

AMENDMENT NO. 1
VIDEO AND AUDIO SYSTEM AGREEMENT

This Amendment No. 1 to the Video and Audio System Agreement (the "Agreement"), dated November 29, 2007, by and between the City of Miami Beach, Florida (the "City"), a municipal corporation duly organized and existing under the laws of the State of Florida, and the New World Symphony, Inc. ("NWS"), a Florida not-for-profit corporation (the City and NWS each, a "Party" and collectively, the "Parties") is entered into on this _____ day of _____, 2018.

RECITALS

WHEREAS, the City and NWS entered into an Agreement of Lease ("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 Schedule "A" hereto (the "Land"); and

WHEREAS, concurrently therewith, 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, all capitalized terms used herein but not defined specifically herein shall have the definitions ascribed to them in the Lease, unless otherwise indicated; 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 is intended to feature an external audio system (the "City Audio System"), located within SoundScape Park, capable of complementing and working in tandem with NWS Video and 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, there is a high demand for increased visual and listening areas at SoundScape Park to serve public programming offered by NWS and promote activation of the Park; and

WHEREAS, In response to this demand, the City wishes to add two additional visual and audio areas at SoundScape Park (the "Livingrooms"), each of which will contain two Audio Media Hydrants and one portable LED Video Wall, as more particularly described herein, that will allow for increased capacity and further improve the quality of public programming offerings for City of Miami Beach residents and visitors (the "Expansion Project" or "Project"); and

WHEREAS, the Parties agree to coordinate the planning, scheduling and approval of the design, purchase and installation of additional visual and audio equipment in connection with the Project, with NWS being responsible for the development of the Project and the payment of the costs associated with the purchase and installation of the LED Video Walls and related improvements (the "Expansion Project Video System"), and the City being responsible for the payment of the costs associated with the purchase and installation of the Audio Media Hydrants and related improvements (the "Expansion Project Audio System"), in an amount not to exceed \$752,000.00; and

WHEREAS, the Parties wish to amend the Agreement to delineate each Party's respective responsibilities with respect to the Expansion Project, including the Equipment, as more particularly set forth herein.

THEREFORE, in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

1. **ABOVE RECITALS.**

The Recitals are true and correct and are incorporated as part of this Amendment.

2. **MODIFICATIONS.**

The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

A. A new Section 2.3 (Expansion Project) is hereby added to the Agreement, as follows:

2.3 Expansion Project. In order to enhance the audio and visual experience at SoundScape Park, the City and NWS wish to cooperate in the development of two (2) additional viewing and listening areas ("Livingrooms"), on behalf of the City, at SoundScape Park (the "Expansion Project" or "Project"), pursuant to the Scope of Work described in Schedule B, attached hereto. The Livingrooms, identified in Exhibit 1 to Schedule B, hereto, as "Center", having an approximate capacity of 660 people, and "Picnic", having a capacity of approximately 480 people, shall each contain two (2) Audio Media Hydrants (as defined below), and one (1) LED Video Wall (ad defined below).

2.3.1 Installation of Expansion Project Audio System. Audio Media Hydrants shall refer to the two (2) permanent Audio Media Hydrants, which will be installed in each Livingroom pursuant to the Expansion Project, as more particularly described in Exhibit 2 to Schedule B, hereto. NWS shall be responsible for the purchase and installation of the Audio Media Hydrants and related improvements (the "Expansion Project Audio System"), and the City shall be responsible for the payment of the cost associated with the purchase and installation of the Expansion Project Audio System, in an amount not to exceed \$752,000.00. Upon installation, the Expansion Project Audio System shall become an extension of, and part of, the City Audio System.

2.3.2 Installation of Expansion Project Visual System. LED Video Walls shall refer to a portable LED modular screen, IP54 water rated, UL listed and portable with a tight pixel pitch, viewable within nine feet of the front of wall. The LED Video Walls will be mounted to a portable device, with easy set up and removal. Each Livingroom will contain one (1) LED Video Wall. NWS, at its sole cost and expense, will be responsible for the purchase and installation of each LED Video Wall and related improvements (the "Expansion Project Visual System") for each Livingroom. The design, size and location of the LED Video Wall shall be subject to the prior written approval of the City Manager. Upon installation, the LED Video Wall shall become an extension of, and part of, the NWS Video System, which will be located in the Park Project Zone.

