

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:** February 4, 2014

(X) Consent

( ) Regular

( ) Ordinance

( ) Public Hearing

**Department**

**Submitted By:** Environmental Resources Management

**Submitted For:** Environmental Resources Management

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to:**

**A) accept** a \$40,000 Grant Award # 13-4100-7090 from National Endowment for the Arts (NEA) supporting the design of a large-scale public art installation by environmental artist/designer Michael Singer, Inc. (MSI) to augment a living shoreline project within the Lake Worth Lagoon, expiring September 30, 2014;

**B) waive** the requirement for competitive selection and approved professional services, based on the NEA award supporting the MSI Living Shoreline public art sculptural elements;

**C) approve** a Professional Service Contract with MSI for the design, fabrication, and delivery of sculptural planter elements in an amount of \$47,500.00;

**D) adopt** a Resolution authorizing the Clerk of the Board to disburse \$50,000 from the Vessel Registration Fee Trust Fund to provide partial funding for this project and match for Grant Award;

**E) approve** a Budget Amendment of \$40,000 in the Environmental Enhancement Non-Specific Fund (1225) to recognize the Grant Award;

**F) approve** a Budget Transfer of \$10,000 in the Natural Areas Fund Manatee Protection Program (1226) to the Bryant Park Living Shorelines Project;

**G) authorize** the County Administrator, or his designee, to sign all future time extensions, certifications, and other forms associated with the NEA Grant Award # 13-4100-7090 and Michael Singer, Inc Contract that do not change the scope of work or terms and conditions.

**Summary:** The \$150,000 Bryant Park Living Shorelines Project will create 500 feet of shoreline protection and habitat for oysters, fish and wildlife within the City of Lake Worth. A public art component was added when MSI brought a grant proposal to the County. The \$40,000 NEA Grant Award will be matched by \$40,600 from the Vessel Registration Fee Trust Fund to fund a sculptural art element that will augment a 100 foot portion of the mangrove planters. The remaining Living Shorelines project will be funded from the Natural Areas Fund Manatee Protection Program \$60,000 and Vessel Registration Fee Trust Fund \$9,400. District 7 (SF)

**Background and Justification:**

The design and fabrication of the sculptural art element will be completed by MSI, a Palm Beach County SBE. Installation of the sculptural element and the Living Shoreline project construction will be completed by ERM through an annual Dune and Wetland Contract (R2013-1825). Additional grant funds will be sought to offset the County contribution.

**Attachments:**

1. Grant Award Letter
2. Professional Service Agreement
3. Resolution
4. Budget Amendment (1225)
5. Budget Transfer (1226)

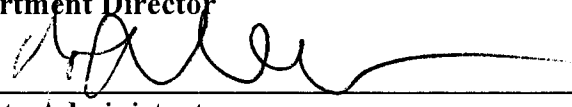
**Recommended by:**

  
Department Director

1-17-14

Date

**Approved by:**

  
County Administrator

1/24/14  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$150,000</u>	_____	_____	_____	_____
External Revenues	<u>(\$40,000)</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u><b>\$110,000</b></u>	_____	_____	_____	_____

# ADDITIONAL FTE  
POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X  
 Budget Account No.: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Program Code \_\_\_\_\_

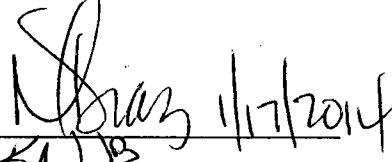
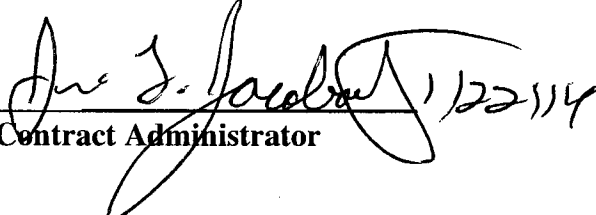
**B. Recommended Sources of Funds/Summary of Fiscal Impact**

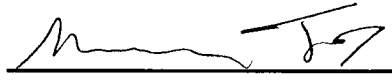
National Endowment for the Arts Grant \$40,000	CFDA 45.024
Vessel Registration Fee Trust Fund – Non-Specific \$50,000	(1225)
Manatee Protection Program \$60,000	(1226)

**C. Department Fiscal Review:** 

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and /or Contract Administrator Comments:**

 _____ OFMB <i>1/14</i> <i>1/15</i>	 _____ Contract Administrator
--	---

**B. Legal Sufficiency:**  
  
  
\_\_\_\_\_  
Assistant County Attorney

**C. Other Department Review:**  
  
\_\_\_\_\_  
Department Director



**ART WORKS.**  
arts.gov

Mr. Robert G. Robbins  
Authorizing Official  
Palm Beach County Board of County Commissioners  
2300 North Jog Road, 4th Floor  
West Palm Beach, FL 33411-2743

JUL 29 2013

Dear Mr. Robbins:

On behalf of the National Endowment for the Arts, it is a pleasure to inform you that your organization has been awarded a grant.

<u>Grantee:</u>	Palm Beach County Board of County Commissioners	
<u>Grant #:</u>	13-4100-7090	<u>CFDA #:</u> 45.024
<u>Grant Amount:</u>	\$40,000	<u>Outcome:</u> Creation
<u>Period of Support:</u>	June 1, 2013 to September 30, 2014	
<u>Discipline/Program:</u>	Visual Arts	
<u>Grant Project:</u>	To support the design of a large-scale public art installation by environmental artist/designer Michael Singer (b.1945), as described in your application (A12-945641) and the enclosed project budget.	

Please review your award packet. A copy of the approved budget is included. If changes were made to the budget they are noted at the bottom of the budget page.

Award materials are online at [www.arts.gov/manageaward](http://www.arts.gov/manageaward). The *General Terms & Conditions* provide detailed information concerning the NEA's regulations and procedures, the administrative requirements that apply to your grant, and your responsibilities as a grantee. Instructions for requesting grant funds and reporting on your project are also here.

If you have any questions regarding the administrative requirements of this grant, our Grants & Contracts Office staff will be happy to assist you. They may be reached at [grants@arts.gov](mailto:grants@arts.gov) or (202) 682-5403.

Congratulations on your grant award!

Sincerely,

Joan Shigekawa  
Senior Deputy Chairman

Enclosures

**National Endowment for the Arts**  
The Nancy Hanks Center  
1100 Pennsylvania Avenue NW  
Washington DC 20506-0001

NATIONAL ENDOWMENT FOR THE ARTS

PROJECT BUDGET

Grantee: Palm Beach County Board of County Commissioners

Grant #: 13-4100-7090

**Important Information:** This budget is derived from your application, revised budget, and/or other communication as noted below. Expenditures on your project should be in general agreement with this budget. Deviation without prior NEA approval will be limited to the standards outlined in the *General Terms & Conditions* and the provisions of circulars A-110 (2 CFR 215) or A-102 (45 CFR 1157). It is understood that costs included below may be estimates and that actual, allowable expenditures will be reported on all financial reports.

This grant must be matched dollar for dollar (1 to 1) unless otherwise indicated in your award letter. All costs must be incurred within the project period on your award letter. Unallowable project costs cannot be supported by either Federal or non-Federal funds. This budget cannot include overlapping project costs with any other Federal grant (direct or indirect). Proper documentation must be maintained for all in-kind contributions claimed.

**INCOME**

Cash: \$	<u>40,600</u>	
In-Kind: \$	<u>0</u>	
		Total Contributions: \$ <u>40,600</u>
NEA Grant: \$	<u>40,000</u>	
		Total NEA Grant: \$ <u>40,000</u>
		<b>TOTAL PROJECT INCOME: \$ <u>80,600</u></b>

**EXPENSES**

**Direct Costs:**

Salaries and Wages: \$	<u>14,600</u>	
Fringe Benefits: \$	<u>0</u>	
Travel: \$	<u>0</u>	
Other: \$	<u>66,000</u>	
		Total Direct Costs: \$ <u>80,600</u>

**Indirect Costs:** \$ 0

**TOTAL PROJECT EXPENSES: \$ 80,600**

Revised Budget/Application Update Date: 05/02/2013

**Notes:**

Project Management, Biological Services, and Professional Engineer moved from IN-KIND to CASH; employees of PBC are not considered third-party contributions.



NATIONAL ENDOWMENT FOR THE ARTS  
**REPORTING REQUIREMENTS**  
For Grants to Organizations  
FY12 & Later

Rev. Oct. 2012

Materials regarding your award are online at [www.arts.gov/manageaward/index](http://www.arts.gov/manageaward/index). Basic information about your grant is available at [www.arts.gov/mygrant](http://www.arts.gov/mygrant) (or My Grant at a Glance).

The reporting requirements for your grant are described below. Follow these instructions carefully.

**PROGRESS REPORT**

Generally, only one progress report will be required during the grant period. It is submitted as part of the Payment Request form, Box 10. The Progress Report is due the first time the cumulative amount requested EXCEEDS two thirds (2/3) of the grant award amount.

The Progress Report must include a description of grant supported activities that:

- have been undertaken since the grant period start date, and
- are scheduled for the remainder of the grant period.

Limit your response to the space provided on the form.

**FINAL REPORTS**

Submit Final Reports to the Grants & Contracts Office (G&C) no later than 90 days after the grant period end date. You will be ineligible for any National Endowment for the Arts (NEA) awards if you fail to submit required and acceptable Final Reports for previous awards.

Go to [www.arts.gov/manageaward/index](http://www.arts.gov/manageaward/index) for Final Reports instructions and forms. Click on **FY12 & Later**.

The Final Descriptive Report (FDR) and Federal Financial Report (FFR) must be e-mailed to [FinalReports@arts.gov](mailto:FinalReports@arts.gov). Identify your grant number and organization name in the subject line; e.g., FDR 12-3200-7xxx ABC Arts Organization or FFR 12-3200-7xxx ABC Arts Organization.

The Final Report includes:

1. **Federal Financial Report (FFR).**
2. **Final Descriptive Report (FDR):**
  - narrative describing the project activities;
  - data about specific activities and participants; and
  - geographic location(s) and venue(s) where grant activities took place (online module).
3. **Final Product Requirement.** If a final product is required for this grant, it is indicated below. Prominently label your product with your organization's name and grant number. If the product is available on-line, include the Web address/link in your FDR.

\_\_\_\_\_ Book(s) / Catalogue(s) / Journal(s)

\_\_\_\_\_ Publication(s) / Report(s)

\_\_\_\_\_ Libretto / Score(s) (hard copy or PDF on disc)

\_\_\_\_\_ Recordings (CD, DVD, or other audio or video files)

Continue 

**Final Product Requirement, cont.**

Other:

**If no item is identified, a product is NOT required for your grant.**

We reserve the right to request subsequent information or work product(s) as necessary. All Federal awarding agencies retain a royalty-free right to use all or a portion of their grantees' final report material for Federal purposes (e.g., the use of final report work products to document the results of grant programs), including publication on a Federal Web site. If the NEA is interested in using images for promotional and educational uses, we will contact you before any such use. For more information, see the **General Terms & Conditions**.

