the Corporation’s funds to deposits in federally insured banks. The Corporation’s Investment Policy was created in 2023.
- Results of the annual independent audit—The independent auditors have issued an unmodified opinion on the Corporation’s financial statements for the year ended December 31, 2023.
- Investment income (interest) record— Investment income (interest) for the year ended December 31, 2023 consisted of:

Interest earned on Treasury Bills matured in 2023:	\$320,954.57
Total:	\$320,954.57
- List of the total fees, commissions or other charges paid to each investment banker, broker, dealer and adviser rendering investment associated services to the Corporation since the last investment report—No such fees, commissions, or other charges were paid during the year ended December 31, 2023.

Appendix I

Annual Audit FY 2023

**ERIENET LOCAL
DEVELOPMENT CORPORATION**
(A Component Unit of the County of Erie, New York)
*Basic Financial Statements, Supplementary Information,
Other Information, and Federal Awards Information for the
Year Ended December 31, 2023 and 2022
and Independent Auditors' Reports*

ERIENET LOCAL DEVELOPMENT CORPORATION
(A COMPONENT UNIT OF THE COUNTY OF ERIE, NEW YORK)

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INDEPENDENT AUDITORS' REPORT

The Board of Directors
ErieNet Local Development Corporation:

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of the business-type activities of the ErieNet Local Development Corporation ("ErieNet"), a component unit of the County of Erie, New York, as of and for the years ended December 31, 2023 and 2022, and the related notes to the financial statements, which collectively comprise ErieNet's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the business-type activities of ErieNet as of December 31, 2023 and 2022, and the changes in its financial position and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America ("GAAS") and the standards applicable to financial audits contained in *Government Auditing Standards* ("GAS"), issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of ErieNet and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

ErieNet's management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and 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.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the ErieNet's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and GAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and GAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the ErieNet's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the ErieNet's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Emphasis of Matter

As discussed in Note 1, the financial statements present only ErieNet and do not purport to, and do not present fairly the financial position of the County of Erie, New York, as of December 31, 2023, and the changes in its financial position, or, where applicable, its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Required Supplementary Information

Management has omitted Management's Discussion and Analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.

Supplementary Information

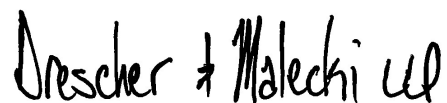
Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise ErieNet’s basic financial statements. The Schedule of Expenditures of Federal Awards, as required by Title 2 U.S. Code of Federal Regulations (“CFR”) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Guidance”), are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Expenditures of Federal Awards is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Information

Management is responsible for the other information included in the financial statements. The other information comprises the Real Property Listing but does not include the financial statements and our auditor’s report thereon. Our opinions on the financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon. In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated March 19, 2024 on our consideration of the ErieNet’s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering ErieNet’s internal control over financial reporting and compliance.



March 19, 2024

BASIC FINANCIAL STATEMENTS

ERIENET LOCAL DEVELOPMENT CORPORATION
(A Component Unit of the County of Erie, New York)
Statements of Net Position
December 31, 2023 and 2022

ASSETS	<u>2023</u>	<u>2022</u>
Current assets:		
Cash and cash equivalents	\$ 1,938,996	\$ 932
Restricted cash and cash equivalents	1,104,616	34,000,000
Restricted investments	28,763,343	-
Prepaid items	5,415	-
Noncurrent assets:		
Capital assets, not being depreciated	<u>3,291,403</u>	<u>-</u>
Total assets	<u>\$ 35,103,773</u>	<u>\$ 34,000,932</u>
LIABILITIES		
Current liabilities:		
Accounts payable	\$ 1,079,296	\$ -
Accrued liabilities	3,374	-
Unearned revenue	<u>29,867,959</u>	<u>34,000,000</u>
Total liabilities	<u>30,950,629</u>	<u>34,000,000</u>
NET POSITION		
Net investment in capital assets	3,291,403	-
Unrestricted	<u>861,741</u>	<u>932</u>
Total net position	<u>\$ 4,153,144</u>	<u>\$ 932</u>

The notes to the financial statements are an integral part of this statement.

