

**LIMITED AUDIT REPORT**

**NEH GRANT AWARD**

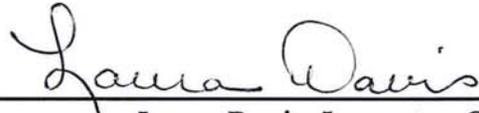
**TO**

**FILM FORUM, INC.**

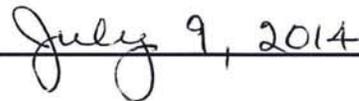
**NEW YORK, NY**

**(TR-50071-09)**

**OIG-14-02 (EA)**



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Laura Davis, Inspector General



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Date

**LIMITED AUDIT REPORT**  
**NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)**  
**GRANT AWARD**  
**TO**  
**FILM FORUM, INC.**  
**NEW YORK, NY**

**I. INTRODUCTION**

The Office of Inspector General has performed a limited audit of Film Forum's records as they relate to the following NEH grant award.

Grant Number: TR-50071-09  
Grant Period: 9/1/2009- 8/31/2011  
Amount Awarded: \$725,000

Grant Expenditures: As noted below, the intent of the grant award was to support the creation of a video documentary on the evolution of non-fiction film/documentaries in America. The final financial report submitted to the NEH, dated December 13, 2011, conveys that the related expenditures conform to the intended grant purpose, as stipulated in the individual NEH grant award.

**II. BACKGROUND**

Film Forum began in 1970 as an alternative screening space for independent films. As a cinema of ideas, Film Forum is committed to presenting an international array of films that treat diverse social, political, historical and cultural realities. Film Forum also acts as a sponsor of film projects through sub-grants or contractual agreements with filmmakers. Film Forum is a 501(c)(3) cultural institution, chartered in New York State.

NEH awarded a media production grant to Film Forum, totaling \$725,000, entitled "To Tell the Truth". This grant was made to support the production of two one-hour episodes in a six hour documentary. Film Forum sponsored the independent filmmaker, Lumiere Productions, which actually produced the documentary.

**III. LIMITED AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

The principle objectives of the limited audit were to determine that 1) grant expenditures were made in accordance with applicable provisions of NEH's *General Terms and Conditions for Awards to Organizations* and the terms of the approved grant award; 2) Film Forum properly implemented a comprehensive subrecipient monitoring program; and 3) proper controls over the use of Federal funds exist in accordance with minimum standards prescribed in OMB Circulars A-110 (2 CFR Part 215) and A-122 (2 CFR Part 230).

We examined documentation provided by Film Forum (sponsor) and Lumiere Productions (subrecipient) supporting the allowability of expenditures charged to the NEH grant, and reviewed the related accounting and management controls implemented by both organizations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### **IV. RESULTS OF LIMITED AUDIT**

Overall, the NEH grant resulted in the successful production of two episodes of a video documentary. However, based on the nature of the exceptions noted at the subrecipient level, we conclude that Film Forum did not fully execute monitoring responsibilities to ensure that the Federal award was used for authorized purposes in compliance with laws, regulations, and the provisions of NEH grant TR-50071-09. Sponsorship fees charged to the grant amounted to \$36,250.

Our audit identified several deficiencies concerning the financial management controls implemented by the subrecipient (Lumiere Productions), which in many instances, resulted in unallowable charges to the NEH grant. The following exceptions were noted:

- Questioned costs totaling \$27,562, of which \$14,375 represents salary in excess of key personnel salary caps; \$9,300 relates to equipment expenditures; \$3,488 relates to petty cash and travel expenditures; and \$399 represents late fee charges.
- Cost-share reported in the final Federal Financial Report (SF-425) amounted to \$53,607. Of the reported cost-share, \$31,398 is not supported by the subrecipient's accounting records.
- The subrecipient's document retention procedures related to petty cash and travel expenditures are inadequate.
- The subrecipient's time and effort reporting documentation do not appear to support salary expenditures.
- The subrecipient did not consistently document agreements with contractors for professional services.