Hardcopy of products (as identified above)  
can be sent by mail\* to:

Grants & Contracts Office  
Final Report Section, RM 618  
National Endowment for the Arts  
1100 Pennsylvania Avenue, NW  
Washington, DC 20506-0001

\*NOTE: The first-class mail to the NEA is delayed due to security screening. Products put through this process suffer irreversible damage. If you are sending a product, or time-sensitive materials, use an alternative delivery service.

**ADDITIONAL REMINDERS**

1. An active and valid [www.sam.gov](http://www.sam.gov) (formerly CCR) registration is required to receive Federal funds and must be maintained throughout the life of the award.
2. Grant activities must be carried out consistent with those approved for funding by the NEA. If changes in the project are believed necessary, send a request with a justification to the G&C **before** implementation.
3. NEA's support must be acknowledged in all materials and announcements regarding this grant.
4. See the requirements concerning record retention and the Federal government's rights of access to records and personnel in the **General Terms & Conditions**.
5. Documentation must be maintained for all grant project costs claimed, including those covered by the required match.
6. Ensure your e-mail will accept messages from the [arts.gov](http://arts.gov) domain name.

The **General Terms & Conditions** provide detailed information on how to manage your NEA award, such as:

- which Administrative Requirements and Cost Principles apply to your organization,
- how to request a time extension or other changes to your approved project,
- when, or if, you need to request a budget amendment, and
- recordkeeping, documentation, and financial management standards.

**REPORTING BURDEN:**

The public reporting burden for this collection of information is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The NEA welcomes any suggestions that you might have on improving the reporting requirements and making them as easy to use as possible. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy Chairman for Management & Budget, Room 518; National Endowment for the Arts; 1100 Pennsylvania Avenue, NW; Washington, DC 20506-0001. NOTE: Grantees are not required to respond to the collection of information unless it displays an OMB control number that is valid at the time of issue.

Rev. 6/21/13



**National Endowment for the Arts**

# **General Terms & Conditions for Grants and Cooperative Agreements to Organizations**

updated December 2012

**Grants & Contracts Office**  
National Endowment for the Arts  
1100 Pennsylvania Avenue, NW; Room 618  
Washington, DC 20506

Telephone (202) 682-5403  
FAX (202) 682-5610 or 5609

[grants@arts.gov](mailto:grants@arts.gov)

[www.arts.gov](http://www.arts.gov)

## **Important Information**

The General Terms & Conditions for Grants and Cooperative Agreements to Organizations (General Terms) apply to all grants and cooperative agreements (also referred to as "awards" or "assistance awards") that the National Endowment for the Arts (Arts Endowment or NEA) issues to nonprofit organizations, institutions of higher education, units of state and local governments, and Federally-recognized Indian Tribal governments.

These General Terms are based on the administrative requirements of the Office of Management and Budget (OMB) Circular A-110 (2 CFR 215), the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments OMB Circular A-102 (2 CFR 230), and the Federal laws, rules, regulations, and Executive Orders that apply to grants and cooperative agreements. They also are based on the Arts Endowment's legislation, rules, regulations, and policies. Award recipients must be familiar with and comply with these General Terms.

General information about your grant is available online at [www.arts.gov/mygrant](http://www.arts.gov/mygrant). Award materials, including payment request and report forms, and links to the OMB Circulars referenced throughout the General Terms are available on our Web site at [www.arts.gov/manageaward](http://www.arts.gov/manageaward).



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## **Acceptance of an Arts Endowment Award**

### **1. Your Responsibilities**

In accepting an Arts Endowment award, your organization assumes legal, financial, administrative, and programmatic responsibility for administering the award in accordance with any provisions included in the award; the laws, rules, regulations, and Executive Orders governing assistance awards; and these General Terms, all of which are hereby incorporated into this award by reference. While we may provide you with reminder notices regarding award requirements, the absence of receiving such notice does not relieve you of your responsibility to meet all applicable award requirements.

In accepting an Arts Endowment award, you also give us the right to examine and copy records, accounts, and other documents and sources of information related to your award, and permit us access to facilities, personnel, and other individuals and information as may be necessary.

Failure to comply with these requirements may result in suspension or termination of the award and our recovery of funds. In addition, the United States has the right to seek judicial enforcement of these obligations.

Lead members of consortia (for grants awarded for FY 2012 and earlier), Our Town leads, and entities responsible for approved independent components are responsible for all aspects of the award. Your organization must submit all payment requests, reports, and any amendment requests.

### **2. Compliance with the General Terms and any other Conditions**

Submission of a Request for Advance or Reimbursement (payment request) form constitutes your agreement to comply with all the terms and conditions of the award.

### **3. Compliance with the Requirement to have a Dun & Bradstreet (DUNS) Number and Active Registration in the System for Award Management (SAM.gov)**

Award recipients are required to maintain current information in the System for Award Management (SAM.gov, previously known as CCR or the Central Contractor Registration), until an award is closed. This includes renewing your registration in SAM.gov at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Note that in some cases you will need to update your information with Dun & Bradstreet before you can complete your SAM.gov renewal.

### **4. Acknowledgment of Arts Endowment Support and Disclaimer**

Acknowledgment of the National Endowment for the Arts must be prominently displayed in all materials and announcements for your funded project. For print materials, a phrase acknowledging support from the National Endowment for the Arts is a basic requirement. In addition, we encourage you to use the agency's logo whenever possible.

For radio or television broadcast, we require the following language: "This project is supported in part by an award from the National Endowment for the Arts. Art Works." For television broadcast, display of the Arts Endowment logo is required.

The logo is available at [www.arts.gov/manageaward](http://www.arts.gov/manageaward). We reserve the right to change the language of the required acknowledgement of Arts Endowment support, as well as the right to disallow the use of our logo and acknowledgment of our support.

For more guidance in planning your media campaign, please consult "Working with the Media Toolkit" at [www.arts.gov/manageaward/Working-with-the-Media-Toolkit.pdf](http://www.arts.gov/manageaward/Working-with-the-Media-Toolkit.pdf). This toolkit provides tips for reaching out to members of the press, using social media, and crafting a press release announcing your NEA grant.

## 5. Authorizing Official.

An authorizing official is an official with the recipient organization who has authority to legally bind the organization. For organizations that act as a lead member of a consortium (FY 2012 and earlier) or are responsible for an approved independent component (e.g., a University and its art museum), the authorizing official must work for the lead organization.

For purposes of administering this award, the following apply:

- a. **Grants.gov Application Form.** Authorizing officials are designated on the Grants.gov application form. This electronic "signature" is accepted if your application was submitted through Grants.gov and the individual meets the definition above or the criteria below for an authorizing official. We reserve the right to request a "hard copy" signature (i.e., ink on paper) of an organization's authorizing official, if necessary.
- b. **By Virtue of Position.** The following are considered to be authorizing officials for this or any award you may receive from the us, whether or not they are identified on an application:
  - *for nonprofit organizations (excluding colleges and universities):* chairman or officer of the board, president, executive director, chief financial officer (for financial matters), or individual of similar rank
  - *for colleges and universities:* chancellor, provost, president, trustee, director of sponsored programs/research, or individual of similar rank
  - *for cities or municipalities, or departments thereof:* mayor, city manager/ administrator, designated department, agency, or office official, or individual of similar rank, or
  - *for states or departments thereof:* governor or designated agency, department or office official, or individual of similar rank
- c. **Arts Endowment Panelist and Council Member Conflicts.** No panelist can review an application from an organization with which he or she is affiliated. In addition, if a panelist later becomes associated with a project that he or she reviewed, then he or she cannot act as an authorizing official for that project. This prohibition is in effect throughout the entire period of support.

Similarly, once an authorizing official for an organization that is an applicant or grantee is nominated to the National Council on the Arts, the authorizing official must recuse him/herself from acting in this capacity for applications and grant actions, including payment requests.

- d. **Changes in or Additional Authorizing Officials.** To designate other individuals as authorizing officials for this or any other NEA award, a current authorizing official should submit a letter or e-mail making such a request to our Grants & Contracts Office (G&C). A Signature Authorization Form is also available on our Web site for your use if you prefer. NOTE: Colleges and universities should follow these procedures to delegate authority to a fiscal officer or other appropriate personnel to approve payment requests and Federal Financial Reports.

Please submit updated information if changes in authorizing officials occur within your organization (e.g., let us know if someone is no longer serving as an authorizing official).

### **Obtaining Award Funds**

**6. Requesting Payment.** As noted in item 2, requesting payment constitutes your agreement to comply with all the terms and conditions of the award.

- a. **Requests for Advance or Reimbursement.** The Request for Advance or Reimbursement (payment request) form, instructions, and video tutorial are available on our Web site. Payment requests must reflect allowable project-related expenses already incurred (reimbursement) and/or expenses to be incurred within 30 days from the date the authorizing official signs the request (advance). All costs must be incurred within the approved period of support.

- **Labor Assurance.** You must comply with the labor standards set out in "29 CFR Part 505 Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts and Humanities." This is required by the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 USC 951 et seq.). Read the "Assurances as to Labor Standards" (page 2 of the payment request form) carefully. When you submit the payment request form you are agreeing to these standards.
- **Progress report.** Generally, this information is only required the first time the cumulative amount requested exceeds two-thirds of the award amount. The payment request form includes space for your report.

**IMPORTANT: Funds must be disbursed immediately upon receipt.** If you cannot do so, you must return the funds to the Arts Endowment. If interest is earned on advanced funds, please contact the G&C Office. In addition, you may not request funds to cover expenditures incurred prior to the beginning of the period of support (pre-award costs are unallowable).

- b. **Tracking Status of Grant Payments on [www.arts.gov/mygrant](http://www.arts.gov/mygrant).** By entering your 10-digit grant number, you can see when we received your payment request, when it was processed, and the amount paid. A payment history and the current balance on your

award are also displayed. At this time, cooperative agreement payment information is not available through this tool.

- c. **Payments through an Alternative Method of Funding.** If you are currently on the working capital advance, cost reimbursement, or certification method of payment, refer to the NEA's Inspector General's guidelines available on our Web site at [www.arts.gov/about/OIG/Guidance](http://www.arts.gov/about/OIG/Guidance).
- d. **Withholding Payments.** Payment may be withheld any time you fail to comply with the terms and conditions of this award. This includes failure to maintain a current SAM.gov registration. Payment may also be withheld if you are not compliant on another NEA award. If we withhold payment, but do not suspend or terminate the award, the payment(s) will be released once we determine that you are in compliance.
- e. **Federal Debt Status.** You may not be delinquent in the repayment of any Federal debt. Examples of relevant debt include delinquent payroll or other taxes, audit disallowances, and benefits that were overpaid (OMB Circular A-129). You must notify us immediately if you become delinquent during your project period. We cannot release your award funds until you provide documentation showing a repayment plan has been accepted by the Internal Revenue Service and payments have been made.

