



COMMISSIONING AGREEMENT

This agreement made and entered into as of June 25, 2024, between Lexington Fayette Urban County Government ("LFUCG"), Blue Grass Community Foundation ("BGCF") and Shawn E. Okpebholo ("COMPOSER").

- LFUCG AND BGCF wish to commission the COMPOSER to create a newly composed work (the "WORK") for the Lexington Philharmonic ("ORCHESTRA") in honor of the 250th anniversary of the city's founding. The duration of the WORK shall be approximately 15 minutes.
- LFUCG will premiere the WORK in September 2025. LFUCG will have the exclusive right to the World Premiere performance of the WORK.
- The COMPOSER guarantees that the WORK shall be entirely original and that he shall be the sole author of said WORK. The COMPOSER will be responsible for obtaining full permission to include any quoted material in the WORK and shall indemnify and hold LFUCG AND BGCF harmless from and against any resulting legal action.
- LFUCG AND BGCF will pay the COMPOSER, collectively, a total fee not to exceed \$40,000 (FORTY THOUSAND) U.S. Dollars, inclusive of all costs, 50% due within two weeks after execution of this contract and 50% due within two weeks after receipt of the completed WORK. BGCF will directly pay the COMPOSER an amount totaling \$25,000.00 towards the above total with the remainder to be paid by LFUCG. There will be no additional fee or costs for the preparation of the musical score and copying of parts.
- The COMPOSER agrees to deliver the completed WORK to LFUCG in adequate form and schedule to produce one fully edited master set of score, parts to the WORK in PDF format, sufficient for performance by LFUCG. The completed score is to be delivered to the LFUCG no later than MAY 01, 2025. The completed parts are to be delivered to the LFUCG no later than JUNE 01, 2025.
- LFUCG may terminate this Agreement for any reason whatsoever by providing COMPOSER with at least thirty (30) days advance written notice. COMPOSER shall be entitled for payment of all work performed up to that period of time, calculated on a reasonable basis.
 - In the event of a termination based upon a material condition of non-performance or default by COMPOSER, LFUCG shall provide COMPOSER advance written notice and a reasonable period of time to cure the breach.
 - COMPOSER may only terminate this Agreement based upon LFUCG's failure to timely pay for properly invoiced and accepted work. COMPOSER shall provide LFUCG with at least thirty (30) days advance written notice and an opportunity to cure prior to termination.

- COMPOSER acknowledges that LFUCG is a governmental entity, and that the validity of this Agreement is based upon the availability of appropriated funding. In the event that such funding is not appropriated in a future fiscal year, LFUCG's obligations under this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to COMPOSER. LFUCG shall exercise any application of this provision in good faith.
- The WORK will bear a dedication to LFUCG and BGCF as designated by LFUCG, on the original manuscript score and duplicate copies and on the printed score and parts in the event it is published.
- It is understood that all rights to the WORK belong to the COMPOSER, with the exception of the rights specifically granted to LFUCG in this agreement.
- **Ownership, Copyright, and Income Participation:** The COMPOSER retains the ownership of the WORK, and the rights of copyright and publishing. The ORCHESTRA will have rights to own a copy of the complete score and set of parts with perpetual rights to perform the piece in the future without rental cost.
- The COMPOSER will treat the WORK as confidential, and will not display, show, publicly perform or otherwise disclose the WORK to any third party without the prior written consent of LFUCG before the premiere date.

The COMPOSER, in accordance with the COMPOSER's availability, will attend rehearsals during the week leading up to the Premiere, the Premiere itself, and community engagement events. LFUCG, in accordance with the COMPOSER's availability, will provide a per diem of \$250.00 per day, for up to six full days of COMPOSER's stay that is directly related to the Commissioning Agreement.

- Community Engagement events may include panel discussion and/or pre-concert talks on topics related to WORK, events with local students, and media appearances TBD. Activities to be arranged around rehearsals. Schedule to be determined and agreed upon in advance by LFUCG and COMPOSER.
- LFUCG agrees to give the COMPOSER four (4) ORCHESTRA house seats for each performance of the WORK.
- LFUCG shall provide COMPOSER with any archival recording of the premiere performance and any future commercial recording for personal & promotional use.
- **Force Majeure.** In the event that normal operations are interrupted by law, act of God, earthquake, fire, flood, civil disturbance, war or armed conflict, labor controversy or strike, or any other cause or reason beyond the control of LFUCG, the obligations of the parties under this agreement shall be suspended automatically and may be terminated by either party without penalty or further obligation under this Agreement. If terminated because of Force Majeure, LFUCG and BGCF are liable to pay the COMPOSER'S fees for work completed before the contract termination, per the fee schedule through to the date of the termination, plus any expenses already incurred by the COMPOSER for which LFUCG and BGCF are contractually liable.
- **Governing Law.** The construction, interpretation, and performance of this Agreement and all transactions under it, will be governed by the laws of the State of Kentucky.

- This agreement may be amended with written consent of all parties.

AGREED AND ACCEPTED:



Linda Gorton, Mayor
LFUCG


COMPOSER
Shawn E. Okpebholo
0N336 Willow Rd
Wheaton, IL 60187

06/25/2024


Brian Dineen
Sr. Vice President, Finance & Administration
Blue Grass Community Foundation

6/25/2024