ERIENET LOCAL DEVELOPMENT CORPORATION
(A Component Unit of the County of Erie, New York)
Statements of Revenues, Expenses, and Changes in Net Position
Years Ended December 31, 2023 and 2022

	2023	2022
Operating revenues:		
Other	\$ 230	\$ -
Total operating revenues	230	-
Operating expenses:		
Salaries and benefits	131,001	-
Professional services	647,646	-
Other	61,991	-
Total operating expenses	840,638	-
Operating (loss)	(840,408)	-
Nonoperating revenues:		
Grant income	4,132,041	-
Investment income	860,579	932
Total nonoperating revenues	4,992,620	932
Change in net position	4,152,212	932
Net position—beginning	932	-
Net position—ending	\$ 4,153,144	\$ 932

The notes to the financial statements are an integral part of this statement.

ERIENET LOCAL DEVELOPMENT CORPORATION
(A Component Unit of the County of Erie, New York)
Statements of Cash Flows
Years Ended December 31, 2023 and 2022

	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash paid for employee wages and benefits	\$ (127,627)	\$ -
Cash paid to vendors and suppliers	(699,297)	-
Cash from other revenues	230	-
Net cash (used for) operating activities	(826,694)	-
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Purchase of capital assets	(2,227,862)	-
Transfer from Erie County	-	34,000,000
Net cash (used for) provided by capital and related financing activities	(2,227,862)	34,000,000
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of investments	(27,998,170)	-
Interest received	95,406	932
Net cash (used for) provided by investing activities	(27,902,764)	932
Net change in cash and cash equivalents	(30,957,320)	34,000,932
Cash and cash equivalents—beginning	34,000,932	-
Cash and cash equivalents—ending	\$ 3,043,612	\$ 34,000,932
Reconciliation of operating (loss) to net cash (used for) operating activities:		
Operating (loss)	\$ (840,408)	\$ -
Adjustments to reconcile operating income to net cash (used for) operating activities:		
(Increase) in prepaid items	(5,415)	-
Increase in accounts payable for operating activities	15,755	-
Increase in accrued liabilities	3,374	-
Total adjustments	13,714	-
Net cash (used for) operating activities	\$ (826,694)	\$ -

The notes to the financial statements are an integral part of this statement.

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ERIENET LOCAL DEVELOPMENT CORPORATION
(A Component Unit of the County of Erie, New York)
Notes to the Financial Statements
Years Ended December 31, 2023 and 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Entity

ErieNet Local Development Corporation (the “ErieNet”) was created in 2022 under Section 1411 of the New York Not-for-Profit Corporation Law for the purpose of creating a foundation to address the broadband needs of unserved areas, improve services in underserved areas of Erie County (the “County”), and enable world-class broadband investment and deployment countywide. ErieNet was established through a \$34,000,000 grant from the County which was passed through the County from the American Rescue Plan Act.

Financial Reporting Entity

In evaluating how to define ErieNet for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in ErieNet’s reporting entity is based on application of these criteria, there are no additional entities included in ErieNet’s financial statements.

Measurement Focus

Management has elected to present ErieNet as a stand-alone business-type activity (proprietary fund). Accordingly, the activities of ErieNet are accounted for similar to those often found in the private sector using the flow of economic resources measurement focus and the accrual basis of accounting. All assets, deferred outflows of resources, liabilities, deferred inflows of resources, net position, revenues and expenses are accounted for through a single enterprise fund with revenues recorded when earned and expenses recorded at the time liabilities are incurred.

Basis of Presentation

The basic financial statements of ErieNet have been prepared in conformity with accounting principles generally accepted in the United States of America applied to governmental units. The Governmental Accounting Standards Board (“GASB”) is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The more significant of ErieNet’s accounting policies are described below.

Basis of Accounting

The accounts of ErieNet are maintained on the accrual basis of accounting. As such, revenues are recognized in the period in which they are incurred. The significant accounting and reporting policies used by ErieNet are described below to enhance the usefulness and understandability of the financial statements.

Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position

Cash and Cash Equivalents and Investments—Cash management is governed by State laws and as established by ErieNet’s written policies. Cash resources must be deposited in FDIC-insured commercial banks or trust companies located within the State. Management is authorized to use demand accounts and certificates of deposit. Permissible investments include obligations of the United States Treasury and its agencies, repurchase agreements, and obligations of the state or its localities.

Restricted Cash and Cash Equivalents and Investments—Restricted cash and cash equivalents and investments represent cash from unearned revenue, including amounts received from the County related to American Rescue Plan Act funds.

Prepaid Items—Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items in the statement of net position. The cost of prepaid items is recorded as an expense when consumed rather than purchased.

Capital Assets—Capital assets are recorded at cost. Depreciation is provided over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; significant improvements are capitalized.

Capitalization thresholds to determine which asset purchases are added to capital accounts and the estimated useful lives of capital assets are presented below:

	Capitalization Policy	Estimated Useful Life in Years
Building and improvements	\$ 10,000	5 - 40
Furniture and equipment	10,000	3 - 10

At December 31, 2023, capital assets consist of construction in progress for the ongoing broadband infrastructure project.

Unearned Revenue—Certain cash receipts have not met the revenue recognition criteria and are reported as unearned revenue. At December 31, 2023, ErieNet reported \$29,867,959 of unearned revenues. ErieNet has received grant money in advance but has not performed the related services and, therefore, recognized a liability.

Net Position Flow Assumption—Sometimes ErieNet will fund outlays for a particular purpose from both restricted (e.g., restricted bond proceeds) and unrestricted resources. In order to calculate the amounts to report as restricted—net position and unrestricted—net position in the statement of net position, a flow assumption must be made about the order in which the resources are considered to be applied. It is ErieNet’s policy to consider restricted—net position to have been depleted before unrestricted—net position is applied.

Revenues and Expenses

Operating Revenue and Expenses—ErieNet’s statements of revenues, expenses, and changes in net position distinguish between operating and non-operating revenues and expenses. Operating revenues and expenses generally result from providing services in connection with ErieNet’s principal ongoing

operations, which have not begun as of December 31, 2023. Operating expenses consist of program expenses incurred in connection with ErieNet’s programs, as well as salaries and benefits expenses for ErieNet’s employees.

Grants Revenues—Through the fiscal year ended December 31, 2022, ErieNet received \$34,000,000 through the American Rescue Plan Act funds passed through the County of Erie, New York. ErieNet believes that it has met the requirements for use of a portion of these funds and has recognized \$4,132,041 during the year ended December 31, 2023 as revenue under GAAP. ErieNet did not claim any additional funds as revenues during the year ended December 31, 2023, and therefore, the remaining \$29,867,959 is reported as unearned revenues.

Other

Estimates—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities, deferred outflows of resources, deferred inflows of resources, and disclosure of contingent assets and liabilities at the date of the financial statements. Actual results could differ from those estimates.

Pension—During the year ended December 31, 2023, ErieNet established a defined contribution retirement plan covering essentially all of ErieNet’s employees. The plan requires a safe harbor employer matching contribution. In addition, ErieNet may make other discretionary contributions at the option of the Board of Directors. Employer contributions to the plan for the year ended December 31, 2023 amounted to \$5,982.

Adoption of New Accounting Pronouncements—During the year ended December 31, 2023, ErieNet implemented GASB Statements No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*; No. 96, *Subscription-Based Information Technology Arrangements*; and a portion of No. 99, *Omnibus 2022*. GASB Statement No. 94 improves financial reporting by addressing issues related to public-private and public-public partnerships arrangements (“PPPs”). GASB Statement No. 96 improves financial reporting by establishing a definition for Subscription-Based Information Technology Arrangements (“SBITAs”) and providing uniform guidance for accounting and financial reporting for transactions that meet that definition. A portion of GASB Statement No. 99 enhances comparability in the application of accounting and financial reporting requirements and improves the consistency of authoritative literature related to GASB Statements No. 94 and 96. The implementation of GASB Statements No. 94, 96, and a portion of 99 did not have a material impact on ErieNet’s financial position or results from operations.