## If there are Changes in Your Project

### 7. Award Amendments

You are required to carry out a project consistent with the application or proposal approved for funding by the Arts Endowment. **As soon as you know that changes are necessary, and before implementation, you must submit a written request to the Grants & Contracts Office for approval.** Requests submitted to other Arts Endowment offices often result in a delayed response.

**Each request must be submitted by a current authorizing official and include:**

- 10-digit grant number (or DCA number for a cooperative agreement)
- specific change(s) requested (for types of amendments, see below)
- justification for the change(s)
- revised project budget, if applicable, and
- contact information, including a phone number, fax number and e-mail address

We reserve the right to request additional information, such as an update on specific project activities, or an itemized list of actual expenditures to date, as needed. In addition, if your organization is undergoing an audit by the Arts Endowment's Inspector General's office, amendments of the award(s) in question will not be approved independent of the audit resolution process.

Amendment requests are considered on a case-by-case basis; approval is not guaranteed. **Until you receive written approval from the Grants & Contracts Office, you may only incur costs consistent with the terms and conditions of the award in effect at the time of your request.**

- a. **Period of Support Extensions (Time Amendments).** All project activities and the commitment of project funds must take place within the period of support set out in your award document. As soon as you become aware that your project cannot be completed on schedule, you must request a time amendment following the procedures outlined in the box above. Requests submitted after the current end date of your award, or requests to extend the total period of support beyond four years, might not be approved.
- b. **Liquidation of Obligations.** You are also responsible for ensuring that all obligations incurred under an award are liquidated (paid) within 90 days after the end of the period of support, which also coincides with the submission of the Federal Financial Report. If all obligations cannot be liquidated within the 90 days, a time amendment must be requested.
- c. **Changes in Project Scope.** Project activities must be consistent with those approved for funding by the Arts Endowment. Contact G&C immediately if you want to make changes to the project or its objectives as originally proposed in your application or as revised during the Tentative Funding Recommendation/Application Update process. Examples of scope changes include:
- changes from artists confirmed in your application (see below)
  - changing from a production of "Hamlet" to a new commission for a comedy
  - replacing an art exhibition with an online blog or app
  - replacing a concert series on Mozart with a Film Festival on John Cage
  - engaging with different target audiences, if that was a major focus of your application
  - adding a component to a project that was not part of the original proposal, or removing a component that was a significant part of your project
  - changes in venue

You must request a scope amendment following the procedures outlined in the box above. Requests submitted after the fact might not be approved.

- d. **Changes in Artists:** If changes in artists or arts organizations identified in your application or proposal are necessary, you must request an amendment following the procedures outlined in the box above. Include a short biography or description of the new artists or arts organizations proposed. Requests submitted after the fact might not be approved. Prior approval is waived for changes in other key persons (e.g., executive or managing directors), as outlined in OMB Circular A-110 (2 CFR 215), Section 25 or the "Common Rule," Section 1157.30, unless your award specifies otherwise.
- e. **Consortium Member Changes (Grants for Arts Projects and Art Works awards made specifically as consortia grants for FY12 and earlier) and Changes in Partners for Our Town Grantees.** If changes to a consortium member or an Our Town grantee partner are necessary, you must seek written approval from the NEA before any changes are made, following the procedures outlined in the box above. In addition, you must also provide:

- written concurrence from the consortium member or Our Town partner dropping out of the project,
- a new Consortium Partner Information form for the new member or partner, and
- a signed letter of commitment from the new consortium member or partner that describes their involvement in the project.

Requests submitted after the fact might not be approved.

- f. **Budget Revisions.** Your award package includes an approved project budget that reflects the information contained in your application or proposal and any revisions made at your request or by us in order to bring it into compliance with our guidelines and applicable Federal regulations. All costs must be incurred within the project period specified in the award document or an approved amendment. The budget cannot include overlapping costs (e.g., share any costs) with any other Federal award.

These minor changes in the project budget do not require written approval from us:

- transfers among direct cost line items
- allocation of Arts Endowment funds among approved project costs
- elimination or addition of an allowable project cost that does not affect the scope of the award. See the Cost Principles under "Office of Management and Budget (OMB) Circulars that Govern Your Award" section

These significant changes in the project budget require prior written approval from us:

- budget changes due to a change in the scope of the Arts Endowment-supported project
- adding permanent equipment, foreign travel, or indirect costs (allowable under a federally negotiated rate)
- request to increase the Arts Endowment award amount

Requests for significant budget changes must include the information outlined in the box above. Requests submitted after the fact might not be approved.

- g. **Matching.** We will not waive minimum matching requirements except under the most unusual circumstances. Such requests must be accompanied by a new budget that reflects the revised commitment to the project. Requests submitted after the fact might not be approved. NOTE: For Save America's Treasures grants, matching requirements will not be waived.
- h. **Final Reports Filing Extensions.** You must fulfill all final reporting requirements within 90 days after the project period end date. If your project is completed but you need additional time to submit the required Final Reports and/or product, you may ask for an extension on filing the Final Reports. Follow the procedure outlined in the box. Requests submitted after the final report due date might not be approved. Failure to submit a timely request may jeopardize future Arts Endowment funding.



## 8. Foreign Travel Requests

- a. **Foreign travel** is defined in the OMB Circulars as any travel outside Canada, Mexico, the United States (U.S.), and its territories and possessions. The Grants & Contracts Office must give written approval for all foreign travel not identified in your application or revised budget before travel is undertaken.

**PLEASE NOTE:** While travel requests to Mexico and Canada that are project related, allocable, and allowable do not require prior written approval from the Arts Endowment before being undertaken, the Fly America Act does apply. Please see b. for more information.

- b. According to the **Fly America Act**, any air travel (inclusive of persons or property) paid in whole or in part with Arts Endowment funds must be on a U.S. air carrier or a foreign air carrier under an air transport agreement with the United States when these services are available. For the Fly America Act, the United States means the 50 States, the District of Columbia, and the territories and possessions of the United States. U.S. air carrier service is considered available even when a foreign air carrier can provide a comparable or different kind of service at less cost and/or foreign air carrier service is preferred by, or is more convenient for, the traveler.

U.S. air carrier service is considered to be unavailable only under the following conditions:

- i. The traveler's origin or destination airport is a gateway airport abroad (i.e., the airport from which the traveler last embarks en route to the United States or at which the individual first arrives when traveling from the United States), and the use of a U.S. air carrier would increase travel time by at least 24 hours over travel by a foreign air carrier.
- ii. When a traveler while en route must transfer to another flight, and the use of a U.S. air carrier would extend travel time at least six hours over travel by a foreign air carrier.
- iii. When travel time on a scheduled flight by a foreign air carrier is three hours or less, and service by a U.S. air carrier would involve twice as much travel time.
- iv. When travel is between two points outside the U.S. and the use of a foreign air carrier would eliminate two or more aircraft changes en route.

If you discover that service on a U.S. air carrier or a foreign air carrier under an air transport agreement with the United States is unavailable, you must request an exception in writing from the Grants & Contracts Office before travel is undertaken.

## 9. Return of Full or Unused Portion of an Award or Declining an Award

If you cannot carry out the project, or cannot use the entire award amount, you must notify the Grants & Contracts Office in writing. Your letter should include:

- the 10-digit grant number (or DCA number for a cooperative agreement),
- an explanation for the return of the funds,
- contact information, including a phone number, fax number and e-mail address,
- the approval of an authorizing official, and

- if returning funds, a check in the correct amount payable to the National Endowment for the Arts (include the award number on the memo line).

If you have expended any of the NEA's funds for the project, you are still responsible for submitting your Final Reports by their due date.

If you are declining the award and have not drawn down any funds, your letter should include:

- the 10-digit grant number (or DCA number for a cooperative agreement),
- an explanation,
- contact information, including a phone number, fax number and e-mail address, and
- the approval of an authorizing official.

## **Termination and Remedies**

### **10. Termination**

There are circumstances under which we may determine that it is in the best interest of the government to terminate an award. OMB Circular A-110 (2 CFR 215), Sections 61 & 62, and the "Common Rule," Sections 1157.43 and .44, respectively, provide uniform termination procedures for Federal awards. Grants and cooperative agreements may be terminated in whole or in part.

#### **a. For Convenience:**

- By you upon sending us written notification with the reasons for the termination, the effective date, and in the case of partial termination, the portion of the project to be terminated. Withdrawals are considered terminations for convenience.
- By us with your consent, in which case we will agree upon termination conditions, including the effective date and, in the case of partial termination, the portion of the project to be terminated.

However, if we determine that the reduced or modified portion of the award will not accomplish the purposes for which it was made, we may terminate the award in its entirety.

#### **b. For Cause** by us if you materially fail to comply with the terms and conditions of an award.

In either case, this may result in our taking additional actions such as requiring you to return a portion or all of the award funds, requesting that you remove acknowledgement of Arts Endowment support, recommending government-wide suspension, or taking other legally available remedies.

In addition, termination may occur as described in 2 CFR Part 175, which has been amended to address paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)).

## Reporting Requirements

### 11. Reporting Requirements

Your grant package includes a blue Reporting Requirements document, which outlines the reporting requirements for your award. Cooperative Agreements include reporting requirements and delivery schedule instructions within the agreement. We may request additional information as necessary. Instructions and report forms are on our Web site.

- a. **Progress Reports.** A progress report is generally required once the cumulative amount of funds requested exceeds two-thirds of the award amount. Specific instructions for submitting your progress report are in your Reporting Requirements document and on the payment request instructions.
- b. **Special Reporting Requirements.** We may require you to submit certain information before funds can be released (e.g., verification of compliance with NEPA/NHPA requirements, a signed contract, copyright release, an itemized list of actual expenditures to date, etc.) or at other times during the project. Instructions will be included in your award package when applicable.
- c. **Final Reports.** A Final Report package including the Final Descriptive Report (FDR), the Federal Financial Report (FFR), and any required final product(s) must be submitted no later than 90 days after the project period end date.

As of FY12 (award numbers beginning 12- or 2012- ), final reports must be submitted electronically to [finalreports@arts.gov](mailto:finalreports@arts.gov). Refer to the Reporting Requirements document in your award package, or to the appropriate section in your cooperative agreement for more information.

Carefully review your Final Reporting Requirements and the FDR form to determine the narrative information required. All questions must be addressed and statistical and geographic data entered. On the FFR you must verify that the project for which Arts Endowment funds were awarded has been carried out and that the matching requirement, if any, has been met.

- d. **Tracking Status of Final Reports** on [www.arts.gov/mygrant](http://www.arts.gov/mygrant). By entering your grant number, you can see when your final reports are due and if a product is required. You can also see if we received them. (This is only for grants).
- e. **Failure to submit the required Final Reports** for any award(s) renders you ineligible to receive funding for five years following the final report due date of the award(s) or until the delinquent final reports are submitted, whichever occurs first. Acceptability of final reports may also affect eligibility for new awards. In addition, failure to submit required final reports within 210 days after the project period end date will result in the withdrawal of any funds remaining on that award.