2.3.3 Construction Insurance.

2.3.3.1 The City shall not be liable for any claims, losses or damages suffered by third parties arising from NWS', or its officers', agents', employees' or contractors' fabrication, construction, and installation of the Expansion Project Audio System or Expansion Project Visual System.

2.3.3.2 NWS shall maintain, or require that its contractor(s) maintain, the following insurance coverages in connection with the installation of the Expansion Project Audio System or Expansion Project Visual System.

- A. Worker's Compensation insurance in at least the minimum amounts required by Florida law; and
- B. Commercial General Liability on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The City of Miami Beach, Florida shall be included as an additional insured with respect to this coverage.

2.3.3.3 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or Contract Manager. Within ten (10) days from the Effective Date, Concessionaire shall provide the City with Contractor's Certificate of Insurance for the

insurance requirements contained in Subsection 3.6.2. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

2.3.4 Operation of LED Video Walls by NWS at SoundScape Park.

NWS shall be responsible for the set-up of the LED Video Walls prior to commencement of any presentation of Cultural Programming, as well as the prompt removal of the LED Video Walls upon conclusion of the presentation.

2.3.5 Release. Under no circumstances shall the City be responsible for any stolen or damaged LED Video Wall or related improvement.

2.3.6 Removal or Relocation of Audio Media Hydrants or LED Video Walls. Notwithstanding the City's approval of the installation of the Livingrooms by NWS at SoundScape Park, the City, in its sole discretion and at its sole expense, may request that NWS remove or relocate the Expansion Project Audio System or the Expansion Project Visual System, or, in the alternative, the City, on its own, may remove or relocate the Expansion Project Audio System or the Expansion Project Visual System.

B. A new Section 19.7 (No Discrimination) is hereby added to the Agreement, as follows:

19.7 No Discrimination. In connection with the performance of the Services, the 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.

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. A new Section 19.8 (NWS' Compliance with Florida Public Records Law) is hereby added to the Agreement, as follows:

19.8 NWS' 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:

(1) Keep and maintain public records required by the City to perform the service;

(2) 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;

(3) 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;

(4) 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.

(1) 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.

(2) 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) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

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

(E) CIVIL ACTION.

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

a. The court determines that the 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 the NWS.

(2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the 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.

(3) A NWS who 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**

D. A new Section 20 (Indemnification and Insurance) is hereby added to the Agreement, as follows:

20. Indemnification and Insurance.

20.1 Indemnification. NWS agrees to indemnify and hold harmless the CITY, and its officers, employees contractors and 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 conduct of NWS, their officers, employees contractors and/or agents; or out of any activity related to this Agreement. 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 termination of this Agreement.

20.2 Insurance.

20.2.1 During the Term of this Agreement, NWS shall maintain, and require that its contractor(s) maintain, the following insurance coverages:

A. Worker's Compensation insurance in at least the minimum amounts required by

Florida law; and

- B. Commercial General Liability on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The City of Miami Beach, Florida shall be included as an additional insured with respect to this coverage.

20.2.2 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or Contract Manager. Within ten (10) days from the Effective Date, NWS shall provide the City with NWS' Certificate of Insurance for the insurance requirements contained in Subsection 20.2.1(A). All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

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IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Amendment 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: _____

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

WITNESSES:

NEW WORLD SYMPHONY, a not-for-profit corporation

Print Name: _____

By: _____
Howard Herring
President and CEO

Print Name: _____

By: _____

Date: _____

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SCHEDULE B
SCOPE OF WORK
(EXPANSION PROJECT)