Future Impacts of Accounting Pronouncements—ErieNet has not completed the process of evaluating the impact that will result from adopting the remainder of GASB Statement No. 99, *Omnibus 2022*; No. 100, *Accounting Changes and Error Corrections—an amendment of GASB Statement No. 62*; and No. 101, *Compensated Absences*, effective for the year ending December 31, 2024; and No. 102, *Certain Risk Disclosures*, effective for the year ending December 31, 2025. ErieNet is, therefore, unable to disclose the impact that adopting GASB Statements No. 99, 100, 101, and 102 will have on its financial position and results of operations when such statements are adopted.

Tax Status—ErieNet is exempt from federal income tax under section 501(a) of the Internal Revenue Code (IRC) as an organization described in section 501 (c)(3).

2. CASH, CASH EQUIVALENTS AND INVESTMENTS

ErieNet’s investment policies are governed by New York State statutes. All deposits are carried at fair value. Collateral is required for demand deposit accounts, time deposit accounts and certificates of deposit not covered by Federal deposit insurance (“FDIC”). ErieNet has entered into custodial agreements with the various banks which hold their deposits. These agreements authorize the obligation that may be pledged as collateral. Obligations that may be pledged as collateral are outlined in Chapter 623 of the laws of the State of New York.

Cash and cash equivalents of ErieNet at December 31, 2023 and 2022 consisted of the following:

	<u>2023</u>	<u>2022</u>
Cash on deposit	\$ 3,043,612	\$ 34,000,932
Total	<u>\$ 3,043,612</u>	<u>\$ 34,000,932</u>

Deposits—All deposits including cash in bank and money market funds are carried at fair value, and are classified by custodial credit risk at December 31, 2023 and 2022 as shown below:

	<u>2023</u>		<u>2022</u>	
	<u>Bank Balance</u>	<u>Carrying Amount</u>	<u>Bank Balance</u>	<u>Carrying Amount</u>
FDIC insured	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Uninsured:				
Collateral held by pledging bank's agent in ErieNet's name	<u>2,909,899</u>	<u>2,793,612</u>	<u>33,750,932</u>	<u>33,750,932</u>
Total deposits	<u>\$ 3,159,899</u>	<u>\$ 3,043,612</u>	<u>\$ 34,000,932</u>	<u>\$ 34,000,932</u>

Custodial Credit Risk—Deposits—In the case of deposits, this is the risk that in the event of a bank failure, ErieNet’s deposits may not be returned to it. As noted above, by State statute all deposits in excess of FDIC insurance coverage must be collateralized. As of December 31, 2023, ErieNet’s deposits were FDIC insured or collateralized by securities held by the pledging institution’s agent in ErieNet’s name.

Restricted Cash and Cash Equivalents and Investments—ErieNet reports restricted cash and cash equivalents for resources received in advance related to unearned revenue. At December 31, 2023, ErieNet reported \$1,104,616 in restricted cash and cash equivalents and \$28,763,343 in restricted investments.

Investments—All investments are reported using a three-level hierarchy that prioritizes the inputs used to measure fair value. This hierarchy, established by GAAP, requires that entities maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs used to measure fair value are as presented below:

- Level 1. Quotes prices for identical assets or liabilities in active markets to which ErieNet has access at the measurement date.
- Level 2. Inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include:

- Quoted prices for similar assets or liabilities in active markets;
 - Quoted prices for identical or similar assets in markets that are not active;
 - Observable inputs other than quoted prices for the asset or liability (for example, interest rates and yield curves); and
 - Inputs derived principally from, or corroborated by, observable market data by correlation or by other means.
- Level 3. Unobservable inputs for the asset or liability. Unobservable inputs should be used to measure fair value to the extent that observable inputs are not available.

Investments reported at December 31, 2023 are as follows:

	12/31/2023	Fair Value Measurements Using		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Treasury notes	\$ 28,763,343	\$ 28,763,343	\$ -	\$ -
	<u>\$ 28,763,343</u>	<u>\$ 28,763,343</u>	<u>\$ -</u>	<u>\$ -</u>

ErieNet did not report any investments at December 31, 2022.