## A. Questioned Costs

The Inspector General Act defines questioned costs as:

- Costs that are questioned because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or document governing expenditure of funds;
- A finding that, at the time of the audit, such cost is not supported by adequate documentation; or
- A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

During the course of our audit, we identified questioned costs as follows:

**Key Personnel Compensation in Excess of Salary Caps (\$14,375)**: The specific terms and conditions applicable to NEH grant TR-50071-09 identified maximum fixed fees to be paid for certain key positions. We determined that the salary cap was exceeded for the Series Writer/Director (██████████) by \$6,625 and the Series Producer (██████████) by \$7,750. Budget revisions for compensation and personnel responsibilities were submitted and approved by the NEH; however, despite the revisions, the salary caps were exceeded.

**Equipment Expenditures (\$9,300)**: We haphazardly selected equipment expenditures for testing totaling \$16,818. The subrecipient provided support for \$7,518. No supporting documentation was provided for the remaining equipment transactions totaling \$9,300.

**Petty cash and travel reimbursements (\$3,488)**: Petty cash and travel transactions totaling \$17,788 were selected for testing based on dollar thresholds. Of the selected transactions, source documentation for transactions totaling \$3,488 could not be provided. Lumiere officials stated that the documentation was in the custody of a former key employee who is no longer involved with the project.

**Late Fee Charges (\$399)**: We identified rental late fees in the amount of \$399 that were charged to the project supported by the NEH grant. The rental statement for the month of January 2010 included the monthly rental rate of \$4,692 and late fees of \$781. We verified charges to the NEH project for January 2010 rent in the amount of \$5,091. The difference between the rent charges to the NEH project for the month of January and the monthly rental rate identified in the January rent statement represents late fees charged to the NEH project. Late fees are unallowable in accordance with OMB Circular A-122.<sup>1</sup>

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<sup>1</sup> OMB Circular A-122, Attachment B, Paragraph 16, *Fines and penalties*

## **Recommendation A**

We recommend that Film Forum return \$27,562 to the NEH related to the unsupported and unallowable charges to the NEH project.

### SUMMARY OF GRANTEE'S RESPONSE

Film Forum formally responded with a letter dated June 13, 2014.

*Key Personnel Compensation in Excess of Salary Caps:* The grantee disputed the questioned costs, and stated that compensation paid to personnel in excess of the salary caps was due to additional roles assumed by such personnel on the project, which ultimately resulted in cost-savings for the project. In addition, to remain on budget and provide fair remuneration to the rest of the production team who were taking on multiple jobs, the Executive Producer chose to decrease his compensation by \$22,000.

*Equipment Expenditures:* The grantee disputed questioned costs related to equipment expenditures, and provided additional documentation to support questioned costs of \$9,300.

*Petty Cash and Travel Reimbursements:* The subrecipient provided expense/reimbursement documentation to support questioned costs, in the amount of \$1,566.

*Late Fees:* Film Forum was not aware that late fees were unallowable and will return \$399 to the NEH.

### OIG EVALUATION OF THE GRANTEE'S RESPONSE

*Key Personnel Compensation in Excess of Salary Caps:* After review of the grantee's response, the OIG retains this finding as originally reported. Additional roles discussed in the grantee's response were communicated to and approved by NEH officials in July 2010, which effected a budget revision and a corresponding revision of the maximum fixed fees to reflect the additional responsibilities.

We further noted that the subrecipient's accounting records reflect:

1. Compensation charges to the project for [REDACTED]'s sound work in the amount of \$3,375 (in addition to his compensation charges as Series Writer/Director) and these charges were specifically identified as "Sound Recordist" charges.
2. Total compensation charges to the project by the Executive Producer in the amount of \$22,000.

*Equipment Expenditures:* After review of the documentation provided by the grantee on June 13, 2014, the OIG determined the documentation to be sufficient in supporting the questioned costs. However, it should be noted that requests for all supporting documentation pertaining to equipment expenditures were communicated to the grantee during audit fieldwork on August 19, 2013. This request communication was acknowledged by officials of Lumiere Productions on August 19, 2013 and a response to several items included in the request communication was transmitted to the OIG on August 27, 2013. Nonetheless, equipment expenditure questioned costs of \$9,300 have been resolved.