## Matching (or Cost Share) Requirements

### 12. Matching

Unless otherwise stated in your grant award document or cooperative agreement, Arts Endowment funds may not exceed 50 percent of the total cost of the Arts Endowment-supported project (i.e., funds must be matched one-to-one, or "dollar for dollar"). This required match, or "cost share," refers to the portion of project costs not paid by Federal funds.

The Federal Financial Report (FFR) is used to verify that the required match has been met. Ensure that the amounts reported on your FFR are based on actual allowable project expenditures and can be easily reconciled to your accounting records. Unallowable costs, such as fundraising or receptions (see the Cost Principles - 2 CFR 230, 2 CFR 220, and 2 CFR 225), cannot be included in your reported numbers.

**Ineligible Matching Resources.** The following items are not eligible as match.

- Other Federal funds, including NEA funds. This includes Federal funds that have been subgranted or disbursed to you from your State Arts Agency or another grantor and clearly identified as such. It is your State Arts Agency's (or other grantor's) responsibility to inform you if any portion of their award to you is a direct flow-through from a Federal agency.
- Resources that have been used to match another Arts Endowment award or other Federal program(s).
- Contributions or gifts transferred to your organization that are restricted and cannot be used to support the project.
- Gifts (testamentary or otherwise) which are not available to your organization during the project period.

### 13. Use of In-kind (or Third-Party) Contributions for Matching Purposes

If you include in-kind, third-party (i.e., not your own) contributions as part of your match, they must also be included as direct costs in your project budget and reflected as such in your accounting records. Volunteer services and donated property or space must be documented and their value determined according to the principles set out below.

- a. **Volunteer services** provided to you by professional and technical personnel, consultants, and other skilled and unskilled labor may be used as match if the service is integral to the approved project. Volunteer services must be valued at rates consistent with those paid for similar work within your organization. If you do not have employees performing similar work, the rates must be consistent with those paid by other employers for similar work in the same labor market. In either case, a reasonable amount of fringe benefits may be included in the valuation.
- b. When a **third-party employer** furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (plus a reasonable amount of fringe benefits), provided these services involve the same skills for which the employee is normally paid.

- c. The value of **donated equipment** must not exceed the fair market value of equipment of the same age and condition at the time of donation. The value of loaned equipment cannot exceed its fair rental value.
- d. The value of **donated space** must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.
- e. The value of **donated supplies** or other expendable property should be reasonable and should not exceed the fair market value of the property at the time of donation.

NOTE: A sample format for documenting in-kind contributions is on our Web site at [www.arts.gov/manageaward](http://www.arts.gov/manageaward).

#### **14. Use of Program Income**

Income earned during the period of support that results from activities supported through an Arts Endowment award is considered to be program income. These earnings can include, but are not limited to, income from fees for services, admission fees, or the use or rental of real or personal property. Program income may be used as part of the match for an award, for additional costs of the Arts Endowment-supported project, or for other eligible projects in the arts conducted by the recipient.

#### **15. Approved Indirect Costs as Allowed by a Negotiated Agreement with a Federal Agency**

The following applies only to those recipients who have indirect costs (or facilities and administrative costs for colleges and universities) included in their NEA-approved project budget.

Indirect costs are calculated using a rate that has been negotiated with a Federal agency. These costs are allowable and the recipient may use the corresponding amount to meet matching requirements. The Arts Endowment supports very few research awards; therefore "other sponsored projects" or "instruction" indirect cost rates are usually the only rates accepted.

- a. **Closing out your award.** The NEA will not close out an award with a **provisional rate** if the indirect costs are needed to meet the minimum required match. NEA funds may also be held until a final rate covering the award period of support is provided.
- b. **Expiration of indirect cost rate.**
  - 1) If indirect costs in your approved project budget were based on a recently expired rate agreement, a proposal must be submitted to your cognizant Federal agency immediately after you receive notification of an award or within three months after the start date of the period of support. Otherwise, a revised budget may be required.

A negotiated rate lower than the rate included in the project budget or failure to negotiate a rate by the end of the period of support may result in decreased Federal support if the total non-Federal costs applied toward your Arts Endowment project do not satisfy the award's matching requirement.

- 2) If your final or predetermined rate expires during the period of support, you must submit a new indirect cost rate proposal to your cognizant Federal agency in time for the rate to be renegotiated before the end of the period of support, unless your institution is governed by OMB Circular A-21 (2 CFR 220). If the negotiated rate exceeds the rate specified in the approved project budget, the use of a higher rate is subject to the limitations set forth in OMB Circulars A-21 (2 CFR 220), A-87 (2 CFR 225), or A-122 (2 CFR 230), as applicable. In no event will additional Federal funds be awarded to support an increase in indirect costs.

## **Recordkeeping**

### **16. Record Retention**

You must maintain financial records, supporting documents (such as cancelled checks, invoices, contracts, travel reports, donor letters, in-kind contribution reports, and personnel activity reports), statistical records, and all other records pertinent to an award according to the provisions outlined in OMB Circular A-110 (2 CFR 215), Section 53, or the "Common Rule," Section 1157.42, as applicable. Generally, the retention period is three years from the date the final FFR is filed.

During the project period and the subsequent three-year retention period, the NEA's Inspector General, the Comptroller General of the United States, or any of our duly authorized representatives has the right to request additional information, and timely and unrestricted access to project records in order to audit, examine, excerpt, transcribe or copy them. This includes timely and reasonable access to the recipient's personnel and facilities for the purpose of interview and discussion related to the records. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained. (A-110 Subpart C \_53 as noted above)

### **17. Financial Management Standards: Maintaining Accounting Records**

There can be no overlapping project costs between Federal awards. Therefore, separate accounting records must be maintained for each award. OMB Circular A-110 (2 CFR 215), Section 21, and the "Common Rule," Section 1157.20, as applicable, establishes standards for financial management systems of recipients (e.g., accounting systems, internal controls, allowable costs, cash management, etc.). The financial management systems of recipient organizations and their subrecipients must meet these standards.

The NEA's Inspector General has prepared two publications, "Financial Management Guide for Nonprofit Organizations" and "Financial Management Guide for State and Local Governments," that contain practical information on what is expected in terms of fiscal responsibility. These publications can be found at [www.arts.gov/about/OIG/Contents](http://www.arts.gov/about/OIG/Contents).

## **18. Procurement Standards**

OMB Circular A-110 (2 CFR 215), Section 40, and the "Common Rule," Section 1157.30, as applicable, establish standards for procurement. You must have standards to ensure that materials and services acquired under Federal awards are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and Executive orders.

Written procedures should include, among other things, determining economical approaches, providing for competition, dealing with conflict of interest, efforts to use minority, women-owned and small businesses, and maintaining records sufficient to detail the procurement process. In addition, you should have written procedures to ensure that contractors or recipients are not debarred or suspended prior to the payment or award of Federal funds (2 CFR part 180 Subpart C) (OIG).

## **19. Personnel Activity Documentation (Documenting Salaries & Wages)**

OMB Circulars require that compensation for personnel services charged to Federal awards be properly documented. Please refer to the applicable cost principles for the specific documentation that must be maintained.

The NEA requires officially-approved personnel activity reports (also known as "time and effort" reports) for any employee whose salary is charged, in whole or in part, to either the award or the matching funds if:

- your award is \$50,000 or greater, or
- you are on an alternative method of funding (as noted in your award document or the Inspector General's audit follow-up report).

Sample formats for allocating a person's time to a project are provided on our Web site. However, you may choose any format appropriate to your scale of operations. Reports must be prepared at least monthly and must coincide with one or more pay periods. Although you generally are not required to submit these to us, we reserve the right to request copies.

Even if you are not required to maintain officially-approved personnel activity reports as outlined above, you are still required to keep other appropriate records (e.g., payroll records, in-kind documentation, etc.) verifying the salary or wage costs attributed to the Federal or matching funds. If you are audited and do not have this documentation, the costs will be disallowed. This may result in a decrease in your award amount and/or funds will need to be returned to us.

## **20. Equipment**

Equipment is defined as an article of tangible, nonexpendable, personal property having a useful life of more than one year that costs \$5,000 or more. Before purchasing equipment not identified in the approved project budget, you must obtain written approval from the Grants & Contracts Office (see Section 7 "Award Amendments"). You are encouraged, whenever possible, to purchase American-made equipment in accordance with the "Buy American Act" (41 USC 10a-10c).

Unless otherwise specified, you will have title to equipment commissioned, purchased, or fabricated under the award, without further obligation to the Federal government, provided that it will be used for activities similar to those approved by the Arts Endowment. We reserve the right to stipulate at the time of the award specific instructions for disposition of the equipment when you no longer need it (e.g., a transfer of title to the Federal government or a third party).

You also have title to artwork purchased under the Arts Endowment award, without further obligation to the Federal government, provided that it will be used for similar activities. One example of similar activity is selling the work to another museum or visual art center with the intention that it will be available to the public. It may not be de-accessioned to a private collector where it would no longer be on view to the public.

## **21. Copyright**

You may arrange to copyright any materials you develop from the work undertaken during the period of support without prior approval from us. For procedural information, contact the U.S. Copyright Office, Library of Congress, [www.copyright.gov](http://www.copyright.gov).

Unless otherwise specified in the award, we are not entitled to receive royalties from work supported or made possible by a grant or cooperative agreement; however, we retain a royalty-free right to use such work for Federal government purposes (e.g., the use of final report final products to document the results of our award programs), including placement on our Web site.

## **22. Library of Congress Cataloging in Publication Data**

We strongly recommend that any publication that results from this award be cataloged by the Cataloging in Publication Program of the Library of Congress before final printing. This method of cataloging enables libraries to acquire and process books quickly. Publishers ineligible for this program may be eligible for the Library's Preassigned Control Number Program. Entering these titles in a national bibliographic database leads to greater dissemination of publications. For procedural information, contact the Library of Congress, <http://www.loc.gov/publish/cip/>.

## **Audit Matters**

### **23. A-133 Audit Requirements**

OMB Circular A-133, "Audits of States, Local Governments and Nonprofit Organizations," includes specific guidance for conducting financial and compliance audits. The threshold for requiring an A-133 audit is \$500,000 in *yearly expenditures* of Federal funds. This amount is the aggregate of funds from all Federal sources.

OMB Circular A-133 and the yearly compliance supplements are available online at [www.whitehouse.gov/omb/grants\\_circulars](http://www.whitehouse.gov/omb/grants_circulars). If you have questions, contact the Office of Inspector General at (202) 682-5402 or [oiq@arts.gov](mailto:oiq@arts.gov).



