

GRANT AGREEMENT

This **GRANT AGREEMENT** (the "Grant" or the "Agreement") is made as of this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City"), and the New World Symphony, Inc., a Florida not-for-profit corporation ("NWS") (the City and NWS each, a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the City and NWS entered into an Agreement of Lease dated as of January 5, 2004, as amended by that certain Memorandum of Lease and Possession Date Certificate, dated February 25, 2008, and recorded on March 17, 2008, in Official Records Book 26272, at Page 3696, of the Public Records of Miami-Dade County, Florida, pursuant to which the City leased to NWS certain real property, more particularly described in that certain survey prepared by Stoner & Associates, Inc., incorporated herein by reference and attached as Exhibit "A" hereto (the "Land"); and

WHEREAS, the City and NWS entered into a Development Agreement, dated as of January 5, 2004, as amended by that certain First Addendum to Development Agreement, dated February 20, 2007, and Second Addendum to Development Agreement, dated as of July 9, 2009 (collectively, the "Development Agreement") setting forth, among other things, the City's and NWS's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of: (i) a performance, educational and internet broadcast facility (the "Building"), together with certain related amenities, facilities and other infrastructure improvements, all on the Land, subject to the terms and conditions of the Lease; (ii) a public municipal parking garage to be designed, developed and constructed by NWS, on the City's behalf, and owned and operated by the City at its sole cost and expense, on City-owned property adjacent to the Land (the "Garage"); and (iii) a Park (the "Park Project") owned by the City, to be located adjacent to the Land, bounded on the west by the Land, bounded on the north by 17th Street, bounded on the east by Washington Avenue, and bounded on the south by Lincoln Lane, and currently known as "SoundScape Park"; and

WHEREAS, the Building features an external video system (the "NWS Video System") displaying musical and other cultural performances and works of art, which is conceived as a videographic element of the Building itself, located on the surface of the east wall at the northern end of the Building (the "Video Wall"), along with an audio system component situated in the Building or on the Premises (the "NWS Audio System"). The Park Project features an external audio system (the "City Audio System"), located within SoundScape Park, capable of complementing and working in tandem with the NWS Video and the NWS Audio System; and

WHEREAS, pursuant to Section 6.2 of the Lease, on or about November 29, 2007, the City and NWS entered into a Video and Audio System Agreement (the "Agreement") for the operation, scheduling and content of the programming of the external video and audio systems; and

WHEREAS, since its debut in January 2011, the City and NWS have worked collaboratively to make SoundScape Park a world-class cultural destination attended by tens of thousands of visitors each season; and

WHEREAS, in response to this demand, the following SoundScape Park improvements were included as part of the General Obligation Bond program approved by the electorate of the City of Miami Beach on November 6, 2018; and

- a. replacement of existing restroom trailer with permanent restroom facilities and augmented storage area - \$700,000; and
- b. technology upgrade of projectors, cameras and servers to 4K (collectively, the "System") - \$3,800,000 (*This allows for ultra-high definition resolution and will be used for visual components at SoundScape Park*); and

WHEREAS, on March 13, 2019, the City Commission approved Resolution No. 2019-30754, approving the issuance of the first tranche of General Obligation Bonds, totaling \$153,000,000 as follows:

- c. Parks, Recreational Facilities, and Cultural Facilities: \$87,700,000;
- d. Police, Fire, and Public Safety: \$36,900,000; and
- e. Neighborhoods and Infrastructure: \$28,400,000; and

WHEREAS, the SoundScape Park System upgrade was included within the Parks, Recreational Facilities and Cultural Facilities priority projects with an allocated budget of \$3,800,000; and

WHEREAS, the Parties agree to coordinate the planning, scheduling and approval of the design, purchase and installation of the System and the design and construction of the room (the "System Room") where the System will be installed (collectively, the "Project"), with NWS being responsible for the purchase, development, installation and implementation of the Project and the City being responsible for the payment, on a reimbursement basis, of the costs for the Project, in an amount not to exceed \$3,800,000.00, as more particularly described in Exhibit "B" hereto; and

WHEREAS, consequently, the parties wish to memorialize their respective responsibilities, as more particularly set forth herein; and

WHEREAS, the City staff member who is designated by the City Manager to administer this Agreement shall be Matt Kenny, Director, Tourism and Culture Department ("Contract Manager").