Interest Rate Risk—Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of deposits and investments. ErieNet's investment policy minimizes the risk by structuring the investment portfolio so that the deposits and investments mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell deposits and investments on the open market prior to maturity. Deposits are primarily invested in short-term securities or similar investment pools with maturities less than one year. Investments are invested in long-term securities or similar investment pools with maturities greater than one year.

Custodial Credit Risk—Investments—Credit risk is defined as the risk that an issuer or other counterpart to an investment in debt securities will not fulfill its obligation. ErieNet's investment policy minimizes credit risk by limiting investments to U.S. Treasury notes are backed by the full faith and credit of the U.S. government and are considered to be of the highest credit quality.

3. CAPITAL ASSETS

Capital asset activity for the fiscal year ending December 31, 2023 was as follows:

	Balance 1/1/2023	Increases	Decreases	Balance 12/31/2023
Capital assets, not being depreciated				
Construction in progress	\$ -	\$ 3,291,403	\$ -	\$ 3,291,403
Total capital assets, not being depreciated	<u>\$ -</u>	<u>\$ 3,291,403</u>	<u>\$ -</u>	<u>\$ 3,291,403</u>

4. ACCRUED LIABILITIES

Accrued liabilities reported by ErieNet at December 31, 2023, were as follows:

	<u>Total</u>
Salary and employee benefits	<u>\$ 3,374</u>

5. PENSION

In 2023, ErieNet established a defined contribution retirement plan covering essentially all of its employees. The plan requires a safe harbor employer matching contribution. In addition, ErieNet may make other discretionary contributions at the option of the Board of Directors. Employer contributions to the plan for the year ended December 31, 2023 amounted to \$5,982.

6. RISK MANAGEMENT

ErieNet is exposed to various risks of losses related to torts; theft of, damage to, and destruction of assets, vehicle liability, injuries to employees, health insurance, unemployment insurance, and natural disasters. These risks are covered by commercial insurance purchased from independent third parties. There have not been any settlements which have exceeded commercial insurance coverage in the past three fiscal years. ErieNet purchases insurance for: commercial general liability coverage, commercial crime coverage, and umbrella insurance.

7. NET POSITION

ErieNet's financial statements utilize a net position presentation. Net position is categorized in net investment in capital assets, restricted and unrestricted.

- **Net Investment In Capital Assets**—This category consists of capital assets, net of accumulated depreciation, reduced by outstanding balances of any related debt obligations attributable to the acquisition, construction, or improvement of those assets. A reconciliation of ErieNet's net investment in capital assets is presented below:

Capital assets, net of accumulated depreciation	<u>\$ 3,291,403</u>
Net investment in capital assets	<u>\$ 3,291,403</u>

- **Restricted**—This category consists of amounts subject to legal purpose restrictions imposed by creditors, grantors, contributors, or laws and regulations of other governments and enforced externally or through constitutional provisions or enabling legislation. At December 31, 2023, there was no restricted net position.
- **Unrestricted**—This component represents net position of ErieNet not restricted for any other purpose.

8. COMMITMENTS AND CONTINGENCIES

Litigation—ErieNet is party to various legal proceedings which normally occur in governmental operations. ErieNet believes that it is the ultimate liability, if any, in connection with these matters, will not have a material effect on ErieNet's financial condition or results of operations.

Grants—ErieNet receives financial assistance from the County. Managing these funds generally requires compliance with the terms and conditions specified in the agreement and may be subject to audit by the grantor agency. Disallowed claims resulting from such audits could become a liability for ErieNet. While the amount of any expense that may be disallowed cannot be determined at this time, management expect any amounts to be immaterial.

Commitments—ErieNet has approved various contracts related to the construction of its broadband infrastructure project. At December 31, 2023, open commitments totaled \$30,121,477.

9. RELATED PARTIES

During the year ended December 31, 2022, the County of Erie, New York allocated \$34,000,000 of American Rescue Plan Act funds to establish ErieNet and fund the construction of a broadband internet network.

