

## PERFORMANCE AGREEMENT

**AGREEMENT** made **Friday, April 15, 2022** by and between the **Lexington Philharmonic** ("Philharmonic") and the **Lexington Parks & Recreation** ("Presenter" or "LPR").

**LPR Signatory:** Amber Luallen, Superintendent of Cultural Arts & Events (Presenter)

**For performance with:** Lexington Philharmonic  
161 N Mill St  
Lexington, KY 40507

### IDEAL WEATHER SCENARIO:

**Dress Rehearsal:** Saturday, July 2, 2022, 6 - 8:30pm (Full Orchestra)  
**Location:** Indoor Haggin Auditorium

**Sound Check:** Sunday, July 3, 2022 - 6:00pm (1 hour before concert time)  
**Location:** Outside and onstage with TECH

**Performance:** Sunday, July 3, 2022 – 7:00pm  
(or time mutually agreed upon between Presenter & Philharmonic)

**Program Length:** (1) 80 minute program to consist of ~(60) minutes of music. No Intermission.  
To be mutually agreed upon by the Philharmonic and Presenter.

**Place:** Morrison Lawn, Transylvania University, Lexington, KY

**Rain Location:** In the event of inclement weather the concert will be moved to an indoor location.

### Compensation:

In return for performance by the Philharmonic of the above services according to the terms and conditions stated herein, Presenter agrees to pay Philharmonic: **\$40,000 (Forty Thousand Dollars 00/100)**. 50% of the fee (\$20,000) will be paid upon execution of this Agreement, and the remaining 50% (\$20,000) within 5 days following the performance.

- Fee includes orchestra, conductor, guest artist(s), Philharmonic stage manager, artistic logistics for rehearsals & performances, chairs, conductor podium, music stands, stand lights, music rental & preparation, and percussion equipment.
- Fee does NOT provide for items such as but not limited to; hospitality requirements for guest artists (meals, hotel accommodations, etc.), piano rental and tuning, electrical equipment, sound equipment, video equipment, general lighting, production crew, stage structure, tent/protective covering of orchestra, backline needs of guest artist, security, or dressing room needs. Any direct expenses incurred by the Philharmonic for expenses related to the above listed areas, will be invoiced separately to the Presenter.
- Presenter will fulfill the attached technical and hospitality rider.

If performances must be moved to an alternate date (**Rain Date**), the Presenter agrees to pay the **Philharmonic** an additional **\$10,000 (Ten Thousand Dollars 00/100)** to perform on the Rain Date.

**See Run-Out Terms & Conditions on following pages:**

**LEXINGTON PHILHARMONIC RUN-OUT TERMS & CONDITIONS:**

This addendum is an integral part of this Agreement

1. Presenter will provide and pay for place of performance and arrange for reasonable access thereto, and will ensure that the facilities are clean, well-lit and in good order.
2. Presenter will provide a secure, indoor or covered space with ample surfaces/tables for musicians to gather and leave their instrument cases during the performance, in close proximity or behind the stage.
3. Presenter will furnish and pay for such local licenses, tickets, ushers, ticket sellers, policemen, firemen and other items or personnel as required by Management of the place of performance or by public authorities.
4. Philharmonic will provide program copy for artistic content if requested, such as guest artist biographies, repertoire list, musician roster and program notes and Presenter may, at his sole discretion and expense, print house programs.
5. For performances which require sound amplification, Presenter shall provide appropriate personnel and equipment. (see technical rider)
6. Should a piano be required, Presenter will reimburse Philharmonic for rental and tuning of a grand piano or rental of electric keyboard.
7. Presenter will provide a sturdy and level covered (sturdy tent or roofed) stage for all services at least 40' deep and 60' wide (subject to change pending program/orchestra size). The tent or covering must cover the expanse of the stage. The Philharmonic may require a larger stage to accommodate more musicians or guest artists. Final stage requirements are to be determined by the Director of Artistic Operations and Production Associate Manager of the Lexington Philharmonic and will be communicated to the Presenter at least 60 days prior to the event.
8. Philharmonic shall be under no liability for failure to appear or perform in the event such failure is due to incapacity of artists, act of regulation of public authorities, labor difficulty, civic tumult, interruption or delay of transportation services, or those conditions that do not conform to the Philharmonic's Master Agreement (CBA) with musicians, force majeure or any other cause beyond control of the Philharmonic. The Parties acknowledge and agree that the COVID-19 Coronavirus pandemic is a force majeure event and that future occurrences due to COVID-19 are currently unknown and unforeseen.
9. Presenter will prevent the broadcasting, recording or photographing of the performance(s) without written consent from the Philharmonic.
10. Performance(s) shall not be in conjunction with or imply endorsement of any commercial product or services or of any person(s) or organization(s) or sponsor (s) other than Presenter unless expressly specified in this agreement. Any Presenter merchandising (T-shirts, hats, etc...) using the Lexington Philharmonic name must be requested in writing and approved in advance by the Philharmonic Executive Director at which time a separate agreement for merchandising will be issued.