## **24. Award Payment Confirmation for Audit Purposes**

Your auditor may contact the NEA's Finance Office for confirmation of the exact amount of funds received from us. Your requests must include the legal name of your organization and the grant or cooperative agreement number(s); otherwise, the Finance Office will not be able to process your request. Requests should be sent via:

- E-mail to [NEAFinance@arts.gov](mailto:NEAFinance@arts.gov) (preferred), with the subject line "Grant Award Confirmation Request," or
- Fax to (202) 682-5679, or
- Mail via an alternative delivery service (see Item 11.c) to,

Finance Office  
National Endowment for the Arts, Rm 624  
1100 Pennsylvania Avenue, NW  
Washington, DC 20506-0001

## **25. CFDA Numbers (Catalog of Federal Domestic Assistance)**

The CFDA tracks award programs in the Federal government and assigns each a specific number. CFDA numbers are included on your award document:

45.024	Awards to Organizations and Individuals
45.025	Partnership Agreements
45.201	Arts & Artifacts Indemnity

## **Office of Management and Budget (OMB) Circulars that Govern Your Award**

### **26. Uniform Administrative Requirements**

Nonprofit organizations, colleges, and universities are subject to the provisions of OMB Circular A-110 (2 CFR 215) ("Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"), as amended. Units of State and local governments and Federally-recognized Indian Tribal governments are subject to the administrative requirements codified by the Arts Endowment at 45 Code of Federal Regulations (CFR) Part 1157 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" ("Common Rule"). Both are available at [www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/).

The "Uniform Administrative Requirements" establish administrative standards to ensure consistency among recipients of Federal awards. These include financial and program management, property and procurement standards, cost sharing or matching, and reporting and record retention. These requirements, as applicable, are hereby incorporated into this award.

### **27. Cost Principles**

The allowable costs for work performed under an Arts Endowment award shall be determined in accordance with the applicable Federal cost principles and the terms and conditions of the

award. The following OMB Circulars set forth the Federal cost principles that, in general, apply to our recipients. They are available [www.whitehouse.gov/omb/grants\\_default/](http://www.whitehouse.gov/omb/grants_default/) These cost principles, as applicable, are hereby incorporated into this award:

- a. OMB Circular A-122 (2 CFR 230), "Cost Principles for Nonprofit Organizations," as amended: nonprofit organizations, exclusive of institutions of higher education;
- b. OMB Circular A-21 (2 CFR 220), "Cost Principles for Educational Institutions," as amended: public and private institutions of higher education;
- c. OMB Circular A-87 (2 CFR 225), "Cost Principles for State and Local Governments," as amended: State, local and Federally recognized Indian tribal governments; and
- d. Federal Acquisition Regulation (FAR) at 48 CFR Part 31 for commercial organizations, individuals, and those nonprofit organizations listed in Attachment C to OMB Circular A-122 (2 CFR 230). The FAR is available online at [www.acquisition.gov/Far/](http://www.acquisition.gov/Far/)

### **National Policy and Other Legal Requirements, Statutes, and Regulations that Govern Your Award**

**28. Nondiscrimination Policies.** As a condition of receipt of Federal financial assistance, you agree to execute your project (e.g., productions, workshops, programs, etc.) in compliance with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to the following.

- a. **Title VI of the Civil Rights Act of 1964**, as amended, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Title VI also extends protection to persons with limited English proficiency. (42 USC 2000d et seq.)
  - As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. You are encouraged to consider the need for language services for LEP persons in conducting your programs and activities. For assistance and information go to [www.lep.gov](http://www.lep.gov).
- b. **Title IX of the Education Amendments of 1972** provides that no person in the United States shall, on the basis of sex or blindness, be excluded from participation in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance. (20 USC 1681 and 1684 et seq.)
- c. **Section 504 of the Rehabilitation Act of 1973** provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his/her disability, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (29 USC 794)

## Section 504 - Self-Evaluation and Additional Resources.

- A Section 504 self-evaluation must be on file at your organization. For each award, review the evaluation to ensure that it is still accurate, that your organization is still in compliance, and that the activity supported by the Arts Endowment will be in compliance. The lack of a Section 504 self-evaluation is one of the most common findings referenced by our Inspector General when conducting an audit or review of our award recipients. We have developed a **504 Self Evaluation Workbook** (which covers programs, activities and facilities) that you may use to determine if you are in compliance with Section 504 requirements. If you have not previously conducted this self-evaluation or wish to update the results of previously conducted evaluations, you may obtain the Workbook on our Web site at [www.arts.gov/about/504Workbook](http://www.arts.gov/about/504Workbook). Or you may request a hard copy, free of charge, from the NEA's Office of Civil Rights at (202) 682-5454.
- *Design for Accessibility: A Cultural Administrator's Handbook* provides guidance on making access an integral part of an organization's staffing, mission, budget, and programs. This *Handbook* and other resources may be downloaded from the Arts Endowment's Web site at [www.arts.gov/resources/Accessibility](http://www.arts.gov/resources/Accessibility). If you have questions, contact the Office of Accessibility at [accessibility@arts.gov](mailto:accessibility@arts.gov); (202) 682-5733; FAX (202) 682-5715; or TTY (202) 682-5496. You may purchase print copies of the *Handbook* from the National Assembly of State Arts Agencies, (202) 347-6352 or [www.nasaa-arts.org](http://www.nasaa-arts.org).

- d. **The Age Discrimination Act of 1975** provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. (42 USC 6101 et seq.)
- e. **The Americans with Disabilities Act of 1990 (ADA)**, as amended, prohibits discrimination on the basis of disability in employment (Title I); State and local government services (Title II); and, places of public accommodation and commercial facilities (Title III). (42 USC 12101-12213)

## 29. Environmental and Preservation Policies

- a. **The National Environmental Policy Act of 1969**, as amended, applies to any Federal funds that would support an activity that may have environmental implications. We may ask you to respond to specific questions or provide additional information in accordance with the Act. If there are environmental implications, we will determine whether a categorical exclusion may apply; to undertake an environmental assessment; or, to issue a "finding of no significant impact," pursuant to applicable regulations and 42 USC Sec. 4332.
- b. **The National Historic Preservation Act of 1966**, as amended, applies to any Federal funds that would support either the planning or major renovation of any structure eligible for or on the National Register of Historic Places, in accordance with Section 106. This law also applies to project activities, such as new construction, that would affect such

properties. We will consult with your State Historic Preservation Officer, as appropriate, to determine the impact of your plan or renovation on the structure or any affected properties. Any change in your design, renovation, or construction plans must be submitted to us for review and approval prior to undertaking any of the proposed changes. You may be asked to provide additional information on your project to ensure compliance with the Act. (16 USC 470)

### 30. Other National Policies

- a. **Debarment and Suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by the Arts Endowment in Title 2 CFR, Chapter 32, Part 3254.

There are circumstances under which we may receive information concerning your fitness to carry out a project and administer Federal funds, such as:

- Conviction of, or a civil judgment for, the commission of fraud, embezzlement, theft, forgery, making false statements
- Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility
- Any other cause of so serious or compelling a nature that it affects an organization's present responsibility.

In these circumstances, we may need to act quickly to protect the interest of the government by suspending your funding while we undertake an investigation of the specific facts. We may coordinate our suspension actions with other Federal agencies that have an interest in our findings. A suspension may result in your debarment from receiving Federal funding government-wide for up to three years.

- b. **The Drug Free Workplace Act** requires you to publish a statement about your drug-free workplace program. You must give a copy of this statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out.

You must maintain on file the place(s) where work is being performed under this award (i.e., street address, city, state, and zip code). You must notify the Arts Endowment's Grants & Contracts Office of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. (41 USC 701 et seq. and 45 CFR Part 1155)

- c. **Lobbying.** You may not conduct political lobbying, as defined in the statutes, regulations and OMB Circulars listed below, within your Federally-supported project. In addition, you may not use Federal funds for lobbying specifically to obtain awards. For definitions and other information on these restrictions, refer to the following:

- (1) No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose,

by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. (18 USC § 1913. Lobbying with appropriated moneys)

- (2) OMB Circular A-122 (2 CFR 230) – "Lobbying" Revision clarifies that lobbying is an unallowable project cost. The Circular generally defines lobbying as conduct intended to influence the outcome of elections or to influence elected officials regarding pending legislation, either directly or through specific lobbying appeals to the public. You should review carefully both this Circular and Circular A-110 (2 CFR 215).
- (3) Certification Regarding Lobbying to Obtain Awards. Section 319 of Public Law 101-121, codified at 31 USC Sec. 1352, prohibits the use of Federal funds in lobbying members and employees of Congress, as well as employees of Federal agencies, with respect to the award or amendment of any Federal grant, cooperative agreement, contract, or loan. While non-Federal funds may be used for such activities, they may not be included in your project budget, and their use must be disclosed to the awarding Federal agency. Disclosure of lobbying activities by long-term employees (employed or expected to be employed for more than 130 days) is, however, not required. In addition, the law exempts from definition of lobbying certain professional and technical services by applicants and awardees.

We strongly advise you to review these regulations carefully. They are published at 45 CFR 1158, and can be found at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/).

- d. **Davis-Bacon and Related Acts (DBRA)**, as amended, requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works (these activities include, but are not limited to, painting, decorating, altering, remodeling, installing pieces fabricated off-site, and furnishing supplies or equipment for a work-site) must contain a clause setting forth the minimum wages to be paid to laborers and mechanics employed under the contract. Under the provisions of DBRA, contractors or their subcontractors must pay workers who qualify under DBRA no less than the locally prevailing wages and fringe benefits paid on projects of a similar character.

Information about the laborers and projects that fall under DBRA can be found in the Department of Labor's Compliance Guide at [www.dol.gov/compliance/guide/dbra.htm](http://www.dol.gov/compliance/guide/dbra.htm). DBRA wage determinations are to be used in accordance with the provisions of Regulations, [29 CFR Part 1](#), [Part 3](#), and [Part 5](#), and with DOL's Compliance Guide. The provisions of DBRA apply within the 50 states, territories, protectorates, and Native American nations (if the labor is completed by non-tribal laborers).

- e. **The Native American Graves Protection and Repatriation Act of 1990** applies to any organization that controls or possesses Native American human remains and associated funerary objects and receives Federal funding, even for a purpose unrelated to the Act. (25 USC 3001 et seq.)
- f. **U.S. Constitution Education Program.** Educational institutions (including but not limited to "local educational agencies" and "institutions of higher education") receiving Federal funds from any agency are required to provide an educational program on the U.S. Constitution on September 17 (PL 108-447, Division J, Sec. 111(b)). For more information on how to implement this requirement and suggested resources, see [www2.ed.gov/policy/fund/guid/constitutionday](http://www2.ed.gov/policy/fund/guid/constitutionday) and <http://thomas.loc.gov/teachers/constitution.html>
- g. **Arts Endowment Enabling Legislation.** You are also required to execute your project, (e.g., productions, workshops, programs, etc.) in accordance with the Arts Endowment's enabling legislation that requires "artistic excellence and artistic merit" to be included in the criteria upon which awards are made.
- h. **Prohibition on use of funds to ACORN** or its subsidiaries. Beginning in FY 10 (award number such as 10-xxxx-xxxx or DCA 2010-xx), none of the Federal or matching funds expended for your awarded project may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries. (P.L. 111-88 Sec. 427)

**Subgranting for State Arts Agencies, Regional Arts Organizations, and Designated Local Arts Agencies**

**31. Subgranting**

Per our legislation, only State Arts Agencies, Regional Arts Organizations, and designated Local Arts Agencies are eligible to subgrant Arts Endowment funds.