*Petty Cash and Travel Reimbursements:* Based upon our review of the grantee's response and additional supporting documentation provided by Lumiere Productions, questioned expenditures should be adjusted to \$3,215, which represents expenditures for which sufficient documentation was not provided to support an assessment of allowability, allocability, or reasonableness, (see below):

Expenditures initially questioned by the OIG	\$3,488
Transactions for which sufficient supporting documentation provided	<u>(273)</u>
Adjusted Questioned Petty Cash/Travel Reimbursements	<u>\$3,215</u>

**Revised Recommendation A  
(Based on the OIG Evaluation of the Grantee's Response)**

We recommend that Film Forum return \$17,989 to the NEH, related to unsupported and unallowable charges as follows:

Key Personnel Compensation in Excess Of Salary Caps	\$14,375
Petty Cash and Travel Reimbursements	3,215
Late Fees	<u>399</u>
Total	<u>\$17,989</u>

## **B. Inadequate Subrecipient Monitoring by the Sponsor**

We have concluded that Film Forum did not execute its monitoring duties adequately, based on the findings related to the subrecipient. Both Film Forum and Lumiere Productions are subject to Federal regulations, as articulated in the NEH *General Terms and Conditions for Awards*. However, as the primary recipient of the NEH award, Film Forum is responsible for advising the subrecipient of requirements applicable to the NEH award and monitoring the subrecipient to ensure compliance with Federal regulations. A sponsor for NEH awards cannot act solely as a fiscal agent.

We noted the following conditions that evidence insufficient accounting controls over the subrecipient's expenditures.

Reported Cost-Share is not Verifiable to the Accounting Records: The subrecipient's accounting records do not distinguish expenditures supported by the NEH grant versus expenditures that represent cost-share. According to Lumiere officials, cost-share consists solely of dollars paid out, not of in-kind goods or services; and all cost-share funds were contributed to the project by Lumiere Productions.

A portion of the cost-share reported in the final Federal Financial Report is not substantiated by the subrecipient's accounting records, (\$31,398). The purpose of the final Federal Financial Report (SF-425) is to certify actual expenditures made for the project during the period of the grant award. The final SF-425 submitted by Film Forum to the NEH certifies cost-share in the amount of \$53,607. The subrecipient explained to the OIG auditor that the reported cost-share represents an "estimate".

Based on the subrecipient's accounting records, we verified total project expenditures during the award period in the amount of \$747,209<sup>2</sup>. According to the final Federal Financial Report, \$725,000 was attributed to the NEH grant. The remaining expenditures may be regarded as "cost-share", (\$22,209). No additional documentation exists to explain the \$31,398 difference between cost-share reported and certified in the final Federal Financial Report (\$53,607) and the "non-Federal" amount supported by the subrecipient's accounting records for the project period, (\$22,209).

According to OMB Circular A-110, recipients of Federal awards must maintain financial management systems that provide for the accurate, current, and complete disclosure of the financial results of each federally-sponsored project. Records that adequately identify the source and application of funds for federally-sponsored activities must also be maintained. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances,

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<sup>2</sup> The subrecipient provided general ledger information reflecting additional expenditures related to the project totaling \$13,418.80. We determined that the expenditures were initiated and paid after the end of the grant period and thereby did not include the expenditures as allowable cost-share.

assets, outlays, income and interests.<sup>3</sup> All cost-share contributions, including cash and third-party in-kind, must be verifiable from the recipient's records.<sup>4</sup>

Document Retention: Source documentation, such as invoices and receipts, could not be provided to substantiate petty cash and travel reimbursements totaling \$3,488. We were informed by Lumiere officials that such documentation was in the custody of a key individual formerly associated with the project and thereby unavailable for the OIG auditor's inspection.

