



# MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 073-2011

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LETTER TO COMMISSION  
CITY CLERK'S OFFICE

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: March 31, 2011

SUBJECT: New World Symphony (NWS) – Grant-In-Aid Correspondence

The purpose of this Letter to Commission is to share with you recent correspondence transmitted to the New World Symphony (NWS) regarding the close out review and audit pursuant to the Grant-in-Aid agreement executed on July 23, 2008 between the City of Miami Beach and NWS. Attached are two recent letters sent to the NWS.

In my letter dated March 11, 2011, the NWS was informed of the status of the City's financial audit of the expenses submitted pursuant to the terms of the agreement and the due diligence review of the entire set of documents that I was conducting to ensure full compliance with all terms and conditions.

My subsequent letter dated March 25, 2011, informed the NWS of the outcome of the above mentioned review. In addition to advising them of the various items that were still pending completion by the NWS, as noted, NWS was informed that the \$15 million funds for the Grant-in-Aid had been authorized for disbursement.

While the funds have been disbursed and there are still a variety of pending matters to close out, the matter of the final schedule of "public benefits" remains outstanding. The NWS has been asked to provide us with the schedule of public benefits they believe they agreed to last Fall. When that is received, we will follow our standard process accordingly.

I hope this provides more clarity as to the facts regarding this matter. Should you require additional information, please feel free to contact me directly.

JMG/DM

Attachments

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

Jorge M. Gonzalez, City Manager  
Tel: 305-673-7010, Fax: 305-673-7782

March 11, 2011

Mr. Howard Herring  
President and CEO  
New World Symphony  
500 17th Street  
Miami Beach, FL 33139

Dear Mr. Herring:

This letter is to acknowledge and memorialize our meeting of March 8, 2011. You will recall that this meeting was hastily arranged at your request and held on the eve of our regularly scheduled March 9<sup>th</sup> City Commission meeting, which I surmise was as a result of the several emails that I have sent to you over the past few weeks urging a resolution to the pending matters between the New World Symphony (NWS) and the City of Miami Beach (the City).


During our meeting you inquired as to when the \$15 million Grant in Aid to the NWS would be funded. I advised you that the City's approved budget has the \$15 million funded in the 2010/2011 Fiscal Year, and that disbursement of said funds was subject to completion of the City's due diligence reviews pursuant to all of the agreements with the NWS. I advised you that I had only recently received the results of the financial audit component within the last several days. I also further explained that I was personally conducting a due diligence review of all of the documents setting forth the City's and the NWS's obligations, to ensure full compliance on both our parts and I had not yet completed that review. A review of the documents, however, indicates that we remain well within the timelines established in the agreement.

As has been consistently included in various correspondence between members of the NWS staff and City staff, at various levels and on various occasions, the matter of mutually agreeing to additional public benefits pursuant to the agreements was also a pending matter. You indicated to me that the NWS and the City had reached agreement in October, 2010 on this matter. I was surprised by that assertion, as we were advised by the City Attorney's office last year, information which was relayed to both David Phillips and Victoria Rogers last summer, that this would require an amendment to our existing agreement, requiring Finance Committee review and City Commission approval. That said, I requested that you provide to me the specific schedule of public benefits you feel the NWS has agreed to and any documentation of agreement by the City for my review. I await that information.

Under separate cover, the City Attorney's Office has replied to the letter from your attorneys dated March 3, 2011. Please review as appropriate.

Again, the grant is fully funded and the funds will be disbursed in accordance with the negotiated and executed agreements. Should you have any further questions, please contact my office.

Sincerely,

  
Jorge M. Gonzalez  
City Manager



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Jorge M. Gonzalez, City Manager  
Tel: 305-673-7010, Fax: 305-673-7782

March 25, 2011

Mr. Howard Herring  
President and CEO  
New World Symphony  
500 17th Street  
Miami Beach, FL 33139

Dear Howard:

This letter is a follow up to my correspondence to you dated March 11, 2011 relating to the Grant-in-Aid Agreement between the City and the New World Symphony (NWS). Notwithstanding that I have not received any response or confirmation from you (either via email or through regular mail) regarding my letter, this letter should serve as formal notice that I have concluded my due diligence review of all of the documents setting forth the City's and the NWS's obligations.

My review has identified the following significant items as still outstanding. Again, the following is based on my review of the documents, and is not intended to be a final, comprehensive list of all pending items for the complete NWS Project:

1. DEVELOPMENT AGREEMENT AND ADDENDUMS

Section 2.8 (b)( i. - v) of the Development Agreement requires the submission by NWS of various project close-out documents, such as final as-builts, AIA certification form, general affidavit, etc. These deliverables remain outstanding.

Exhibit G of the First Addendum to the Development Agreement ("General Terms and Conditions for Grant-in-Aid") calls for additional public benefits "to be provided by the Developer as further consideration for the Grant." You have indicated that there was mutual agreement on this matter, but as yet I have not received any information from you (as I requested in my March 11, 2011 letter). As such, the "additional" public benefits referenced in Exhibit G remain outstanding.

2. GROUND LEASE

Exhibit C, "Public Benefits," needs to be finalized and a revised exhibit to the Ground Lease brought before the City Commission for its review and approval (as a formal amendment to the Ground Lease). As you are aware, several deliverables required pursuant to Exhibit C have not been provided by NWS. Your staff had indicated that NWS was interested in amending the Public Benefits document, and had provided language which was being negotiated with City Staff. Additionally, last August your staff was advised that these amendments would require City Commission approval. This issue remains outstanding.

Pursuant to Section 6.3(b), NWS has the ongoing obligation throughout the Term of the Ground Lease to provide the City with its proposed annual operating budget for Tenant's Improvements, and a rolling five (5) year projection. This remains outstanding.

3. VIDEO AND AUDIO SYSTEM AGREEMENT

Section 6.1 and Section 11 refers to the establishment of specific criteria, business terms and charges for third-party users, as well as procedures for the selection of artists to develop video art (as well as to address any appeals to NWS decisions in this regard); we would request copies of NWS's criteria, business terms, proposed charges and above-noted procedures relating to calls for artists.

The City and NWS also committed to developing procedures for coordinating scheduling of Screen programming and use of the Systems, as required pursuant to Section 9. We have not received any proposed procedures.

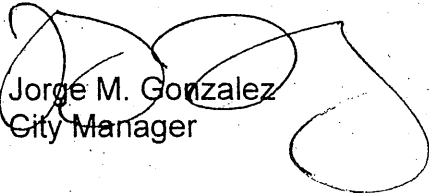
Again, the above list is not intended to be a comprehensive, final list of pending items; there may, of course, be ongoing construction punch list items, as well as day-to-day operational issues regarding coordination of the Project components (i.e. the NWS facility, the Park, the Garage, and the other ancillary Improvements), that I have not specifically referenced above.

In the event that any of the above have already been submitted, please advise when and to whom in the City they were provided. Additionally, if you find in your review of the above that we have omitted any significant pending item(s), please also feel free to bring same to my attention.

While these items remain outstanding and require your prompt attention and resolution, I have authorized the disbursement of the Grant-in-Aid funds. Please contact Patricia Walker, Chief Financial Officer, to coordinate receipt of the check.

Should you require further assistance, please contact my office.

Sincerely,

  
Jorge M. Gonzalez  
City Manager

Cc: Patricia Walker, CFO