

This Agreement made as of the 7 day of April 2022.

b e t w e e n

The Corporation of The Town Of Tecumseh,
hereinafter called the “Town”

Of The First Part;

- and -

The Windsor Symphony Orchestra
hereinafter called the “WSO”

Of The Second Part.

Whereas the Town is coordinating a celebration in recognition of the Town’s 100th Anniversary celebration and has engaged the services of the WSO to conduct two (2) performances as part of the celebration schedule of events;

And Whereas the goal of the two (2) performances (performances) is to commemorate and celebrate the history of the Tecumseh area;

And Furthermore Whereas this agreement outlines roles and responsibilities of each party in relation to the performances.

In Consideration Of the mutual covenants contained herein and mutual benefits arising from the performance of this Agreement, and other good and valuable consideration exchanged, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1 Performance Dates and Locations:

Performance # 1:

Date: Saturday, July 2, 2022

Location: Lakewood Park (North), 13400 Riverside Drive, Tecumseh, ON N8N 5A6

Time: 6:30 PM to 8:00 PM

Musical pieces: WSO Quintet

Performance # 2:

Date: Monday, July 4, 2022

Location: L’Essor High School, 13605 St. Gregory Road, Tecumseh, ON N8N 3E4

Time: 7:30 PM to 9:00 PM

Musical pieces: WSO 25 piece

2 The Town Covenants and Agrees that it will:

- 2.1 Coordinate the use of smoke free venues to host the performances, including dates and times for rehearsals; and be responsible for any rental fees associated with the use of the facility and equipment;
- 2.2 Procure and set up equipment required for Performance # 2 including staging, microphones and chairs;
- 2.3 Introduce the WSO before the performance and thank them at the end;
- 2.4 Market and promote the performances, including printed programs and posters related to the performances in consultation with the WSO;
- 2.5 Coordinate items related to performance spectators including but not limited to seating assignments, ushers and ticket distribution/sales;
- 2.6 Adhere to COVID-19 or any other applicable public health protocols;
- 2.7 Make determination if performance(s) will be postponed or cancelled including but not limited to inclement weather conditions;
- 2,8 Pay WSO in accordance with the Payment Terms contained in this Agreement;
- 2.9 Report to and pay SOCAN (Society of Composers, Authors and Music Publishers of Canada);
- 2.10 Agree to accept that the performances as created and performed by WSO are the artistic property of WSO and are not to be copied, re-used or appropriated by another party;
- 2.11 Agree that the performances are not to be copied, circulated, recorded or shared in whole or in part by any party other than WSO;
- 2.12 Consult with WSO on artistic elements including performance programming, performers, and speakers;
- 2.13 Make artistic decisions regarding the printed program and poster for the performances, in consultation with WSO. Final copyrights pertaining to performance program, creative property, recording and any potential livestreaming of the event are to be the property of WSO, in accordance with the musician's union regulations;
- 2.14 Agree that no flash photography, audio or video taping will be permitted, except as set out in Section 3.8 of this Agreement.

3 The WSO Covenants and Agrees that it will:

- 3.1 Prepare and perform two (2) performances celebrating the 100th anniversary of the Town that will illustrate through music the history of the region in consultation and collaboration with the Town;
- 3.2 Make final decisions pertaining to artistic elements including performance programming, performers, and speakers;
- 3.3 Reserve the right to adjust the performances for artistic and timing purposes provided that it delivers the components set out above. The dates, commencement time and completion time of the overall program will not be amended without the Town's consent acting reasonably;
- 3.4 Acknowledge that the Town is not responsible for cost incurred as a result of damaged equipment due to inclement weather or other probable factors involving damage to equipment or performers property;
- 3.5 Provide all equipment required for Performance # 1, including but not limited to musical instruments, amplifiers, sound-system, microphones and performer seating;
- 3.6 Coordinate with the venues regarding logistical needs and comply with any terms of use as notified by the venues;
- 3.7 Provide content to the Town for printed program with graphics, ads and name listings;
- 3.8 In the event of COVID-19 or any other applicable public health restrictions limiting indoor gatherings or in the event of capacity limits of the venue, WSO agrees to allow the Town to livestream the performances using a closed-circuit link, to an agreeable location;
- 3.9 In the performance of this Agreement, be an independent contractor. Neither the WSO nor any of the WSO's employees, officers or directors shall be deemed to be employees of the Town.
- 3.10 Comply with all requirements of the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act and all other applicable law, regulations and the Corporation's bylaws and workplace policies. The WSO shall provide proof from time to time upon request from the Town and forthwith upon execution of this document a valid clearance certificate issued by the Workplace Safety and Insurance Board.

