

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY AND THE RHYTHM FOUNDATION INC., FOR THE STAGE RESTORATION AND SUBWOOFER CONCEALMENT PROJECT AT THE NORTH SHORE BANDSHELL, IN THE TOTAL AMOUNT NOT TO EXCEED \$102,600.00.

WHEREAS, on February 19, 2015, The Rhythm Foundation, Inc. ("The Rhythm Foundation"), a not-for-profit Florida corporation, and the City executed a Management Agreement for the property located at 7275 Collins Avenue (the North Shore Bandshell, "the Bandshell"); and

WHEREAS, The Rhythm Foundation, presents concerts, events and festivals by established and innovative artists from around the world and South Florida; and

WHEREAS, the Bandshell is in need of a new stage and sound renovations, including concealing a new subwoofer system underneath the stage (the "Project"), in order to further enhance programming efforts, as well as to mitigate sound concerns for nearby residents; and

WHEREAS, as part of the Parks and Recreation Department's FY 16/17 Current Service Level Budget, \$102,600.00 has been earmarked to fund the Project at the Bandshell; and

WHEREAS, the Administration recommends executing a Grant Agreement with The Rhythm Foundation, providing that the City will reimburse The Rhythm Foundation for the purchase and installation of specialized staging and subwoofer equipment necessary to support the Project; and

WHEREAS, the Grant Agreement will require, in material part, that prior to the City reimbursing The Rhythm Foundation for the expenses relating to the Project, that The Rhythm Foundation provide a report evidencing how the grant funds were spent and proof that the Project was completed; and that six (6) months from the Project completion date, but within a year from the Project completion date, The Rhythm Foundation shall make a presentation to the City Commission describing the impact of the Project upon the programming for the Bandshell and the noise remediation efforts; and

WHEREAS, the Administration recommends that the Mayor and City Commission approve and authorize the City Manager to execute a Grant Agreement, substantially in the form attached as Exhibit "1" hereto.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the City Manager to execute a Grant Agreement, substantially in the form attached to this Resolution, between the City and The Rhythm Foundation, Inc., in the total amount not to exceed \$102,600.000, for the stage restoration and subwoofer concealment project at the North Shore Bandshell.

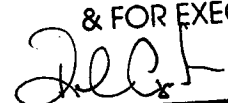
PASSED and ADOPTED this 8th day of February, 2017.


ATTEST:

PHILIP LEVINE, MAYOR

RAFAEL E. GRANADO, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney  Date 1-27-17



MIAMI BEACH

GRANT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH FLORIDA AND THE RHYTHM FOUNDATION, INC. TO COMPLETE THE STAGE AND SUBWOOFER CONCEALMENT PROJECT AT THE NORTH SHORE BANDSHELL LOCATED AT 7275 COLLINS AVENUE, MIAMI BEACH, FL 33141

This Grant Agreement (Agreement) is entered into effective as of this ____ day of _____, _____, between the City and Grantee.

Article I / Grant Description

1. Grantee: The Rhythm Foundation, Inc.
Grant Contact: Laura Quinlan, Director
Address: 7275 Collins Avenue
City, State, Zip: Miami Beach, Florida 33141
Phone, fax, e-mail : 786.453.2897 lq@rhythmfoundation.com
2. Grant amount: **\$102,600.00**
3. Project Description: See Exhibit 1 hereto
4. Grant Project Budget: See Exhibit 2 hereto
5. Expenditure deadline: September 30, 2017
6. Project completion date: September 30, 2017
7. Final Report deadline: Must be postmarked or delivered no later than **15** days after Project completion date.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 2017.

Jimmy L. Morales, City Manager

Attest:

Rafael E. Granado, City Clerk

GRANTEE:

The Rhythm Foundation
Federal ID #: 65-0102768

BY: _____
Laura Quinlan, Director

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by Laura Quinlan, as Director of The Rhythm Foundation, Inc., a not-for-profit Florida corporation. He/She is personally known to me or has produced _____ as identification.

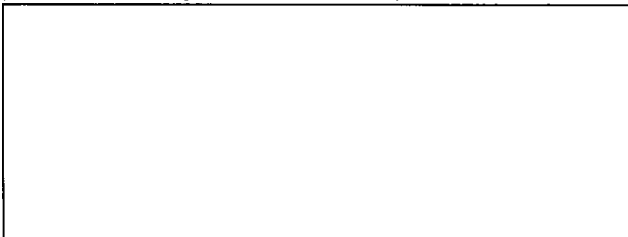
Signature of Notary Public

Notary Name: _____

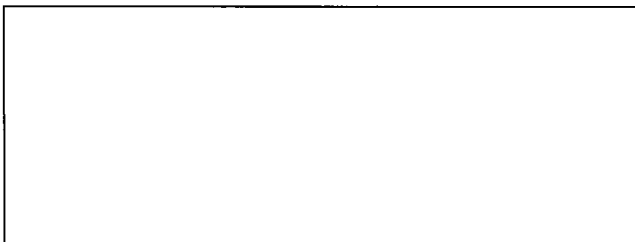
Notary Public, State of Florida

My Commission Expires: _____

(Grantee's Corporate Seal Here)