ARTICLE I: SERVICES

- 1.1 Expansion Project Services. NWS agrees to purchase and install all equipment including, without limitation, the Audio Media Hydrants (“Expansion Project Audio Equipment”) and improvements related thereto (“Expansion Project Audio System”), and LED Video Walls (“Expansion Project Video Equipment”) and improvements related thereto (collectively, “Expansion Project Video System”) in connection with the development of two (2) additional viewing and listening areas (“Livingrooms”), on behalf of the City, at SoundScape Park (the “Expansion Project” or “Project”), as more particularly identified in Exhibit 1 hereto.
- 1.2 Center Livingroom. NWS shall purchase and install two (2) Audio Media Hydrants and one (1) 12’ high by 21’7” wide LED Video Wall and all necessary Project improvements to complete the installation of the Expansion Project Audio Equipment and Expansion Project Video Equipment for the Center Livingroom.
- 1.3 Picnic Livingroom. NWS shall purchase and install two (2) Audio Media Hydrants and one (1) 7’ high by 12’5” wide LED Video Wall and all necessary Improvements to complete the installation of the Expansion Project Audio Equipment and Expansion Project Video Equipment for the Picnic Livingroom.
- 1.4 Project Audio Equipment. Type of Audio Media Hydrants identified in Exhibit 2 attached hereto is hereby approved. The location of the Audio Media Hydrants shall be subject to the prior written approval of the City Manager.
- 1.5 LED Video Walls. The type, size and location of the LED Video Wall shall be subject to the prior written approval of the City Manager. LED Video Walls shall refer to a portable LED modular screen, IP54 water rated, UL listed and portable with a tight pixel pitch, viewable within nine feet of the front of wall. The LED Video Walls will be mounted to a portable device, with easy set up and removal. Upon approval, Exhibit 3 shall be updated to reflect the description of the approved LED Video Wall.

ARTICLE 2: FEE

- 2.1 Fee. NWS shall be paid an aggregate sum, not to exceed \$751,410.00 (the “Fee”), in connection with the purchase and installation of the Expansion Project Audio System, inclusive of hard and soft costs. NWS shall be solely responsible for the payment of any costs associated with the purchase and installation of the Expansion Project Visual System. Any Project costs exceeding the Fee shall be the responsibility of NWS.

- 2.2 NWS hereby agrees and covenants to use the Fee, and all Fee payments disbursed to NWS by the City in connection with these services, solely for the purpose of funding the hard and soft costs incurred by NWS to purchase and install the Expansion Project Audio System.
- 2.3 As referenced herein, the "Project Cost" shall mean the hard costs and soft costs necessary to purchase and install the Expansion Project Audio System. The Project Cost shall not exceed \$751,410.00. In the event the Project Cost exceeds \$751,410.00, 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 \$751,410.00 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 Fee. Accordingly, NWS hereby agrees, covenants, and represents to the City that NWS shall be solely responsible for any Project Cost in excess of the \$ 751,410.00 Fee, as required and necessary to complete the Project.

2.4 **Funding Draw Requests and Payments**

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

- (a) Payments to NWS shall be made on a reimbursement basis ("Reimbursement"). In connection with any Reimbursement, NWS shall provide the City with the appropriate supporting documentation, including, without limitation, the contract, licensing information, insurance information, estimate, invoice, warranty information and any other documentation with respect to the Project which may be requested by the City. Additionally, upon expenditure of the Reimbursement, NWS shall submit the appropriate supporting documentation, as required herein in subsection 2.4(g) and including, without limitation, any other proof which may be reasonably requested by the City.
- (b) All costs, fees and expenses attributable to work and/or services performed, or caused to be performed, by NWS for the purchase and installation of the Project Audio System shall be identified, tracked, accounted for, invoiced, and paid by NWS in a manner that clearly distinguishes the Project and the Expansion Project Audio System costs from other costs incurred by NWS including, without limitation, costs, fees, and expenses incurred in connection with the Project Visual System.
- (c) The City shall have the right to make Fee payments by check or wire transfer to NWS.
- (d) NWS shall substantiate the cost of the Expansion Project Audio System with the appropriate supporting documentation, as required herein in subsection 2.4(g), and including, without limitation, any other documentation with respect to the Project which may be requested by the City. In lieu of Reimbursement, the City may elect, at its sole discretion, to directly procure and purchase the Expansion Project Audio System.