11. No person shall be denied admission to the performance(s) because of race, color, religion, sexual orientation or national origin.
12. Presenter shall save and hold harmless Philharmonic from and against all liabilities, claims, losses, damages, and expenses (including legal expenses), of whatever nature, that may be awarded to or asserted by any person whatsoever and arising out of Philharmonic's performance hereunder, except to the extent caused by the negligent, reckless or intentional actions of Philharmonic. Unless the same shall be specifically waived in writing, Presenter shall, (not less than 14 (fourteen) days prior to any performance hereunder), provide to the Philharmonic a certificate or certificates of insurance evidencing insurance coverage in such amounts and with such terms and conditions as are satisfactory to the Philharmonic, provided, that any such waiver, if executed, shall not operate to relieve Presenter of its obligations hereunder. Nothing contained herein is intended to be, nor shall it be, a waiver of any defense, including that of sovereign immunity, that Presenter may have as to any third party.
13. Presenter shall provide a venue representative and/or Presenter representative to be on the premises where any service is to occur continuously beginning one hour prior to the service and until the listening audience and/or performers have cleared the premises.
14. Presenter shall take all steps reasonably necessary to provide for the personal safety of Philharmonic's personnel and the audience, including but not limited to, the following;
  - (a) Presenter shall determine an emergency plan and communicate that plan at least fourteen (14) days in advance to Philharmonic for adequate preparation.
  - (b) Presenter shall provide personnel adequate in number and training for security and crowd control purposes.
  - (c) Presenter shall provide reliable communication facilities and operators for use in emergency situations.
  - (d) If any performance is to be held outdoors, Presenter shall maintain contact with a reliable weather service providing coverage of the performance site throughout the performance.
  - (e) Presenter shall provide an emergency medical service unit on the premise of any outdoor performance.
  - (f) Presenter will refrain from using extra-musical or special-effect device(s) of an explosive nature, combustible or otherwise potentially harmful nature unless requested in writing and approved by the Executive Director of the Philharmonic.
  - (g) Presenter will abide by any local and national COVID-19 health and safety guidelines in effect at the time of the event (July 3, 2022).
15. In the event that weather becomes a concern, the decision to move the concert will be based on a consensus of the Lexington Philharmonic, its Director of Artistic Operations, the Union Steward and the Orchestra Committee.

- 16. In the event the concert must be postponed or canceled due to rain, emergency conditions, or other situations rendering it impossible for the performance to occur at the outdoor location, the Lexington Philharmonic Director of Artistic Operations will notify the Presenter at the earliest time possible. The Lexington Philharmonic’s Director of Artistic Operations and Presenter will be in communication a minimum of 48, 24, and 12 hours before the published start time of the concert to discuss weather status and any necessary changes to ensure the concert is able to be performed, relocated, or rescheduled as per this agreement.
- 17. If it is determined to delay the start time or suspend and resume the concert at a later time on the same date due to weather or emergency conditions, or moving the concert to the alternate indoor location, the Presenter agrees to pay any additional costs incurred including but not limited to musician overtime or equipment rental.
- 18. Should rain, emergency conditions, or other situations render it impossible for contracted services to occur, then the Presenter will be responsible to the Philharmonic for 90% of the total fee (90% of \$40,000 = \$36,000), provided the Presenter cancels at least 4.5 hours prior to scheduled services. If less than 4.5 hours written notice of cancellation is given, the full performance fee is due (\$40,000).
- 19. All correspondence and communication regarding this agreement shall be between the signatories hereto and the Director of Artistic Operations of the Lexington Philharmonic.
- 20. Under no circumstances will there be a performance or rehearsal if musicians are in direct sunlight, dew, rain, mist, dangerous weather, conditions which might endanger personal health or the condition of the musicians’ instruments or extreme temperature conditions outside of the range of 65-95 degrees Fahrenheit.
- 21. Presenter will provide free parking to LexPhil musicians and staff behind Haggin Auditorium on the Transylvania campus or as close to the performance site as possible.
- 22. Presenter will provide water for up to 100 individuals at the concert site for musicians, guest artist(s) and stage crew.

**AGREED:**

FOR: **Lexington Fayette Urban Count Government**

BY: \_\_\_\_\_  
Linda Gorton, Mayor Date

FOR: **Lexington Philharmonic**

BY: \_\_\_\_\_  
Allison Kaiser, Date  
Executive Director