OMB Circular A-110 provides that financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. Furthermore, the Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents.<sup>5</sup>

Time and Effort Reporting: Salary charges to the NEH grant do not appear to be based on time and effort reporting records maintained by the subrecipient. We specifically tested salary charges to the grant during the period, April 2011 through June 2011. Lumiere officials asserted that full resources were dedicated to the NEH project during that timeframe and provided approved time and effort reports. However, the salary charges reflected in the general ledger for the same period do not correlate with the subrecipient's assertion. For instance, salary charges for a Lumiere employee differed week to week despite the same level of effort documented in the employee's approved time and effort reports. Additionally, we performed a cursory review of all salary charges to the project, as reflected in the general ledger, and it does not appear that charges are consistent with effort actually expended on the project.

In consideration of other circumstances pertaining to the NEH award, we did not take exception to the salary charges. However, OMB Circular A-122 requires charges to awards for salaries and wages, whether treated as direct or indirect costs, to be based on documented payrolls approved by a responsible official(s) of the organization and the distribution of salaries and wages to awards must be supported by personnel activity reports.

Reports reflecting the distribution of activity must be maintained for all staff members whose compensation is charged, in whole or in part, directly to awards and must meet the following standards:

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<sup>3</sup> OMB Circular A-110, Subpart C, Section .21, *Standards for financial management systems*

<sup>4</sup> OMB Circular A-110, Subpart C, Section .23, *Cost sharing or matching*

<sup>5</sup> OMB Circular A-110, Section .53, *Retention and access requirements for records*

(a) Reflect an after-the-fact determination of the actual activity of each employee. Budget estimates do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.<sup>6</sup>

### **Recommendation B-1**

We recommend that Film Forum review their sponsorship policies and the procedures employed in monitoring/overseeing entities that which they sponsor. Film Forum should become familiar with the NEH guidance, *Requirements for Grant Recipients that Serve as Sponsors of Projects*, as well as regulations applicable to the administration of Federal awards before taking on the role of sponsor for future grants. We further recommend that Film Forum, upon execution of sponsor agreements, explicitly communicate Federal financial management standards to a sponsored entity, and prior to the release of Federal funds, assess the entity's capability to comply with the standards. In particular, Film Forum must develop and implement sufficient monitoring procedures to ensure sponsored entities:

1. Maintain a financial management system that provides for the accurate, current, and complete disclosure of the financial results of each federally-sponsored project and discretely accounts for project expenditures by funding sources in accordance with OMB Circular A-110;
2. Establish controls over the maintenance and retention of source documentation; and
3. Establish and consistently implement time and effort reporting procedures in accordance with OMB Circular A-122.

In addition, we suggest that Film Forum expand current monitoring activities to incorporate periodic review and substantiation of subrecipient expenditures to

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<sup>6</sup> OMB Circular A-122, Attachment B, Paragraph 8m, *Support of salaries and wages*

ensure compliance with Federal cost principles and specific terms/conditions of Federal awards.

#### SUMMARY OF GRANTEE'S RESPONSE

Film Forum noted that an extraordinary circumstance was the cause for the loss of some documents. However, the organization will implement new oversight systems for any future NEH grants for which the organization acts as a sponsor. Specifically, Film Forum will review back-up documentation on expenditures and timesheets as a part of the monitoring procedure.

#### **Recommendation B-2**

We recommend that Film Forum revise and resubmit the final Federal Financial Report for NEH grant TR-50071-09 to reflect verifiable cost-share during the grant performance period, \$22,209.

#### SUMMARY OF GRANTEE'S RESPONSE

Film Forum will revise and resubmit the final report to reflect \$22,209 as the cost-share. The discrepancy in the cost-share amount reported on the final Federal Financial Report versus the amount recorded in the subrecipient's accounting system is due to a misunderstanding of what the NEH allows to be counted as project costs.