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the Parties hereto as follows:

ARTICLE 1

Section 1- The Grant

- 1.1 **Recitals** The Recitals above are true and correct and are incorporated herein by reference.
- 1.2 **Grant** The City hereby grants to NWS the Grant, in the aggregate sum not to exceed \$3,800,000.00 (the "Grant Monies"), on a reimbursement basis, to develop, install and implement the 4k technology upgrade for the Project. Any Grant Monies which remain undisbursed upon completion of the Project or earlier termination of the Agreement shall immediately return to the City and NWS shall have no claim to same.
- 1.3 NWS hereby agrees and covenants to use the Grant, and all Grant Monies disbursed to NWS by the City pursuant to the terms of this Grant, solely for the purpose of funding the hard and soft costs incurred by NWS to implement the Project.
- 1.4. As referenced in this Agreement, the "Project Cost" shall mean the hard costs and soft costs necessary for the design, purchase and installation of the System, as more particularly set forth in Exhibit "B" hereto. The Project Cost shall not exceed \$3,800,000.00. In the event the Project Cost exceeds \$3,800,000.00, NWS shall provide immediate written notice of same to the City, along with evidence reasonably satisfactory to the City regarding NWS' sources of funding for all remaining costs in excess of \$3,800,000.00 needed to complete the Project. NWS shall also include a revised cost estimate for the Project Cost, including a detailed breakdown of costs needed to complete the Project. Notwithstanding the preceding, the City shall have no obligation to fund any Project Cost in excess of the Grant Monies. Accordingly, NWS hereby agrees, covenants, and represents to the City that NWS shall be solely responsible for any Project Cost in excess of the \$3,800,000.00 Grant Monies set forth herein, as required and necessary to complete the Project.

1.5

Bonds and Insurance

- (a) **Insurance Requirement for NWS** NWS is required to maintain insurance to protect the City should the supplier default or enter bankruptcy. The City takes no responsibility and will require all funds expended in connection with the Project to be reimbursed to the City should the supplier default or enter bankruptcy. NWS shall provide, or cause to be provided, and maintain, or cause to be maintained, in force at all times during the Project, at its sole cost and expense, the following types of insurance coverage throughout the Term of the Agreement or until final acceptance of the Project, whichever is later:
- (i) Worker's Compensation Insurance as required by Florida Statute 440, with Employer's Liability Insurance, per accident for bodily injury or disease; and(ii) Commercial General Liability Insurance on an occurrence basis, contractual liability, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

Additional Insured Status

The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of NWS.

Waiver of Subrogation

NWS hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of NWS may acquire against the City of Miami Beach by virtue of the payment of any loss under such insurance. NWS agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

Verification of Coverage

NWS shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive NWS's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

The City of Miami Beach reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder

**CITY OF MIAMI BEACH
c/o RISK MANAGEMENT
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the NWS of its liability and obligation under this section or under any other section of this agreement.

- (b) The contractor for the construction of the System Room shall purchase and maintain the following insurance coverages:
 - (i) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage; and
 - (ii) Builder's Risk insurance utilizing an "All Risk" coverage form, with limits equal to the completed value of the contract for the construction of the System Room and no coinsurance penalty provision. The City may accept an Installation Floater that provides for the modification to the existing building, structure, machinery and equipment. The City of Miami Beach and NWS shall be a Loss Payee with respect to this coverage.

(iii) a payment and performance bond (the bond) of the form and containing all the provisions set forth in this Section. The bond shall be in the form of dual obligee bonds from the Contractor, naming the City and NWS as dual obliges. The bond shall be in the amount of one hundred percent (100%) of the contract amount, guaranteeing to City the completion and performance of the work under the contract and payment of all subcontractors. Such bond shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the cost of the work, or an additional bond shall be conditioned that NWS will, upon notification by City, correct any defective or faulty work or materials which appear within one year after completion of the Work. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10, 000, 000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

(c) The contractor for the installation of the System shall purchase and maintain the following insurance coverages:

(i) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage;

(ii) a payment and performance bond (the bond) of the form and containing all the provisions set forth in this Section. The bond shall be in the form of dual obligee bonds from the Contractor, naming the City and NWS as dual obliges. The bond shall be in the amount of one hundred percent (100%) of the contract amount, guaranteeing to City the completion and performance of the work under the contract and payment of all subcontractors. Such bond shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the cost of the work, or an additional bond shall be conditioned that NWS will, upon notification by City, correct any defective or faulty work or materials which appear within one year after completion of the Work. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
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500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10, 000, 000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

- (ii) a maintenance bond for a period of two (2) years from Substantial Completion (as defined in Section 1.7(d)) of the installation of the System.

