

**FOURTH AMENDMENT TO THE USE AGREEMENT
FOR THE MORTON H. MEYERSON SYMPHONY CENTER**

This FOURTH AMENDMENT TO THE USE AGREEMENT FOR THE MORTON H. MEYERSON SYMPHONY CENTER ("Amendment"), is executed on JUNE 30, 2009 by and between the City of Dallas, a Texas municipal corporation ("City") and the Dallas Symphony Association, Inc., a Texas nonprofit corporation ("Association").

WITNESSETH:

WHEREAS, the City and the Association entered into the Use Agreement for the Morton H. Meyerson Symphony Center on September 18, 1985, as amended ("Agreement"); and

WHEREAS, the City and Association have amended the Agreement three previous times; and

WHEREAS, the City and the Association desire to amend this Agreement for a fourth time in certain aspects; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Association do hereby agree as follows:

1. Section 3(a) of the Agreement is hereby amended to read as follows:

"The term of this Agreement is for a period beginning on the date the Association takes beneficial occupancy of any portion of the symphony center, pursuant to written authorization from the City's Director of Public Works, and continuing for an initial term of twenty (20) years, and thereafter for a first automatic renewal term ending on August 31, 2049, unless earlier cancelled as provided herein. At the end of the first automatic renewal term (and any subsequent renewal terms not to exceed five renewal terms total), unless written notice to the contrary is given by either party hereto at least ninety (90) days prior to the expiration date of the renewal term in question, this Agreement shall be automatically renewed for a period of ten (10) additional years; provided, the foregoing shall not limit the initial or first automatic renewal terms of this Agreement as otherwise established in this Section."

2. Section 4(b) of the Agreement is hereby amended by adding the following sentences at the end of subsection (b):

"With respect to the scheduling of events at the Meyerson in conjunction with the scheduling of events by the Dallas Center for the Performing Arts Foundation ("DCPAF") at the Annette Strauss Artists Square, the City and the Association agree to abide by the Booking Procedures Agreement between the Association and DCPAF, attached to and made a part of this Agreement as Attachment 1. In addition, until August 31, 2019, the City agrees to provide the Association with four of the ten no-rental fee event dates at Annette Strauss Artists Square that the City has been granted in its use agreement with DCPAF, provided that the City is not required to incur any expenses in connection with making those event dates available or in connection with the use of Annette Strauss Artists Square by the Association on those event dates, and further provided that the Association must reimburse DCPAF for personnel and other charges related to the use of the Annette Strauss Artists Square on those event dates."

3. Section 4 (f)(1) is hereby amended to read in its entirety as follows:

"(1) The City will make available and the Association will have the right to use and occupy 140 parking spaces in the symphony center garage for the Association's officers, employees, and guests. The monthly parking fee charged to the Association (which fee Association agrees to pay within thirty (30) days after receipt of an invoice from the City) by the City for the 140 parking spaces shall be \$25 per month per space until December 31, 2018. After December 31, 2018, the parking fee charged to the Association by City shall be the lesser of the prevailing market rate plus the rate necessary to cover appropriate garage operating and maintenance costs, as reasonably determined by the City Manager, or the rate charged by the City to its officers and employees for parking at Dallas City Hall. Parking by the general public will be allowed in these spaces when their availability is not necessary for Association purposes. All revenue derived from parking belongs to the City. The symphony center garage shall be operated by the City or its selected independent garage operation contractor. The City will consult with the Association on all policy matters regarding parking garage operations to ensure access to the symphony center garage by Association officers, employees, and guests, but not including concert patrons."

4. Section 9 of the Agreement is hereby amended to read in its entirety as follows:

"The City shall provide and pay for all water, gas and electricity (collectively as "utilities"), used in the symphony center. The Association shall pay for its own telephone services.

Notwithstanding the foregoing, for the period from June 1, 2004 to May 31, 2010, the Association shall be responsible annually for 15% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365; for the period June 1, 2010 to May 31, 2015, the Association shall be responsible annually for 25% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365; and for the period June 1, 2015 to May 31, 2029, the Association shall be responsible annually for 35% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365. If the Agreement remains in effect beyond May 31, 2029, the Association agrees to be responsible annually for 50% of the utilities' costs, multiplied by the actual number of dates the Association uses the concert hall, divided by 365."

5. City reaffirms to the Association its existing agreement in Section 4(f)(2) of the Use Agreement that the lease arrangements with adjacent property owners for the approximately 1200 subsurface parking spaces adjacent to the symphony center will not materially impair the availability of such subsurface parking spaces for the purposes intended in the Use Agreement.
6. All other terms, provisions, conditions, and obligations of the Agreement between the City and the Association shall remain in full force and effect, and the Agreement, the first three amendments and this Amendment shall be construed together as a single contractual agreement.

EXECUTED this the 30th day of June, 2009 by the City, signing by and through its City Manager, duly authorized to execute same by Resolution No 09-1109, adopted by the City Council on April 27, 2009 and by the Association, acting through its duly authorized officials.

APPROVED AS TO FORM:
 THOMAS P. PERKINS, JR.
 City Attorney

CITY OF DALLAS
 MARY K. SUHM
 City Manager

BY: Lawrence J. Hoff
 Assistant City Attorney
 Submitted to City Attorney

BY: M. Suhm
 Assistant City Manager

ATTEST:

ASSOCIATION:
Dallas Symphony Association, Inc.

BY: _____

BY:  _____
President