(City Attorney Approval Here)



Article II / General Conditions

1. Parties: The parties to this Agreement are the Grantee listed in Article I, and the City of Miami Beach, a municipal corporation organized under the laws of the State of Florida (City). The City has delegated the responsibility of administering this Grant to the City Manager or his authorized designee, who will be the Director of the Parks and Recreation Department.

2. Project Description: The Grantee may only use the Grant for the purposes that are specifically described in the Project Description, attached hereto as Exhibit 1. All expenditures will be subject to the terms of this Agreement, and as specified in the Grant Project Budget, attached hereto as Exhibit 2. Notwithstanding the preceding sentence, amendments to the Grant Project Budget in Exhibit 2 shall not be permitted without the prior written consent of the City Manager or his designee. Said requests shall be made in, in writing, detailing and justifying the need for such changes.

3. Reports: This Grant has been awarded with the understanding that the activities and services contemplated under the described Project will mutually contribute to the enhancement of services available to City residents, businesses, and visitors. To demonstrate that the Grant is fulfilling, or has fulfilled, its purpose, the Grantee must supply the City Manager with a written Final Report documenting that the Grantee has fulfilled all requirements. This report must be received by the City within 15 days of the Project's completion date (i.e. For example, Grantees completing their Project by September 30, 2017 must submit their final reports no later than October 15th of that year). Notwithstanding the preceding, and as a condition of disbursement of the Grant funds, the City Manager or his designee may require Grantee to submit an interim written report, detailing Grantee's compliance at the time of a partial reimbursement request.

4. Amount of Grant and Payment Schedule: The total amount of the Grant is specified in Article I-2 (subject to the restrictions therein). In awarding this Grant, the City assumes no obligation to provide financial support of any type whatsoever in excess of the total Grant amount. Cost overruns are the sole principal responsibility of the Grantee. The Grant funds will only be supplied subject to the Parties' execution of this Agreement. At the time of a request for reimbursement, in addition to submitting a report, as described in the preceding paragraph 3, Grantee shall submit a bill for the Grant sums being requested, along with corresponding evidence of expenses and payments incurred in connection with the Project, such as payroll records, invoices, credit card receipts, canceled checks etc. Invoices incurred prior to the fiscal year are not reimbursable and invoices incurred after the end of the fiscal year are not reimbursable, unless previously approved by the City. Any request for reimbursement of Grant funds (including the bill, requisite report and corresponding evidence of expenses and payments), which is not received before October 15, 2017, shall be forfeited.

5. Program Monitoring and Evaluation: The City Manager or his designee may monitor and conduct an evaluation of the Project under this Grant, which may include, with or without limitation, visits by City representatives to the Project site to observe Grantee's programs, procedures, and operations, or to discuss the Grantee's programs with Grantee's personnel; and/or requests for submittal of additional documentations or written reports, prior to the Project completion date, evidencing Grantee's progress on the Project.

6. Bank Accounts and Bonding: Monies received pursuant to this Agreement shall be kept in accounts in established Miami-Dade County banks or savings and loan associations whose identities shall be disclosed in writing to the City Manager or his designee with the identity and title of individuals authorized to withdraw or write checks on Grant funds.

7. Accounting and Financial Review: Funded activities must take place before the Expenditure Deadline in Article I-5. The Grantee shall keep accurate and complete books and records of all receipts and expenditures of Grant funds, in conformance with reasonable accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with this Grant, including, without limitation, vouchers, bills, invoices, receipts and canceled checks, shall be dated within the fiscal year for which they are approved and retained in Miami-Dade County in a secure place and in an orderly fashion by the Grantee for at least two (2) years after the Expenditure Deadline specified in Article I-5. These books, records, and documents may be examined by the City, and/or its authorized representatives, at the Grantee's offices during regular business hours and upon reasonable notice. Furthermore, the City may, at its expense, audit or have audited, all the financial records of the Grantee, whether or not purported to be related to this Grant.

8. Publicity and Credits: The Grantee must include the City of Miami Beach logo and the following credit line in all publications related to this Grant: **"This Program is financially assisted by a grant from the City of Miami Beach"**. Failure to do so may preclude future grant funding from the City in the same manner as if Grantee defaulted under this Agreement, pursuant to Article II-12.