(d) The contractors hired by NWS in connection with the construction of the System Room and the installation of the System may be individually referred to as a "Contractor" or collectively referred to herein as "Contractors".

(iii) Indemnification of City

- i. The contracts between NWS and its Contractors and the architect's agreement between NWS and Consultant (as defined in Section 1.5(e)(iv)) shall provide that Contractor or Consultant (as applicable) shall indemnify and save harmless the City, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by or in consequence of any negligence of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees (excluding negligence of the City), in connection with the construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by use of any improper materials or by or on account of any act, error or omission of Contractor or Consultant (as applicable) or any subcontractor, subconsultants, agents, servants or employees, except to the extent caused by City. The construction contract between NWS and Contractor and the architect's agreement between NWS and Consultant shall further provide that Contractor or Consultant (as applicable) shall indemnify and save harmless City (a) against any claims or liability arising from or based upon the violation of any federal, State, County or City laws, bylaws, ordinances or regulations

by Contractor, its subcontractors, agents, servants or employees (excluding negligence of City); and (b) from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against City on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against City for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

- ii. NWS shall indemnify, save harmless and defend City, its agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any negligent conduct or negligent misconduct of NWS and for which City, its agents, servants or employees, are alleged to be liable.
- iii. The indemnification provided above shall obligate Contractor, Consultant or NWS (as applicable) to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description that may be brought against City which may result from the operations and activities under this Agreement whether the construction operations be performed by NWS, Contractor, Consultant, its subcontractors, its subconsultants, or by anyone directly or indirectly employed by any of the above.

(e) The architect ("Consultant") shall provide, or cause to be provided, and maintain, or cause to be maintained, in force at all times during the Project the following insurance coverages:

- (i) Professional Liability Insurance with limits of liability provided by such policy not less than One Million Dollars (\$1,000,000.00) each claim to assure City the indemnification specified in subsection (d). Such policy may carry a commercially reasonable deductible, not to exceed Fifty Thousand Dollars (\$50,000.00) for each claim. The Certificate of Insurance for Professional Liability Insurance shall reference the applicable deductible and the Project.
- (ii) Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and \$2,000,000 aggregate.

1.6 **No Discrimination/No Conflict**

- (a) In connection with the Project, NWS shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.
- (b) Additionally, NWS shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.
- (c) NWS herein agrees to adhere to and be governed by all applicable laws as it relates to conflicts of interest including, without limitation, Section 2-11.1 of the Code of Miami-Dade County (the County's Conflict of Interest and Code of Ethics Ordinance), as may be amended from time to time, and by Section 2-446 of the City of Miami Beach Code, as may be amended from time to time (collectively, the "Conflict Statutes"); both of which are incorporated by reference as if fully set forth herein. NWS covenants that, in connection with its performance of this Agreement, it presently has no interest and shall not acquire any interest, directly or indirectly, which could constitute a conflict of interest, as described under the Conflict Statutes. NWS further covenants that in the performance of this Agreement, NWS shall not employ any person having any such conflict of interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

1.7 Funding Draw Requests and Payments

Subject to the terms and conditions of this Agreement, the Grant Monies shall be paid by the City to NWS as follows:

- (a) Payment of the Grant monies shall be made on a reimbursement basis ("Reimbursement"). In connection with any Reimbursement, NWS shall provide the City with a completed and signed Reimbursement request, in the form attached as Exhibit "C" hereto, including the monthly status report described in the below subsection (c), and the appropriate supporting documentation, including, without limitation, the contract, licensing information, insurance information, estimate, invoice, evidence of payment (receipts), warranty information and any other documentation with respect to the Project which may be requested by the Contract Manager (collectively, a "Reimbursement Request"). Any Reimbursement Requests for purchases of equipment, materials or personalty shall require that the equipment, materials or personalty have been delivered to NWS' possession, in Miami-Dade County, Florida, as a condition precedent to payment. Additionally, upon expenditure of the Project Costs, NWS shall submit the appropriate supporting documentation, as required in subsection (d) below.
- (b) Project Costs shall be identified, tracked, accounted for, invoiced, and paid by NWS in a manner that clearly distinguishes the Project Costs from other costs incurred by NWS. The City shall have the right to make Reimbursement payments

by check or wire transfer to the NWS. NWS shall submit to Contract Manager a Reimbursement Request on or before the 15th of each month for any sums expended in connection with the Project for the preceding month. The City will pay the Reimbursement within thirty (30) days from receipt of an acceptable and approved Reimbursement Request.