- (e) Except for those costs provided in subsection 2.4(d) above, as to any Reimbursement for the remainder of the Fee, NWS shall complete, sign and submit to the City the appropriate disbursement request forms (Exhibits 3 attached hereto) accompanied by supporting documentation, as necessary and as may be required under this Agreement.
- (f) 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; start date; project schedule to reflect completion date of November 15, 2018, 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 the thirtieth (30th) day of each month, to detail expenditures and progress for the preceding month.
 - (ii) The City Manager shall approve any contracts relating to the Project. The City shall be a third party beneficiary under any contract relating to the Project.
- (g) Completion of the Project. NWS shall complete the Project on or before November 15, 2018. Upon completion 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 the City (the "Warranties), and all maintenance and operating instructions pertaining to the completed work; including the standard manufacturer's warranty for the Expansion Project Audio System and components purchased in relation to the Expansion Project Audio System and a minimum one (1) year warranty for all completed work.
 - (iv) Bill of Sale, purchase documentation, or assignment evidencing title for the Expansion Project Audio System vesting in the City of Miami Beach.
- (h) Notwithstanding anything contained herein, payment of the Fee shall not constitute a waiver of claims by the City for: (i) faulty or defective Expansion Project Audio System; (ii) failure of the work to be in strict accordance with the approved final plans and specifications for the Expansion Project Audio System; and (iii) terms of all Warranties required by the applicable contract documents.
- (i) 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 (h) above, as they may arise, at no cost to the City.

- (j) All Warranties shall commence on the date of delivery of the Expansion Project Audio System, unless otherwise provided.
- (k) Title to the Expansion Project Audio System shall vest with the City. NWS shall cause for the Expansion Project Audio System to be purchased 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.

ARTICLE 3: BOOKS AND RECORDS; INSPECTION RIGHTS

- 3.1 NWS shall maintain adequate records to justify all costs, expenses, fees and charges incurred which represent the portion of the Project funded by the Fee for at least three (3) years after completion of the work. 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.
- 3.2 NWS shall maintain accounts, books and records in connection with the Project (including, without limitation, all portions of the Fee). 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 the Fee to determine NWS compliance with the terms and conditions of the Agreement during a City Inspection (as hereinafter defined).
- 3.3 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 the Agreement, 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 Agreement 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.

ARTICLE 4 – BREACH, OPPORTUNITY TO CURE AND TERMINATION

- 4.1 Each of the following shall constitute a default by NWS:
 - (a) If NWS uses all or any portion of the Fee for costs not associated with the Project 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.
 - (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.

- (c) If the Expansion Project Audio System is not used as part of SoundScape Park for a period of five years following the completion of the Project, NWS shall repay the City, as liquidated damages, an amount equal to the unamortized balance of the purchase price for the Expansion Project Audio System, consisting of \$12,523 for each month remaining in the five year period following completion of the Project (except as such term may be extended for Force Majeure pursuant to Section 4.3 hereof).

4.2 Remedies:

- (1) Upon the occurrence of a default as provided in Section 4.1, 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 the Fee 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.
- (2) 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).
- (3) 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.
- (4) 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.
- (5) Upon the occurrence of a default by NWS which remains uncured within the time periods provided in Section 4.1, the City may terminate this Agreement, upon written notice to NWS. Upon termination of this Agreement, the City shall have no further liability or obligation to NWS.

- 4.3 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.

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Exhibit 3
Schedule B

PLEASE SUBMIT THIS FORM ON NWS LETTERHEAD

Reimbursement Request

Date _____

Tourism, Culture and Economic Development 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

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 Video and Audio System Agreement between the City of Miami Beach, Florida and New World Symphony, Inc., dated November 29, 2007 and have attached our monthly report providing the latest project update.

Sincerely,