9. Liability and Indemnification: The Grantee shall indemnify and hold harmless the City and its officers, employees, agents and contractors, from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents and contractors may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Grantee or its officers, employees, agents, servants, partners, principals or contractors. Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided, shall in no way limit its obligation, as set forth herein, to indemnify, hold harmless and defend the City or its officers, employees, agents and contractors as herein provided.

10. Assignment: The Grantee shall not be permitted to assign this Grant, and any purported assignment will be void, and shall be treated as an event of default pursuant to Article II-12.

11. Compliance with Laws: The Grantee agrees to abide by and be governed by all applicable Federal, State, County and City laws, including but not limited to Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance, as amended, which is incorporated herein by reference as if fully set forth herein, and Chapter 2, Article VII of the Miami Beach City Code, as amended, which is incorporated herein by reference as if fully set forth herein.

12. Default/Termination Provisions: In the event the Grantee shall fail to comply with any of the provisions of this Agreement, the City Manager or his designee may terminate this Agreement and withhold or cancel all or any unpaid installments of the Grant upon giving five (5) calendar days written notice to the Grantee, and the City shall have no further obligation to the Grantee under this Agreement. Further, in the event of termination, the Grantee shall be required to immediately repay to the City all portions of the Grant which have been received by the Grantee, as of the date that the written demand is received.

Any uncommitted Grant funds which remain in the possession or under the control of the Grantee as of the date of the Expenditure Deadline specified in Article I-5 must be returned to the City within fifteen (15) days after the Expenditure Deadline. If such funds have been committed but not expended, the Grantee must request in writing from the City Manager an extension of the Expenditure Deadline which, if approved, shall be for a period not to exceed one (1) year.

Grant funds which are to be repaid to the City pursuant to this Section are to be repaid upon demand by delivering to the City Manager a certified check for the total amount due, payable to the City of Miami Beach, Florida.

These provisions shall not waive or preclude the City from pursuing any other remedies that may be available to it under the law.

13. Indulgence Will Not be Waiver of Breach: The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement either at the time the breach or failure occurs, or at any time throughout the term of this Agreement.

14. Written Notices: Any written notices required under this Agreement will be effective when delivered in person or upon the receipt of a certified letter addressed to the Grantee at the address specified in Article I-1 of this Agreement, and to the City when addressed as follows: City Manager, City of Miami Beach, 1700 Convention Center Drive, 4th Floor, Miami Beach, Florida 33139.

15. Captions Used in this Agreement: Captions, as used in this Agreement, are for convenience of reference only and should not be deemed or construed as in any way limiting or extending the language or provisions to which such captions may refer.

16. Contract Represents Total Agreement: This contract, including its special conditions and exhibits, represents the whole and total agreement of the parties. No representations, except those contained within this agreement and its attachments, are to be considered in construing its terms. No modifications or amendments may be made to this Agreement unless made in writing signed by both parties, and approved by appropriate action by the Mayor and City Commission.

Article III / Miscellaneous Provisions

17. The Grant awarded herein is the result of a finding by the City, based on representatives, documents, materials and other information supplied by Grantee, that the Grantee is performing a public purpose through the programs, projects, and/or services recommended for support. As such, use of Grant funds for any program component not meeting this condition will be considered a breach of the terms of this Agreement and will allow the City to seek remedies including, but not limited to, those outlined in this Grant Agreement.

18. The Grantee also accepts and agrees to comply with the following Special Conditions:

The Grantee agrees to comply with the City of Miami Beach Title VI / Nondiscrimination Policy and Plan, pursuant to Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), as well as other related federal and state laws and regulations, including Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regulations, and the Florida Department of Transportation (FDOT) guidelines. As such, Grantee 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 familial status.

The City endorses the clear mandate of the Americans with Disabilities Act of 1990 (ADA) to remove barriers, which prevents qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

The City also endorses the mandate of the Rehabilitation Act of 1973 and Section 504 and prohibits discrimination on the basis of disability and requires that Grant recipients provide equal access and equal opportunity and services without discrimination on the basis of any disability.

Grantee hereby agrees to comply with City of Miami Beach Human Rights Ordinance, as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

19. GOVERNING LAW AND EXCLUSIVE VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, GRANTOR AND GRANTEE EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

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Exhibit 1 / Project Description

Project Description – North Beach Bandshell Stage Renovation and Subwoofer Project **Key Intended Outcome – Enhance Cultural and Recreational Activities**

The Rhythm Foundation Inc. is a Florida not-for-profit organization that presents concerts, events and festivals by established and innovative artists from around the world and South Florida. They are a cultural anchor in South Florida, presenting outstanding international music artists and quality community-based programs. Since 2015, the Rhythm Foundation Inc. has been the management company operating the North Shore Bandshell for the City of Miami Beach.