10. SUBSEQUENT EVENTS

Management has evaluated subsequent events through March 19, 2024, which is the date the financial statements are available for issuance, and have determined there are no subsequent events that require disclosure under generally accepted accounting principles.

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SUPPLEMENTARY INFORMATION

ERIENET LOCAL DEVELOPMENT CORPORATION
Schedule of Corporation Investments
Year Ended December 31, 2023

Annual Investment Report - §2925(6) of Public Authorities Law of the State of New York requires that each public authority must annually prepare an investment report which shall include (a) investment guidelines, (b) amendments to such guidelines since the last investment report, (c) an explanation of the investment guidelines and amendments, (d) results of the annual independent audit, (e) the investment income record of the corporation, and (f) a list of the total fees, commissions or other charges paid to each investment banker, broker, dealer and adviser rendering investment associated services to the Corporation since the last investment report.

- a. Investment guidelines—ErieNet’s investment policies are governed by State statutes. All investments are maintained in bank deposit accounts which are federally insured. ErieNet’s deposits are held at quality institutions.
- b. Amendments to guidelines—None.
- c. Explanation of guidelines and investments—These guidelines restrict investment of ErieNet’s funds to deposits in federally insured banks. ErieNet has not made any amendments to its investment policy.
- d. Results of the annual independent audit—The independent auditors have issued an unmodified opinion on ErieNet’s financial statements for the year ended December 31, 2023.
- e. Investment income (loss) record— Investment income (loss) for the year ended December 31, 2023 consisted of:

Interest income	\$ 95,406
Unrealized gain on investments	<u>765,173</u>
Total	<u>\$ 860,579</u>

- f. List of the total fees, commissions or other charges paid to each investment banker, broker, dealer and adviser rendering investment associated services to the Corporation since the last investment report—No such fees, commissions, or other charges were paid during the year ended December 31, 2023.

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OTHER INFORMATION

ERIENET LOCAL DEVELOPMENT CORPORATION
Real Property Listing (Unaudited)
Year Ended December 31, 2023

1. **Real Property List** – §2896(3) of Public Authorities Law of the State of New York requires that each public authority must publish, at least annually, a report listing all real property of the authority. At December 31, 2023, ErieNet reported no real property.
2. **Real Property Acquisitions/Dispositions** – During the year ended December 31, 2023, ErieNet neither acquired nor disposed of any real property.

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FEDERAL AWARDS
INFORMATION

ERIENET LOCAL DEVELOPMENT CORPORATION
Schedule of Expenditures of Federal Awards
Year Ended December 31, 2023

Federal Grantor/Pass-through Grantor Program or Cluster Title (1a)	Federal Assistance Listing Number (1b)	Pass-through Entity's Identifying Number (1c)	Passed- Through to Subrecipients	Total Federal Expenditures (1d)
U.S. DEPARTMENT OF THE TREASURY:				
<i>Passed through the County of Erie, New York:</i>				
Coronavirus State and Local Fiscal Recovery Funds	21.027	n/a	\$ -	\$ 4,132,041
TOTAL U.S. DEPARTMENT OF THE TREASURY			<u>-</u>	<u>4,132,041</u>
TOTAL EXPENDITURES OF FEDERAL AWARDS (1e)			<u>\$ -</u>	<u>\$ 4,132,041</u>

The notes to the schedule of expenditures of federal awards are an integral part of this schedule.

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ERIENET LOCAL DEVELOPMENT CORPORATION
Notes to the Schedule of Expenditures of Federal Awards
Year Ended December 31, 2023

1. BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards (the “Schedule”) includes the federal grant activity of the ErieNet Local Development Corporation (“ErieNet”), a component unit of the County of Erie, New York, under programs of federal government for the year ended December 31, 2023. The information in this Schedule is presented in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Guidance”). Because the Schedule presents only a selected portion of the operations of ErieNet, it is not intended to and does not present the financial position, changes in net position or cash flows of ErieNet. The following notes were identified on the Schedule:

- a) Includes all federal award programs of the ErieNet Local Development Corporation.
- b) Source: Federal Assistance Listing Numbers, previously known as Catalog of Federal Domestic Assistance.
- c) Pass-through entity identifying numbers are presented where available.
- d) Prepared under accounting principles generally accepted in the United States of America and includes all federal award programs.
- e) Total federal expenditures for ErieNet’s 2023 fiscal year are reconciled to Federal sources as reported in the basic financial statements.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Expenditures reported on the Schedule are reported on the accrual basis of accounting. Such expenditures are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement. Pass-through entity identifying numbers are presented where available. ErieNet has not elected to use the 10 percent de minimis indirect cost rate as allowed under the Uniform Guidance.