- (c) NWS shall also be responsible for reporting, on a continuous, on-going basis any contractual relationship established to perform work or services on the Project, including start date and project schedule, reflecting completion date of October 31, 2019, as required in the Monthly Status Report. Additional reports may be required at the discretion of the City Manager.

- (i) Monthly Status Report to be submitted to the City on or before the fifteenth (15th) day of each month, to detail expenditures and progress for the preceding month; and
- (ii) The City Manager shall approve all contracts for Contractors and Consultant relating to the Project, which approval shall not be unreasonably withheld or delayed.

- (d) Substantial Completion of the Project. NWS shall obtain Substantial Completion of the Project on or before October 31, 2019. Substantial Completion shall mean that the Consultant has certified that all conditions of the permits and regulatory agencies have been met for the construction of the System Room and for the System installation. On or before the Substantial Completion date of the Project, NWS shall submit to City, for City's acceptance and approval:

- (i) applicable contract documents relating to the Project; and
- (ii) copies of all agreements, permits, and licenses, and all insurance policies or certificates, if any, pertaining to the work;
- (iii) all manufacturers, suppliers' and subcontractors' warranties duly assigned to NWS (the "Warranties"), and all maintenance and operating instructions pertaining to the completed work; including the standard manufacturer's warranty for all fixtures and equipment purchased in relation to the Project and a minimum two (2) one (1) year warranty for all work contracted or associated with the Project, which warranty may be provided pursuant to a Warranty bond;
- (iv) Bill of Sale, purchase documentation, or assignment evidencing title for the Project vesting in the New World Symphony; and
- (v) Any other documents or information which the City Manager may reasonably request in connection with the Project.

- (e) Notwithstanding anything contained in this Agreement, payment of the Grant Monies shall not constitute a waiver of claims by the City for: (a.) faulty or defective product; (b) failure of the work to be in strict accordance with the

approved final plans and specifications for the Project; and (c) terms of all Warranties required by the applicable contract documents.

- (f) NWS shall use best efforts to fully cooperate with and assist the City in resolution of any issues with regard to City's claims for defects, Warranty issues, and/or other post-purchase issues contemplated in subsection (g) above, as they may arise, at no cost to the City.
- (g) All Warranties shall commence on the date of Substantial Completion of the Project, by October 31, 2019, unless otherwise provided.
- (h) Although title to the System shall vest in NWS upon Substantial Completion of the Project, NWS shall cause for the Project to be purchased and implemented on behalf of, and for the benefit of, the City of Miami Beach, Florida, and shall provide evidence thereof as part of the supporting documentation required hereunder., in the event of an early termination of the Agreement or the failure of NWS to obtain Substantial Completion of the Project, as an additional remedy, and not as a modification to any of the City's rights under Article 3, all title and interest in the personalty, including the System equipment or supplies in connection with the construction and installation of the Project, which have been purchased by Grant Monies but have not been installed in the Building as a fixture, shall be transferred to the City.
- (i) Warranty of Continuous Operation. NWS warrants and represents to maintain, repair, upgrade and replace the System, at its sole cost, for a period of ten (10) years following Substantial Completion of the Project (the "Use Warranty Period"). Any upgrades or replacements of the System shall be of comparable or greater quality than the System which is the subject of this Agreement. If NWS fails to continue to use the System, as may be upgraded or replaced, for the entire Use Warranty Period, NWS shall repay the City, as liquidated damages, an amount equal to the unamortized balance of the purchase price for the Project, consisting of \$31,666.66 for each month remaining in the Use Warranty Period.

ARTICLE 2: BOOKS AND RECORDS; INSPECTION RIGHTS

- 2.1 NWS shall maintain adequate records to justify all costs, expenses, fees and charges incurred which represent the Grant funded portion of the Project for at least three (3) years after completion of the Term of this Agreement. The City shall have access to all books, records, and documents as required in this Article for the purpose of inspection or auditing during normal business hours.
- 2.2 NWS shall maintain accounts, books and records in connection with the Grant (including, without limitation, all portions of the Grant Monies). NWS shall use reasonable commercial efforts to maintain such accounts, books and records in such a manner that it will not be unduly costly or difficult for the City to segregate, ascertain or identify the use of Grant Monies to determine NWS' compliance with the terms and conditions of the Grant during a City Inspection (as hereinafter defined).