A subgrant is an award made by a grantee or cooperator using award and/or matching funds (i.e., an award resulting from Arts Endowment support, but not one made directly by us). A subgrant exists when funds are regranted to an individual or an organization for activities conducted independently of the direct award recipient and for the benefit of the subgrantee's program objectives. A subgrant recipient is neither directly employed by nor affiliated with the direct award recipient. Please be aware that a subgrant relationship could exist even if you call the agreement a contract.

**General Subgranting Requirements**

- a. **Artistic Excellence and Artistic Merit.** In accordance with the Arts Endowment's enabling legislation, you must include "artistic excellence and artistic merit" in the review criteria used to make the subgrant awards. (20 USC Sec. 951 et seq.)
- b. **Subgranting to Eligible Organizations, Units of State and/or Local Government.** 501(c)(3) nonprofit organizations, units of state or local government, institutions of higher education, or Federally-recognized Indian tribal governments are eligible to receive funds subgranted through an Arts Endowment award.

**Effective with NEA awards beginning with the number 11-, you may not make a subaward to an entity without a DUNS number (2 CFR 25 Appendix A).** Thus, you must notify potential subrecipients that the entity cannot receive a subaward from you unless the entity has provided its DUNS number.

The Federal laws, rules, regulations and OMB Circulars that apply to Arts Endowment organizational award recipients generally also apply to such organizations when they receive a subgrant through an Arts Endowment supported award. Thus, you must inform subgrantees that they are receiving Federal funds from the National Endowment for the Arts, and that they must comply with these mandates.

You must also:

- Provide them with your Federal award number and associated CFDA number (the CFDA number is on your award letter or cooperative agreement document).
- Instruct them that there may be no overlapping project costs between Federal awards, whether they receive them directly from a Federal agency or indirectly, such as through a state agency or other entity.

- c. **Requirements for Federal Funding Accountability and Transparency Act (FFATA) implementation of subaward reporting.** Effective with NEA awards beginning with the number 11-, you may be required to report subaward information to the FFATA subaward report database [www.fsrs.gov/](http://www.fsrs.gov/), as described in 2 CFR Part 170.

This requirement applies to subawards of \$25,000 or more in Federal funds. Additional information is available at [www.arts.gov/manageaward/FFATA-FAQ.pdf](http://www.arts.gov/manageaward/FFATA-FAQ.pdf)

- d. **Additional Requirements for Subgranting to Organizations and Individuals.** Your subgrant agreements must include a requirement that the subgrantee:
- provides you with final reports and any other information or reports necessary for you to fulfill all applicable Federal reporting requirements
  - adheres to the prohibition against lobbying within a Federally supported grant or cooperative agreement
  - uses U.S. air carriers for approved foreign travel
  - maintains records pertinent to the award for three years following submission of their final report to you.
- e. **Progress reports.** State Arts Agencies should require a progress report from their subgrantees, with discretion to determine when these reports must be submitted.
- f. **Time extensions.** You should request a period of support time extension (not a final report due date extension) from the Arts Endowment whenever a subgrantee's project cannot be completed within your award period. See Item 7.
- g. **Subgrantee records.** You must keep subgrantees' report submissions on file for three years after the date you submit your Federal Financial Report to the Arts Endowment.

## Questions?

### 32. Arts Endowment Staff

Cooperators, please refer to your cooperative agreement for names of contact persons available to answer questions.

Grantees, if you have any questions concerning administrative or technical requirements, please contact the Grants & Contracts Office at (202) 682-5403 or [grants@arts.gov](mailto:grants@arts.gov). For programmatic requirements, please contact the program discipline/field or office identified in your award document. A staff directory is available at [www.arts.gov/staff/staff](http://www.arts.gov/staff/staff).

### 33. Accessibility Accommodations

Individuals who are deaf or hard-of-hearing may e-mail the Grants & Contracts Office at [grants@arts.gov](mailto:grants@arts.gov) or call (202) 682-5496 TTY.

Individuals who do not use conventional print may access the information in this document by contacting the Office for Accessibility at [accessibility@arts.gov](mailto:accessibility@arts.gov) or call (202) 682-5733 for help acquiring an audio recording of these General Terms or any other Arts Endowment publication.

Individuals with limited English proficiency or recipients serving such individuals should contact the Office of General Counsel at (202) 682-5418 or by e-mail at [ogc@arts.gov](mailto:ogc@arts.gov). You can also find information at [www.lep.gov](http://www.lep.gov).



**CONTRACT FOR DESIGN, FABRICATION, AND DELIVERY OF  
THE BRYANT PARK SCULPTURAL LIVING SHORELINE MANGROVE PLANTER**

This Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Michael Singer Inc., a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 030331532.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

**ARTICLE 1 - SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services to design, prototype, fabricate, and deliver the sculptural living shoreline planter elements that will function as a planter to retain soils to support the growth of mangroves and oysters along the shoreline of Bryant Park in Lake Worth Lagoon. The form and composition of the sculptural elements will be designed and sculpted by CONSULATANT with the goal of environmental enhancement through art, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be Robert Robbins, Director, Environmental Resources Management, telephone number (561) 233-2400 or designee Eric Anderson, telephone number (561) 233-2514. The CONSULTANT'S representative/liaison during the performance of this Contract shall be Jason Bregman the designated project manager, telephone number (561) 865-7683.

**ARTICLE 2 - SCHEDULE**

The CONSULTANT shall commence services on February 4, 2014 and complete all services by September 30, 2014.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

**ARTICLE 3 - PAYMENTS TO CONSULTANT**

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials shall not exceed a total contract amount of forty-seven thousand five hundred Dollars (\$47,500.00). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
  
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT shall clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

**ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

**ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
  
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
  
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.

D. Continue and complete all parts of the work that have not been terminated.

**ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

**ARTICLE 7 - SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified

by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

**ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

**ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

**ARTICLE 10 - INSURANCE**

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well

as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

- B. **Commercial General Liability** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **Business Automobile Liability** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability** CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- E. **Additional Insured** CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.
- F. **Waiver of Subrogation** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.
- G. **Certificate(s) of Insurance** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY'S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or

non-renewal of coverage. The certificate of insurance shall be issued to "Palm Beach County, c/o: ERM Director, 2300 N. Jog Road, 4<sup>th</sup> Floor, West Palm Beach, FL 33411-2743," or his successor/current address.

- H. **Umbrella or Excess Liability** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- I. **Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

#### **ARTICLE 11 - INDEMNIFICATION**

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party

beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONSULTANT.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

**ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 – 2-440, as amended.

**ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.



**ARTICLE 19 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440 and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

**ARTICLE 22 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

### **ARTICLE 23 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

### **ARTICLE 24- PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

### **ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

### **ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Robert Robbins, Director  
Department of Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411-2743

With copy to:

Palm Beach County Attorney's Office  
301 North Olive Ave.  
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Michael Singer  
321NW 1<sup>st</sup> Ave  
Delray Beach, FL 33444

**ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25- Modifications of Work.

**ARTICLE 28 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

Attachments:

Exhibit A: Scope of Work

Exhibit B: Schedule of Payments

Exhibit C: Schedule 1 (List of Proposed SBE-M/WBE Prime/Subcontractors)

Exhibit D: Schedule 2 (Letter of Intent to Perform as an SBE or M/WBE Subcontractor)

Exhibit E: Schedule 3a (Professional Service Activity Report Form)

Exhibit F: Schedule 4 (SBE-M/WBE Payment Certification)

Exhibit G: Insurance

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPROLLER

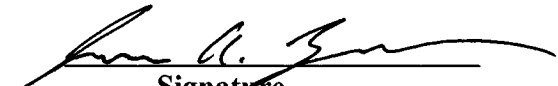
PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

WITNESS:

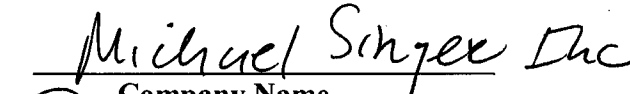
CONSULTANT:

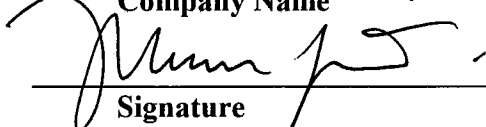
  
Signature

Jason Bregman  
Name (type or print)

  
Signature

Brandon Justice  
Name (type or print)

  
Company Name

  
Signature

Michael Singer  
Typed Name

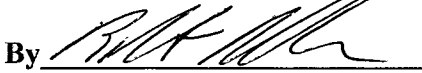
President  
Title

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

(corporate seal)

By   
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By   
Robert Robbins, Director  
Department of Environmental Resources Management

## EXHIBIT "A"

### SCOPE OF WORK

2.06.13 revised from initial 09.03.13 draft

Robert Robbins, Director  
Palm Beach County  
Environmental Resources Mgmt.  
2300 North Jog Road, 4th Floor  
West Palm Beach, FL 33411-2743

#### **Scope of Work for the *Living Shoreline* Project sponsored by the National Endowment for the Arts**

Dear Mr. Robbins,

As you know, since the summer of 2012 Michael Singer Inc (MSI) and the Palm Beach County Department of Environmental Resources Management (ERM) have been collaborating on a regenerative public art project know as the *Living Shoreline*. In August 2012, MSI and ERM submitted a joint proposal to the National Endowment for the Arts (NEA) for the *Living Shoreline* project, which was later accepted by the NEA in Spring of 2013 and accepted again with a revised proposal in the Summer of 2013. The final NEA acceptance letter was received by ERM on August 2<sup>nd</sup>, 2013.

This document outlines the Scope of Work and Budget for MSI's role on the *Living Shoreline* Project. MSI's Scope of Work will be undertaken through a contract with ERM. ERM will provide all services for the Project Engineer of Record (Engineer) for the built elements designed and fabricated by MSI.

Please note that MSI is the business entity of artist, designer, and planner Michael Singer which is responsible for the contractual arrangements for projects. Michael Singer Studio is Michael Singer's collaborative team of designers and specialists who assist in the advancement of MSI's projects.

#### **Project Description**

The *Living Shoreline* Project will entail the design, engineering, prototype fabrication and installation of a piece of regenerative public art along the shoreline in Bryant Park, Lake Worth, Florida. The piece titled *Living Shoreline* will be created by environmental artist Michael Singer and his Studio team along with biologists and engineers at ERM. The *Living Shoreline* will be comprised of Sculptural Elements that will be designed to retain soils to support the growth of mangroves and spartina and provide oyster and fisheries habitat within the Lake Worth Lagoon. The form and composition of the Sculptural Elements will be designed and sculpted by Michael Singer Studio with the goals of shaping regenerative habitat through art and engaging a broader public acceptance to mangrove planters along seawalls.