4 Payment Terms

Performance # 1: \$1,000

50% deposit required upon signing of Agreement

Balance due July 2, 2022 at the conclusion of Performance # 1

In the event Performance # 1 is commenced but stopped by inclement weather, payment will be made subject to the parties acting reasonably to re-schedule if desired by the Town subject to an additional payment being made consistent with the costs involved in the WSO re-attending and not exceeding 20 percent of the original amount set out for Performance #1.

Performance # 2: \$8,400

50% deposit required upon signing of Agreement

Balance due July 4, 2022 at the conclusion of Performance # 2

5 Cancellation / Rescheduling

In the event of cancellation of one or both performances due to circumstances beyond the control of the Town, the performance(s) will be rescheduled at a date(s) acceptable to both parties without payment of any cancellation fee.

6 Insurance

6.1 The WSO, as Named Insured, shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the Town and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- (a) A limit of liability of not less than \$2,000,000/occurrence with an aggregate of not less than \$5,000,000.
- (b) Add Town and Le Conseil Scolaire de District des Écoles catholiques du Sud-Ouest as an additional insured with respect to the operations of the Named Insured.
- (c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured.
- (d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)
- (e) Products and completed operations coverage
- (f) Broad Form Property Damage
- (g) Contractual Liability

(h) Work performed on Behalf of the Named Insured by Sub-Contractors

(i) The policy shall provide 30 days' prior notice of cancellation,

6.2 The WSO's insurance shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the Town.

6.3 The WSO shall provide a Certificate of Insurance evidencing coverage in force.

7 Accessibility Training

The WSO represents to the Town and shall ensure that all its employees, agents, volunteers, or others for whom the WSO is legally responsible receive training regarding the provisions of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the Accessibility for Ontarians with Disabilities Act, 2005 as amended (the "Act").

8 Indemnification

8.1 The WSO shall defend, indemnify and save harmless the Town its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the WSO, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement This indemnity shall be in addition to and not in lieu of any insurance to be provided by the WSO in accordance with this Agreement and shall survive this Agreement.

8.2 The Town further covenants and agrees that it will at all times indemnify and save harmless WSO, its officers, servants and agents, from and against all loss or damage, and from and against all actions, suits, claims and demands whatsoever which may be made or brought against the WSO, its officers, servants and agents arising out of or attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Town, its directors, officers, employees, agents, performers, artists, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Agreement.

9 General Provisions

No waiver by any party of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

Each of the Parties covenants and agrees that he, his heirs, executors, administrators, successors and assigns will sign such further agreements, assurances, waivers and documents, and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this agreement. Should any provision of this agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

(a) Prepared this agreement or any part of it; or

(b) Seeks to rely on this agreement or any part of it."

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

This agreement shall be governed in all regards by the laws of the Province of Ontario.

Subject to the terms of this agreement, this agreement is not assignable without the consent of all parties.

In Witness Whereof the Parties hereto have hereunto affixed their seals duly attested by the hands of their proper Officers in that behalf, respectfully.

**The Corporation of The
Town of Tecumseh**

SEAL

Per:

Gary McNamara, Mayor

Per:

Laura Moy, Clerk

Date

Windsor Symphony Orchestra

SEAL

Per:

Faith Schofield, Director of Operations

Witness