2.3 The City shall have the right to inspect the Project, and shall further have the right to audit NWS' performance of its obligations under this Agreement (collectively, the "**City Inspection**") to determine compliance with items in Section 2.2 hereof as follows:

- a) The City or its designated agent may examine, in accordance with generally accepted accounting principles, all records directly or indirectly related to the Grant for the purpose of determining NWS compliance with the terms of this Agreement.
- b) Any City Inspection shall be (A) subject to the City providing NWS with three (3) business days prior written notice thereof; and (B) performed during the regular business hours of NWS on regular business days of NWS.

2.4 **Compliance with Florida Public Records Law**

(a) NWS shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(b) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(c) Pursuant to Section 119.0701 of the Florida Statutes, if the NWS meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the NWS shall:

- (i) Keep and maintain public records required by the City to perform the service;
- (ii) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the NWS does not transfer the records to the City;
- (iv) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the NWS or keep and maintain public records required by the City to perform the service. If the NWS transfers all public records to the City upon completion of the Agreement, the NWS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the NWS keeps and maintains public records upon completion of the Agreement, the NWS shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(d) REQUEST FOR RECORDS; NONCOMPLIANCE.

(i) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the NWS of the request, and the NWS must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

(ii) NWS's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) avail itself of the remedies set forth under the Agreement; and/or (2) avail itself of any available remedies at law or in equity.

(iii) If NWS who fails to provide the public records to the City within a reasonable time, it may be subject to penalties under s. [119.10](#).

(e) CIVIL ACTION.

(i) If a civil action is filed against NWS to compel production of public records relating to the City's contract for services, the court shall assess and award against NWS the reasonable costs of enforcement, including reasonable attorney fees, if:

a. The court determines that NWS unlawfully refused to comply with the public records request within a reasonable time; and

b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the NWS has not complied with the request, to the City and to NWS.

(ii) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to NWS at the NWS's address listed on its contract with the City or to the NWS's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(iii) If NWS complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(f) IF THE NWS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE NWS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139**

E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

ARTICLE 3 – BREACH, OPPORTUNITY TO CURE AND TERMINATION

3.1 Each of the following shall constitute a default by NWS:

- (a) If NWS uses all or any portion of the Grant Monies for costs not associated with the Project and NWS fails to refund the unauthorized disbursement of Grant Monies within thirty (30) days after written notice of the default is given to NWS by the City.
- (b) If NWS shall breach any of the other covenants or provisions in this Agreement, and NWS fails to cure its default within thirty (30) days after written notice of the default is given to NWS by the City; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to ninety (90) days following the date of the original notice, if within thirty (30) days after such written notice, NWS commences diligently and thereafter continues to cure.

3.2 **Remedies**

- (a) Upon the occurrence of a default as provided in Section 3.1, and such default is not cured within the applicable grace period, the City, in addition to all other remedies conferred by this Agreement, may require that NWS reimburse the City for all Grant Monies provided by the City hereunder. At the City's sole discretion, the City may, from amounts otherwise appropriated to NWS (or due to NWS pursuant to any other agreement), withhold, deduct or set off any amounts that the City reasonably believes are sufficient to reimburse the City for any default under this Agreement.
- (b) The City may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).
- (c) Upon the occurrence of a default by NWS which remains uncured within the time periods provided in Section 3.1, the City may terminate this Agreement, upon written notice to NWS. Upon termination of this Agreement under this section, the City shall have no further liability or obligation to NWS. NWS understands and agrees that termination of this Agreement under this section shall not release NWS from any obligation occurring prior to the effective date of termination.

- (d) Any failure of the City to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by the City of any claim for damages it may have by reason of the default.
- (e) The rights and remedies of the City are cumulative and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

3.3 Termination due to Lack of Funding The City may also, through its City Manager, terminate this Agreement due to lack of funds, should available funding from the City's capital budget be reduced during the Term of this Agreement, by giving written notice to NWS of such termination. Should such termination occur, the City of Miami Beach agrees to reimburse NWS for all approved costs up to the date of written notice. Following termination pursuant to this section 3.3, the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

ARTICLE 4 – INDEMNIFICATION

NWS agrees to indemnify and hold harmless the City, and its officers, employees contractors or agents, from and against any and all expenses, claims, liability, losses and causes of action (at law or in equity), including, but not limited to, attorney's fees and costs, that may arise or be alleged to have arisen out of the negligent acts, errors, omissions or other wrongful conduct of NWS, its officers, employees contractors, agents or other person or entity acting under NWS's control or supervision; any activity related to this Agreement; or NWS' use of the Grant funds or the Project. NWS shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals (or to provide for such defense, at City's option). NWS recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily make this covenant and expressly acknowledge the receipt of good and valuable consideration, provided by the City in support of the obligation in accordance with the laws of the State of Florida. Nothing herein shall be construed to waive any of the City's rights set forth in Section 768.28, Florida statutes. Nothing contained in this Agreement shall be deemed a waiver of sovereign immunity by the City. This paragraph shall survive the expiration or early termination of this Agreement.