### **C. Lack of Written Agreements for Professional Services**

The subrecipient did not consistently document agreements with contractors for professional services. Agreements with supporting personnel, such as the Production Editors, were documented in writing. However, agreements with cameramen were made verbally. Total charges to the project for cameraman services amounted to \$14,142.

Agreements with contractors for professional services should be documented in writing. Written agreements facilitate mutual understanding of expectations and enforcement of performance. According to OMB Circular A-122, an acceptable written agreement for professional services addresses, at a minimum, a description of the service to be provided, an estimate of time required, rate of compensation, and termination provisions.<sup>7</sup>

Also, ensuring that agreements with contractors for professional services are documented in writing further substantiates Film Forum's intentions concerning compliance with labor standards, as articulated by the initial assurances made upon acceptance of the NEH award.

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<sup>7</sup> OMB Circular A-122, Attachment B, Paragraph 37b(8), *Professional services costs*

### **Recommendation C**

We recommend that Film Forum include in their sponsorship agreements the advisory that all agreements with contractors for professional services must be documented in writing. We also recommend that Film Forum, as part of the organization's monitoring activities, review subrecipient agreements with contractors for professional services upon execution of the agreements to ensure compliance with labor standards.

#### **SUMMARY OF GRANTEE'S RESPONSE**

Film Forum will revise their current sponsorship agreement used for any future public-funding sponsorships to include specific language regarding the requirement to have all contracts for professional services in writing.

### **V. EXIT CONFERENCE**

Preliminary results of our review were shared with the General Manager at Film Forum (██████████) and the President of Lumiere Productions (██████████) on September 17, 2013.

# **GRANTEE RESPONSE TO AUDIT REPORT**

# FILM FORUM

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June 13, 2014

Ms. Laura Davis  
Inspector General  
National Endowment for the Humanities  
Office of the Inspector General  
1100 Pennsylvania Avenue NW, Rm 419  
Washington, DC 20506

*RE: Response to Audit Report OIG-14-02 (EA)*

Dear Ms. Laura Davis:

This letter is in answer to the Limited Audit Report for NEH Grant Award TR-50071-09 which we received on May 19, 2014. First we feel it is important to share some background on Lumiere Productions' project *To Tell the Truth (TTTT)*:

The NEH grant of \$725,000 was critical for the completion of *TTTT*; however the grant did not cover the complete, original budget for producing two episodes of *TTTT*. After the frustrations of several months of fundraising with no prospects appearing, we approached our NEH Senior Program Officer, David Weinstein, to ask if Lumiere could submit a revised budget for only the amount we received. Lumiere vowed to complete and deliver the two episodes for the revised budget amount. David Weinstein agreed; we submitted the new budget and work plan; the funds were released; and Lumiere delivered the two episodes.

Our specific responses are below in the order in which the recommendations appear in the audit report.

## **Recommendation A: Questioned Costs**

All expenditures reviewed by the NEH auditor were directly related to the successful completion of the two episodes of *TTTT* funded by the NEH.

### Key Personnel Compensation in Excess of Salary Caps

Due to the revised, approved budget and work plan, Lumiere entered the production period with very low salary caps. For example, Series Writer/Director [REDACTED]'s cap was \$44,000 for what became nearly two years' work – which according to the US Census Bureau comes out to well below the annual median income of \$51,865 for New York City (<http://quickfacts.census.gov/qfd/states/36/3651000.html>). In order to supplement that amount without exceeding the \$44,000 allotted the Writer/Director line, [REDACTED] also worked additional time as the sound man on several locations. The \$6,625 he earned in excess of the \$44,000 was for his sound work. This was ultimately a cost-saving measure for the project as Lumiere did not need to purchase airfare or hotel for a separate person acting as the sound man.

Similarly, the amount in excess of the salary cap for Project Director/Producer that [REDACTED] earned was due to her taking on the additional role of Archival Researcher. An appropriately qualified researcher costs between \$2,000-\$2,250 a week, and the project required 12 weeks of work. This would have cost Lumiere \$24,000 - \$27,000. [REDACTED] earned \$7,750 for her time working as the Archival Researcher which represents the overage identified in the audit report, but which in the end was a cost-savings for the project.