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**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL
OVER FINANCIAL REPORTING AND ON COMPLIANCE AND
OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL
STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS**

The Board of Directors
ErieNet Local Development Corporation:

We have audited, in accordance with the 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, of the business-type activities of the ErieNet Local Development Corporation (“ErieNet”), a component unit of the County of Erie, New York, as of and the year ended December 31, 2023, and the related notes to the financial statements, and have issued our report thereon dated March 19, 2024.

Report on Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered ErieNet’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 ErieNet’s internal control. Accordingly, we do not express an opinion on the effectiveness of ErieNet’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 such that there is a reasonable possibility that a material misstatement of ErieNet’s financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.


Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. 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 or significant deficiencies may exist that were not identified.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether ErieNet's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of ErieNet's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering ErieNet's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

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March 19, 2024

DRESCHER & MALECKI LLP

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INDEPENDENT AUDITORS' REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM AND REPORT ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH THE UNIFORM GUIDANCE

The Board of Directors
ErieNet Local Development Corporation:

Report on Compliance for Each Major Federal Program

Opinion on Each Major Federal Program

We have audited the ErieNet Local Development Corporation's ("ErieNet") compliance with the types of compliance requirements identified as subject to audit in the OMB *Compliance Supplement* that could have a direct and material effect on each of ErieNet's major federal programs for the year ended December 31, 2023. ErieNet's major federal programs are identified in the summary of auditors' results section of the accompanying schedule of findings and questioned costs.

In our opinion, ErieNet complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2023.

Basis for Opinion on Each Major Federal Program

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America ("GAAS"); the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States ("*Government Auditing Standards*"); and the audit requirements of Title 2 U.S. *Code of Federal Regulations* ("CFR") Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (the "Uniform Guidance"). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditors' Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of ErieNet and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of the ErieNet's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules and provisions of contracts or grant agreements applicable to the ErieNet's federal programs.

Auditors' Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the ErieNet's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material, if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the ErieNet's compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding ErieNet's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of ErieNet's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of ErieNet's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

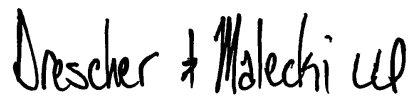
Report on Internal Control Over Compliance

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditors' Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

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March 19, 2024

ERIENET LOCAL DEVELOPMENT CORPORATION
Schedule of Findings and Questioned Costs
Year Ended December 31, 2023

Section I. SUMMARY OF AUDITORS' RESULTS

Financial Statements:

Type of auditors' report issued: Unmodified

Internal control over financial reporting:

Material weakness(es) identified? _____ Yes ✓ No

Significant deficiency(ies) identified? _____ Yes ✓ None reported

Noncompliance material to the financial statements noted? _____ Yes ✓ No

Federal Awards:

Internal control over major federal programs:

Material weakness(es) identified? _____ Yes ✓ No

Significant deficiency(ies) identified? _____ Yes ✓ None reported

Type of auditors' report issued on compliance for major federal programs: Unmodified

Any audit findings disclosed that are required to be reported
in accordance with 2 CFR 200.516(a)? _____ Yes ✓ No

Identification of major federal programs:

<u>Name of Federal Program or Cluster</u>	<u>Federal Assistance Listing Number</u>
Coronavirus State and Local Fiscal Recovery Funds	21.027

Dollar threshold used to distinguish between Type A and Type B programs? \$ 750,000

Auditee qualified as low-risk auditee? ✓ Yes _____ No

Section II. FINANCIAL STATEMENT FINDINGS

No findings noted.

Section III. FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

No findings noted.

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