The design of the *Living Shoreline* will be led by Michael Singer Studio with support from ERM and ERM's designated Engineer of Record (these three parties are known hereafter as the Team). The visible Sculptural Elements of the project will be designed and sculpted by the Studio and delivered to the project site. The Sculptural Elements will be some form of pre-cast concrete with fiberglass reinforcing. ERM will provide all engineering, design approval, any necessary permits and is responsible for installation of all structural components (rock, geotextile fabric, sand/ soil, any structural supports, etc...), plantings, and the safe offloading, storage, and installation of the Sculptural Elements.

#### **MSI's Scope of Work (MSI deliverables are noted in bold)**

1. MSI will meet and collaborate with ERM engineers, biologists and project managers to develop initial guidelines for the Sculptural Elements of the *Living Shorelines* Project. (Completed on 08.27.13.)

2. MSI will develop a series of **conceptual 3D model studies** to review with ERM and ERM's designated Engineer. 3D models will be digital models.
  - a) The Team will meet to review the conceptual model studies and discuss potential costs.
  - b) The Team will select one Final Concept to advance as a schematic design. Team members will provide feedback on this Final Concept for incorporation by MSI. All members of the Team must agree on this Final Concept as well as any feedback for incorporation.
3. Develop and create fully dimensioned **Final Concept drawings and cost estimate**.
  - a) ERM will provide MSI with all engineering support necessary to finalize the design and estimate the cost of the Final Concept Sculptural Elements including (but not limited to) specifications for coastal and marine environments, structural supports / foundations, fiberglass rebar sizing and placement, attachments for lifting and installing elements, etc...
  - b) A **Final Concept cost estimate** will be developed by MSI using in-house estimating for the Sculptural Elements, and local/regional subcontractor estimating, as well as Team input for other components of the project.
  - c) ERM will develop the necessary drawings and details showing how the Sculptural Elements will be engineered and placed on site relative to the seawall and any foundation or structural supports (e.g. rock mattress). ERM will also provide the cost estimates for all material other than the Sculptural Elements and the entire project installation.
  - d) The Team will meet to review the Final Concept and estimated costs (both MSI and ERM estimates) and determine the project size for fabrication and installation that will meet the project budget (both MSI's Budget and ERM's Budget).
4. Upon agreement of the Final Concept and the size of the project MSI will develop a **Design Package** with plan(s), section(s), and 3d model drawing(s) as well as up to 2 renderings that will describe the project in full. The Design Package will also include text and support images within the page layouts. MSI shall create a proposal which will include the extent of the Sculptural Elements in the current MSI Budget (defined below) as well as a proposed 'larger' proposal that will be presented to 3<sup>rd</sup> parties to seek additional funding. This booklet will be made available as PDF file with 4 full color 11x17 bound booklets provided to ERM. The Design Package will be shared with ERM prior to finalization for any comments or edits; however under this agreement the Design Package will only be edited once.
5. Concurrently, upon agreement of the Final Concept and the size of the project, ERM will develop the final sealed engineering drawings for the project. If available, MSI will include and/or reference these drawings in the Design Package. Final sealed engineering drawings will need to be provided to MSI before shop drawings can begin.
6. Upon receipt of the final sealed engineering drawings MSI will confirm all pricing and necessary subcontracting and will confirm the total project size and costs including delivery.
7. MSI will provide **shop drawings** to ERM for review and signed approval. Upon approval of shop drawings and MSI manufacturer list, ERM will issue MSI a Notice to Proceed with the fabrication and delivery of the Sculptural Elements.
8. MSI will implement the fabrication of the Sculptural Elements and arrange with ERM for delivery date(s). MSI will ensure delivery of the **Sculptural Elements** to the project site in Bryant Park.
9. While not a part of the MSI Scope of Work, ERM authorizes MSI to conduct site visits, participate in all aspects of the installation and be involved in the long-term monitoring of the Sculptural Elements.
10. MSI will assist ERM on reporting required by the NEA after the completion of the project. Specifically, MSI will contribute to the "**Final Descriptive Report**" document by providing text for selected sections of the report.

Under this agreement MSI agrees to attend up to 4 Team meetings and up to 3 additional community presentations to present this project to the broader public and/or to seek additional funding.

Jason Bregman is the designated Michael Singer Studio project manager for the *Living Shorelines* Project and will attend all meetings on behalf of MSI. Michael Singer will attend select meetings and/or fabrication / installation oversight.

Under this agreement MSI retains the ownership of all molds and inserts created to cast the Sculptural Elements for the *Living Shorelines* Project. Furthermore MSI retains the rights to the Sculptural Elements as Works of Art that may only be reproduced outside of this project under a separate written agreement in which MSI authorizes reproduction.

MSI will retain the rights to all MSI produced drawings for this project. ERM will retain copies of MSI drawings and documents for use solely with respect to this project. None of the drawings or documents created for this project by MSI may be used as construction documents. MSI will have the right to utilize materials created for this project for professional and marketing purposes. Any marketing or promotional use of MSI drawings by ERM or the Engineer must be accompanied by "Courtesy of Michael Singer Studio".

#### **MSI Project Budget**

The total MSI Budget for the *Living Shorelines* Project is \$47,500, as agreed with ERM and as put forth in the approved budget with the NEA. Exhibit B in the primary agreement covers the Schedule of Payments. The MSI Budget covers only the MSI Scope of Work listed above and excludes all installation, storage, general conditions, Engineer fees, permit fees and any other costs not specifically listed above.

#### **MSI Estimated Project Schedule**

Development of Conceptual Models: February to Mid-March

Development of Final Conceptual Design: Mid-March to Mid-April

Creation of Design Package: Mid-April to Mid-May

Shop Drawings: Mid-May to Mid-June

Fabrication: June - August, depending on project complexity (assumes base Budget with no additional 3<sup>rd</sup> party funds, a larger project may take longer to fabricate.)

Delivery and Installation: As early as August 2014

Schedule Note: The project schedule submitted to the NEA assumed a project completion by September 30<sup>th</sup>, 2014. This project schedule assumes MSI will be under contract with the County by February, 4 2014. MSI cannot be held responsible for delays by 3<sup>rd</sup> parties including but not limited to 3<sup>rd</sup> party review, permits and 3<sup>rd</sup> party deliverables.

Please note, MSI is Certified as a Small Business with Palm Beach County.

-----END Scope of Work-----

**EXHIBIT "B"**

**SCHEDULE OF PAYMENTS**

The Scope of Work to be completed by CONSULTANT as defined in Exhibit "A" consists of specific completion phases which shall be clearly identified on a phase-by-phase basis upon submission to the COUNTY of certain "deliverables" as expressly indicated below. Compensation for the work tasks stated herein shall be in accordance with the following Schedule of Payments:

**PHASE 1**

Task(s) to be Completed: Design for the *Living Shoreline* planter

Completion Time: Mid-April, 2014

Compensation for Phase 1: \$8,500.00

Deliverable(s) Required:

- Conceptual 3D Model Studies
- Meeting to review conceptual models
- Final conceptual design and cost estimate
- Meeting to approve final concept, cost estimate, and size of project

**PHASE 2**

Task(s) to be Completed: Design Package and Shop Drawings for *Living Shoreline* planter

Completion Time: Mid-June, 2014

Compensation for Phase 2: \$10,000.00

Deliverable(s) Required:

- Design Package
- Supplier List
- Shop Drawings

**PHASE 3**

Task(s) to be Completed: Fabricate the *Living Shoreline* Sculptural Elements

Completion Time: August 15, 2014

Compensation for Phase 3: \$17,300.00

Deliverable(s) Required:

- Fabrication of sculptural elements

**PHASE 4**

Task(s) to be Completed: Deliver the *Living Shoreline* Sculptural Elements

Completion Time: August 30, 2014

Compensation for Phase 4: \$11,000.00

Deliverable(s) Required:

- Delivery of sculptural elements

**PHASE 5**

Task(s) to be Completed: Assist with *Living Shoreline* Descriptive Report

Completion Time: September 30, 2014

Compensation for Phase 5: \$700.00

Deliverable(s) Required:

- Text and image support for descriptive report



**SCHEDULE 1**

**LIST OF PROPOSED SBE-M/WBE PARTICIPATION**

PROJECT NAME OR BID NAME: Bryant Park Sculptural Living Shoreline Mangrove Planter  
 NAME OF PRIME BIDDER: Michael Singer Inc.  
 CONTACT PERSON: Michael Singer  
 BID OPENING DATE: N/A.

PROJECT NO. OR BID NO.: Bryant Park Sculptural Living Shoreline Mangrove Planter  
 ADDRESS: 321 NW 1st Ave, Delray Beach, FL, 33444  
 PHONE NO.: 561-865-7683 FAX NO.: \_\_\_\_\_  
 USER DEPARTMENT: Environmental Resources Management

THIS DOCUMENT IS TO BE COMPLETED BY THE PRIME CONTRACTOR AND SUBMITTED WITH BID PACKET. PLEASE LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK TO BE COMPLETED BY ALL SBE -M/WBE's ON THIS PROJECT. IF THE PRIME IS AN SBE-M/WBE, PLEASE ALSO LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK TO BE COMPLETED BY THE PRIME ON THIS PROJECT. THE PRIME AFFIRMS THAT IT WILL MONITOR THE SBES LISTED TO ENSURE THE SBES PERFORM THE WORK WITH ITS OWN WORKFORCE.

Name, Address and Phone Number	(Check one or both Categories)		DOLLAR AMOUNT AND/OR PERCENTAGE OF WORK				
	M/WBE Minority Business	SBE Small Business	Black	Hispanic	Women	Caucasian	Other (Please Specify)
1. <u>Michael Singer Inc 321 NW 1st Ave, Delray Beach, FL, 33444 561-865-7683</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	_____	_____	<u>100%</u>	_____
2.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
3.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
4.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
5.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____

(Please use additional sheets if necessary)

Total \_\_\_\_\_ 100%

Total Bid Price \$ \$47,500 Total SBE-M/WBE Participation Dollar Amount and/or Percentage of Work 100% \$47,500

I hereby certify that the above information accurate to the best of my knowledge: \_\_\_\_\_  
 Signature \_\_\_\_\_ Title President

- NOTE: 1. The amount listed on this form for a SBE-M/WBE Prime or Subcontractor must be supported by price or percentage listed on the signed Schedule 2 or signed proposal in order to be counted toward goal attainment.
2. Firms may be certified by Palm Beach County as an SBE and/or M/WBE. If firms are certified as both an SBE and M/WBE, please indicate the dollar amount and/or percentage under the appropriate category.
3. M/WBE information is being collected for tracking purposes only.

**OSBA SCHEDULE 2  
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE**

This document must be completed by ALL SBE-M/WBE's and submitted with this bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE's is certified to perform. Failure to properly complete Schedule 2 will result in your SBE participation not being counted.