Programming by the Rhythm Foundation Inc. has grown in popularity and the venue is in the need of stage and sound renovations to further enhancing programming efforts to engage more nationally recognized acts, as well as to mitigate sound concerns for nearby residences.

The Grant monies will be used to support the Project. The following expenses will be incurred in the delivery of these services:

- The purchase and installation of specialized staging and subwoofer equipment which will be used to support and enhance the Project to include:
 - remove all multiple layers of existing plywood stage decking and discard -- existing wood joists to remain.
 - remove a portion of the front CMU stage wall as required for creation of new under-stage subwoofer cavity.
 - replace stage decking with 2 layers of 3/4" Grade 1 marine plywood glued and screwed to existing wood joists with counter sunk #10 stainless steel wood screws. The plywood joints could be mitered and filled with flexible urethane type caulking providing a smooth stage deck suitable as a performance surface.
 - Seal the marine plywood decking with a waterproof coating such as Super Deck Exterior Deck & Dock Coating by Sherwin Williams.
 - build two (2) new under-stage walls creating a funneled subwoofer cavity as indicated on drawings.
 - build three (3) under stage subwoofer isolation platforms as detailed in drawings.
 - provide circuits from existing electric panel for under stage subwoofers.
 - at the front of stage, where a portion of wall is to be removed, fabricate an aluminum acoustically transparent grill face utilizing vertical 2x1 aluminum tubes and structural aluminum posts in front of a 50% open perforated metal screen.
 - provide a keyed locking metal door incorporated into the front grill wall for access to subwoofer cavity.
 - Install a wireless sound level meter system.
 - replace the existing speaker support tower manual winches (x2) with electrically powered versions.
 - drawings and permits to be supplied and paid for by the contractor hired by The Rhythm Foundation, Inc. as part of the total cost of the work
 - provide dumpsters for debris associated with above scope of work.

None of the Grant funds may be used toward administrative and overhead costs.

See Exhibit 2 for a complete budget break-down.

The Grantee will support the following Citywide Key Intended Outcome and provide documentation of such:

- Enhance Cultural and Recreational Activities

Grantee Responsibilities

1. The Grantee's funded services will support the Citywide Key Intended Outcome, as follows:
 - **With Respect to Project Work:**
 - The Rhythm Foundation, Inc. shall purchase and install staging and subwoofer equipment, and pay for any installation costs related thereto, in an amount not to exceed \$102,600.00. The City shall reimburse The Rhythm Foundation for the work related to the Project as set forth herein.
 - **With Respect to the Purchased Equipment:**
 - The contractor and the contract for the work related to the Project shall be subject to the written approval of the City Manager or his designee prior to Grantee executing the contract. At minimum, the contractor must be licensed and insured.
 - All equipment purchased and reimbursed by the City pursuant to this Agreement shall remain at all times the property of the City. The equipment shall be inventoried, used by the Grantee, and stored at the North Shore Band Shell.
2. The Grantee will document progress and support of the Citywide Key Intended Outcome above by providing the following:
 - a. **The Rhythm Foundation will track the grant funds spent.**
 - b. **The Rhythm Foundation will track programing gains and noise complaint reductions as a result of the work completed for six months after the Project completion date.**
3. The Grantee will submit a final report no later than October 15, 2017 which documents the efforts undertaken to support the Key Intended Outcome and including:
 - a. **A Summary of overall Project and its impact on the identified key intended outcomes, including the following:**
 - i. **a detailed report on how the funds were spent, including, without limitation, Order forms for the purchase of the approved equipment and labor; cancelled checks, receipts or other evidence of payment for the approved equipment; copies of the warranty for the approved equipment and work within the scope of the Project; evidence that any permits which were opened in connection with the work were closed; and contractor's affidavit verifying that the contractor and all lienholders/subcontractors have been paid.**
 - ii. **any additional information/documentation which the City Manager or his designee may reasonably request to verify completion of Project and impact of the Project; and**
 - b. **A Final Project budget.**
4. Within fifteen (15) days from receipt of the final report and final Project budget, the City Manager's designee shall reimburse the Grantee for the purchase of any equipment and supplies, and for any labor or services performed in connection with the Project.
5. Grantee shall be required to present the impact of the Project upon programing for the Bandshell and the noise remediation efforts to the City of Miami Beach Mayor and City Commission, during an agreed upon City Commission meeting six (6) months after the Project completion date but within a year from the project completion date.

Exhibit 2 / Project Budget

| | |
|---|---------------|
| The purchase of approved staging and subwoofer equipment and related installation costs for the Project | \$ 102,600.00 |
| Total Grant Funds | \$102,600.00 |