ARTICLE 5 – GENERAL PROVISIONS

- 5.1 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to

provisions of this Agreement specifically referred to herein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 5.2 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent this Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 5.3 This Agreement may be amended only with the written approval of the Parties. The City Manager, on behalf of the City, shall have authority to amend or modify this Agreement, including any changes to the budget for the Project, provided that the changes do not materially change the scope of the Project and the amount of the amount of the Grant Monies are not increased.
- 5.4 This Agreement states the entire understanding and agreement between the Parties and supersedes any and all written or oral representations, statements, negotiations or agreements previously existing between the Parties with respect to the subject matter of this Agreement.
- 5.5 The Parties agree that time is of the essence in the performance of each and every obligation under this Agreement.
- 5.6 In the event a dispute arises, that the Parties cannot resolve between themselves, the Parties shall have the option, but not the obligation, to submit their dispute to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties.
- 5.7 Funding Contingency. The City's obligation to fund all or any portion of the Grant is subject to and contingent upon such funding continuing to be allowed and permissible pursuant to applicable Florida law, as same may be amended from time to time. In the event that City's performance and obligation to NWS with respect to the Grant is rendered impossible by applicability of law(s), then the Parties agree that City's obligation shall be extinguished, and that neither Party shall have any further liability to the other with respect to the Grant.
- 5.8 **Law, Jurisdiction and Venue** In the event that the City or NWS institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The City and NWS agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

- 5.9 **Notice** Any notice, consent or other communication required to be given under this Agreement shall be in writing, and delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

To City:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Jimmy Morales, City Manager

To NWS:

New World Symphony, Inc.
501 17th Street, Miami Beach
Miami Beach, FL 33139
Attention: Howard Herring,
President and Chief Executive Officer

Copy to:

Copy to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Maria Hernandez, Capital Projects, Office of City Manager
Matt Kenny, Director, Tourism and Culture Department

Notice shall be deemed given on the date of an acknowledged receipt, or, in all other cases, on the date of receipt or refusal.

- 5.10 **Force Majeure** Whenever a period of time is herein prescribed for the taking of any action by a Party hereunder, such Party shall not be liable or responsible for any delays (including, without limitation, any delay by the City in making the Reimbursement, nor shall such Party be obligated to perform hereunder, nor deemed to be in default hereunder, if the required action or performance of a Party is prevented due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such Party.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Grant Agreement on the date written below.

CITY OF MIAMI BEACH, FLORIDA, a
municipal corporation of the State of Florida

By: _____
Jimmy L. Morales, City Manager

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Date: _____

WITNESSES:

NEW WORLD SYMPHONY, INC., a
not-for-profit corporation

By: _____
Howard Herring, President
and Chief Executive Officer

Print Name: _____

Date: _____

EXHIBIT A

DRAFT

EXHIBIT B- PROJECT BUDGET AND SCOPE

**CITY OF MIAMI BEACH GO BOND
NEW WORLD SYMPHONY
4K UPGRADE - TECH CORE PHASE**

DRAFT

EXHIBIT C

REIMBURSEMENT REQUEST

Payments to New World Symphony shall be made on a reimbursable basis and must be submitted with a Reimbursement Request as follows:

PLEASE SUBMIT THIS FORM ON NWS LETTERHEAD

Reimbursement Request

Date_____

Tourism and Culture Department
Attn: Luis Wong
1755 Meridian Avenue, Suite 500
Miami Beach, FL 33139

Attached please find the required reimbursement forms requesting payment in the amount of \$_____ for the following:

Project Name and Number

Amount

I certify that all the attached documents have not been previously reimbursed or submitted for payment and that all of the expenditures comply with the terms and conditions of the Grant Agreement between the City of Miami Beach and New World Symphony, Inc., dated_____ and have attached our monthly report providing the latest project update.

Sincerely,