PROJECT NUMBER: N/A PROJECT NAME: Bryant Park Sculptural Living Shoreline Mangrove Planter

TO: Michael Singer Inc.  
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise  Minority Business Enterprise \_\_\_\_\_  
Black \_\_\_\_\_ Hispanic \_\_\_\_\_ Women \_\_\_\_\_ Caucasian  Other (Please Specify) \_\_\_\_\_

Date of Palm Beach County Certification: May 6th, 2013

The undersigned is prepared to perform the following described work in connection with the above project. Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
	<u>Entire Project</u>			<u>\$47,500 = 100%</u>

at the following price or percentage \$47,500 or 100%  
(SBE Prime or Subcontractor's Quote)

and will enter into a formal agreement for work with you contingent upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE-M/WBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage \_\_\_\_\_  
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE-M/WBE listed to ensure the SBE-M/WBE perform the work with their own work force. The undersigned SBE-M/WBE Prime or SBE-M/WBE subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

Michael Singer Inc.  
Print name of  
SBE-M/WBE Company  
By: [Signature]  
(Signature)  
Michael Singer President  
Print name/title of person executing on behalf  
of SBE-M/WBE

Date: 1/6/14

**OSBA Schedule 3(A)  
PROFESSIONAL SERVICES ACTIVITY REPORT**

Project No.: \_\_\_\_\_  
Task Authorization No: \_\_\_\_\_

REPORTING PERIOD: \_\_\_\_\_

Prime Consultant Address: \_\_\_\_\_  
City/State: \_\_\_\_\_ Zip \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone # \_\_\_\_\_  
Contract Name: \_\_\_\_\_  
Contract Term: \_\_\_\_\_ Contract Amount \$ \_\_\_\_\_  
Total Percentage performed by the Prime's Firm: \_\_\_\_\_ SBE-M/WBE Firm: \_\_\_\_\_  
Service Type: Architectural \_\_\_\_\_ Engineering \_\_\_\_\_ Surveying \_\_\_\_\_  
Other (Specify) \_\_\_\_\_  
Have Sub-Consultants completed work with its own workforce for this application?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Note: If yes, complete below:

**SUB-CONSULTANTS**

1. Firms Name: \_\_\_\_\_  
Address/Tel: \_\_\_\_\_  
Estimated Start Date: \_\_\_\_\_ Contract Amount: \_\_\_\_\_  
**SCOPE OF WORK:** \_\_\_\_\_  
Percentage/Hrs Completed: \_\_\_\_\_ Amount Paid To Date \_\_\_\_\_
  
2. Firm's Name: \_\_\_\_\_  
Address//Tel: \_\_\_\_\_  
Estimated Start Date: \_\_\_\_\_ Contract Amount: \_\_\_\_\_  
**SCOPE OF WORK:** \_\_\_\_\_  
Percentage/Hrs Completed: \_\_\_\_\_ Amount Paid To Date \_\_\_\_\_
  
3. Firm's Name: \_\_\_\_\_  
Address/Tel: \_\_\_\_\_  
Estimated Start Date: \_\_\_\_\_ Contract Amount \_\_\_\_\_  
**SCOPE OF WORK:** \_\_\_\_\_  
Percentage/Hrs Completed: \_\_\_\_\_ Amount Paid To Date \_\_\_\_\_

I certify that the above is true to the best of my knowledge

\_\_\_\_\_  
Signature/Title

OSBA SCHEDULE 4 - SBE-M/WBE PAYMENT CERTIFICATION

The Prime Contractor is to submit Schedule 4 with its Monthly Payment Request to Palm Beach County to reflect actual payments made to the SBE-M/WBE Subcontractor. The Prime Contractor is not to request signature from an SBE-M/WBE Subcontractor unless it has made a payment to the SBE-M/WBE Subcontractor. The SBE-M/WBE Subcontractor is not to complete and sign this form unless it has received a payment from the Prime Contractor for services actually performed by the SBE-M/WBE Subcontractor. A separate Schedule 4 is required for each SBE-M/WBE Subcontractor payment.

This is to certify that \_\_\_\_\_ received  
(SBE or M/WBE Subcontractor Name)

(Monthly) or (Final) payment of \$ \_\_\_\_\_

On \_\_\_\_ - \_\_\_\_ - \_\_\_\_ from \_\_\_\_\_  
MM DD YYYY (Prime Contractor Name)

For labor and/or materials used on \_\_\_\_\_ / \_\_\_\_\_  
(Project Name) (Work Order)

DEPT.: \_\_\_\_\_ PROJECT NO.: \_\_\_\_\_

PRIME CONTRACTOR VENDOR CODE: \_\_\_\_\_

SBE OR M/WBE SUBCONTRACTOR VENDOR CODE: \_\_\_\_\_

=====

If the SBE Subcontractor intends to disburse any funds associated with this payment to any Subcontractor for labor provided on this project, please provide the following information:

\*Subcontractor Name: \_\_\_\_\_ Amount to be paid: \_\_\_\_\_

\*Note: If the subcontractor listed in this section is an SBE or M/WBE a separate schedule 4 is required to verify payment.

By: \_\_\_\_\_  
(Signature of Subcontractor) (Print Name & Title of Person executing on behalf of Subcontractor)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print, Type or Stamp Commissioned Name of Notary

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_ Type of Identification \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/22/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Richards Group - Wilmington 27 East Main St PO Box 248 Wilmington VT 05363-0248	<b>CONTACT NAME:</b> Wendy Chase	
	<b>PHONE (A/C, No, Ext):</b> (802) 464-5353	<b>FAX (A/C, No):</b> (802) 254-7110
<b>E-MAIL ADDRESS:</b> wchase@therichardsgrp.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Foremost Signature Ins Co		41513
<b>INSURER B:</b>		
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** 13/14                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			PPS41413890	9/15/2013	9/15/2014	EACH OCCURRENCE \$ 1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000	
							PERSONAL & ADV INJURY \$ 1,000,000	
							GENERAL AGGREGATE \$ 2,000,000	
							PRODUCTS - COMP/OP AGG \$ 2,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER:								
<input checked="" type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO-JECT	<input type="checkbox"/>	LOC		\$	
A	AUTOMOBILE LIABILITY			PPS41413890	9/15/2013	9/15/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>				SCHEDULED AUTOS NON-OWNED AUTOS	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input type="checkbox"/>	<input checked="" type="checkbox"/>					PROPERTY DAMAGE (Per accident) \$
								\$
Y	UMBRELLA LIAB						EACH OCCURRENCE \$	
	EXCESS LIAB						AGGREGATE \$	
	DED			RETENTION \$			\$	
2	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		N/A			OTHER	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$	
							E.L. DISEASE - EA EMPLOYEE \$	
							E.L. DISEASE - POLICY LIMIT \$	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents are considered additional insured in regards to liability pertaining to work performed by the above insured if required by written contract

<b>CERTIFICATE HOLDER</b>  Palm Beach County c/o Robert Robbins, ERM Director 2300 N. Jog Road, 4th Floor West Palm Beach, FL 33411-2743	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  Wendy Chase/W210 <i>Wendy Young-Chase</i>

**RESOLUTION NO. R-2014-\_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO UTILIZE A PORTION OF THE COUNTY VESSEL REGISTRATION FEES FOR THE CONSTRUCTION OF THE BRYANT PARK LIVING SHORELINE PROJECT.**

WHEREAS, Palm Beach County enacted the Vessel Registration Fee Ordinance, No. 88-40 which began collecting fees June 1, 1989; and

WHEREAS, the Vessel Registration Fee Ordinance provides that monies collected from vessel registration fees be utilized to protect and construct marine, estuarine, and freshwater habitats to maintain and enhance fisheries; and

WHEREAS, the Bryant Park Living Shoreline project is located in the City of Lake Worth and listed in the 2013 Lake Worth Lagoon Management Plan to create oyster, mangrove and spartina habitats and provide shoreline resilience to climate change; and

WHEREAS, Environmental Resources Management has been awarded a grant from the National Endowment for the Arts (NEA) to support the design of a large-scale public art installation by environmental artist/designer Michael Singer Incorporated (MSI); and

WHEREAS, the NEA grant supports the installation of the MSI sculptured shoreline planter as a matching contribution by Palm Beach County; and

WHEREAS, the sculptured shoreline planter will be designed to function as a mangrove planter to retain soils to support estuarine habitats and provide an alternative planter design that will engage a broader public acceptance towards the living shoreline concept; and

WHEREAS, the Director of Environmental Resources Management recommends that the Board of County Commissioners authorize the Clerk of the Court to disburse Vessel Registration Fee monies in the amount of \$50,000 for the Bryant Park Living Shoreline Project and NEA grant award to match the grant and construct the project.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, THAT:

Section 1: The foregoing recitals are hereby adopted and ratified.

Section 2: The Board hereby authorizes the Clerk to disburse funds of \$50,000 for the purpose of constructing the Bryant Park Living Shoreline Project.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:


- District 7: Priscilla A. Taylor, Mayor \_\_\_\_\_
- District 2: Paulette Burdick, Vice Mayor \_\_\_\_\_
- District 1: Hal. R. Valeche \_\_\_\_\_
- District 3: Shelley Vana \_\_\_\_\_
- District 4: Steven L. Abrams, \_\_\_\_\_
- District 5: Mary Lou Berger \_\_\_\_\_
- District 6: Jess R. Santamaria \_\_\_\_\_

The Mayor thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By   
Assistant County Attorney

By \_\_\_\_\_  
Deputy Clerk

2014-0319

BGEX - 380 - 010214\*565

BGRV - 380 -010214\*184

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT

Fund 1225 Environmental Enhancement Non-Specific

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED ENCUMBERED BUDGET / Expended	REMAINING BALANCE
<u>REVENUES</u>						
380-3089 Bryant Park Living Shoreline      3139-Fed Grant Phys Environment	0	0	40,000		40,000	
<b>TOTAL RECEIPTS &amp; BALANCES</b>	<u>5,088,887</u>	<u>5,672,662</u>	40,000	0	<u>5,712,662</u>	
<u>EXPENDITURES</u>						
380-3089 Bryant Park Living Shoreline      3401 - Other Contractual Services	50,000	50,000	40,000	0	90,000	90,000
<b>TOTAL APPROPRIATIONS &amp; EXPENDITURES</b>	<u>5,088,887</u>	<u>5,672,662</u>	40,000	0	<u>5,712,662</u>	

Environmental Resources  
Management

INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures & Dates

*[Signature]*  
\_\_\_\_\_  
February 11/17/2014  
\_\_\_\_\_  
ce11/17/14

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF

February 4, 2014

Deputy Clerk to the  
Board of County Commissioners



2014 - 0320

BGEX -010214\*564

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER  
FUND 1226 Natural Areas Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 1/2/2014	REMAINING BALANCE
<u>Appropriations</u>							
<u>Manatee Protection</u>							
380-3252      3401 Other Contractual Services	753,175	603,175	0	10,000	593,175	160,000	433,175
<u>Bryant Park Living Shoreline</u>							
380-3089      3401 Other Contractual Services	50,000	50,000	10,000	0	60,000	0	60,000
			10,000	10,000			

Environmental Resources  
Management

INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures & Dates

*[Signature]*  
*[Signature]* 1/17/2014  
*[Signature]* 1/17/14

BY BOARD OF COUNTY COMMISSIONERS  
AT MEETING OF

February 4, 2014

Deputy Clerk to the  
Board of County Commissioners