Finally, it should be noted that Executive Producer [REDACTED] was paid only \$22,000 for the project – 50% of the \$44,000 allotted for his salary line in the budget. [REDACTED] took this smaller salary so that the project would remain on budget, while providing fair remuneration to the rest of the production team who were taking on multiple jobs.

#### Equipment Expenditures

The three areas selected for testing under Equipment were HD Camera Equipment, Sound Equipment, and Hard Drives. Ms. En Tang originally only requested receipts for \$5,000 and above, which explains why you were missing \$9,300 in equipment expenditures. Lumiere has the paid invoices for all of these categories below, and copies are enclosed with this letter:

HD Camera Equipment	\$12,951.38
Sound Equipment	\$1,131.99*
Hard Drives	\$2,734.81
<b>TOTAL</b>	<b>\$16,818.81</b>

\*NB: The \$1,131.99 in Sound Equipment covers only rented equipment. For East Coast domestic shoots, Lumiere used its own equipment and did not bill the project for its use.

Lumiere's British cameraman and French sound person included the equipment rented from them on their invoices, as did American [REDACTED] (FAW Pictures). [REDACTED], Lumiere's major U.S. cameraman, had to rent equipment as he did not have any of high enough quality to use for this project; therefore, equipment invoices during shoots with him are from an equipment house.

#### Petty Cash and Travel Reimbursements

Attached to this letter is a report from Lumiere responding to this item.

#### Late Fees

We were unaware that late fees were unallowable. We will return \$399 to the NEH.

#### **Recommendation B: Inadequate Subrecipient Monitoring**

Film Forum has worked with hundreds of filmmakers, production companies and distributors in our 44 years in business, and in our decade of working together have found Lumiere Productions to be one of the most upstanding and well run companies. In general, we do not agree to offer sponsorship to filmmakers seeking public funding due to the significant amount of work and due diligence required to administer government grants. We agreed to work with Lumiere on this NEH-funded project because of our longstanding relationship, and in our knowledge that Lumiere had worked successfully with the NEH on several other projects in the past.

Recommendation B-1

For any future NEH grants for which Film Forum acts as a sponsor, Film Forum will implement new oversight systems to ensure the subrecipient is acting in accord with Federal guidelines for grant awards. Specifically, Film Forum will review back-up documentation on expenditures and timesheets as part of our regular monitoring procedures.

It should be noted, again, that an extraordinary circumstance was the cause for the loss of some documents related to the petty cash receipts. Lumiere does have a document retention policy that abides by the minimum requirements outlined in OMB Circular A-110. One of the key staff, the Series Producer/Project Director, became gravely ill, very quickly and has yet to recover. The documents that the auditor requested and were unavailable were on this person's computer—which amount to under \$2,000 (or .2%) of a \$747,209 budget. Lumiere is still working to recover those files.

Recommendation B-2

The discrepancy in the cost-share amount reported on the final Federal Financial Report versus the amount recorded on Lumiere's accounting system, is due to a misunderstanding on our part of what the NEH allows to be counted as project costs. A number of project expenses directly related to the production of *TTTT* (e.g. \$12,500 paid to British Film Institute for footage rights used in *TTTT*) were not paid out until after the grant period end date of September 2011. We will, however, revise and resubmit the final report to reflect the \$22,209 as the cost-share amount.

**Recommendation C: Lack of Written Agreements for Professional Services**

Film Forum will revise our sponsorship agreements used for any future public-funding sponsorships to include specific language regarding the requirement to have all contracts for professional services in writing.

We respect the efforts of the NEH in supporting a wide-ranging field of important works. Film Forum would like to continue working with the NEH on appropriate projects, and so has given serious consideration to all of the audit recommendations.

Please let me know if you require any additional information.

Sincerely,



██████████  
General Manager

Encl.

cc: ██████████, President and Director, Film Forum, Inc.  
██████████, President, Lumiere Productions