

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF KINGSPORT, TENNESSEE**  
**AND**  
**SYMPHONY OF THE MOUNTAINS**

THIS AGREEMENT made and entered into as of this 1st day of July, 2023, by and between the City of Kingsport, hereinafter called "CITY", and Symphony of the Mountains, hereinafter called "SYMPHONY".

**WITNESSETH:**

WHEREAS, SYMPHONY is a not-for-profit agency as defined by Tenn. Code Ann. §§6-54-111 and 48-51-101 *et seq.*, and is eligible to receive funds for this purpose; and

WHEREAS, CITY is authorized by Tenn. Code Ann. §6-54-111 *et seq.* to provide financial assistance to nonprofit organizations and not-for-profit corporations; and

WHEREAS, SYMPHONY will receive financial assistance from the CITY; and

WHEREAS, the parties desire to set forth the terms and conditions with respect to the use of funds to be provided.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. **PURPOSE OF THE AGREEMENT.** The purpose of this Agreement is to fund a concert chair for SYMPHONY and to state the terms and conditions upon which financial assistance will be provided by CITY and the manner in which the project will be carried out by SYMPHONY.
2. **DESCRIPTION OF THE PROJECT.** SYMPHONY agrees to fund a concert chair for the Symphony of the Mountains Association of Kingsport in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS and NO/100 (\$7,500).
3. **MAXIMUM PAYMENT.** It is expressly understood and agreed that the total amount to be paid by CITY to SYMPHONY under this Agreement will not exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS and NO/100 (\$7,500).
4. **REQUEST FOR REIMBURSEMENT.** SYMPHONY will bill CITY for payment of funds after July 1, 2022, using forms and procedures specified by CITY.

5. **REIMBURSEMENT BY CITY.** CITY will review all billing submitted, however, reimbursement of any cost, not to exceed the amount as shown in paragraph 3, will not constitute a final determination by CITY of the allowability of such costs and will not constitute a waiver of any violation of the terms of the Agreement.
6. **AUDITS.** SYMPHONY prior to receiving funds pursuant to this Agreement it must file with the city clerk a copy of an annual report of its business affairs and transactions that includes, but is not limited to:
  - a) Either a copy of the entity's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury and prepared and certified by the chief financial officer of such nonprofit organization;
  - b) A description of the program that serves the residents of the municipality; and
  - c) The proposed use of the municipal assistance.
  - d) A listing of revenue sources detailing what percent of the total operating budget they cover.

The report filed pursuant hereto shall be open for public inspection during regular business hours of the city clerk's office. Financial reports shall be available to fiscal officers of the CITY and shall be subject to audit under Tenn. Code Ann. § 6-56-105. SYMPHONY will permit CITY or its representatives to inspect all work, materials, payrolls, and other records with regard to the project, and to audit the books, records, and accounts of SYMPHONY with regard to the project. Such records will be retained for this purpose for a period of not less than three years.

7. **ACCOUNTING, RECORD KEEPING AND REPORTING REQUIREMENTS.** SYMPHONY will establish and maintain an accounting, record-keeping, and reporting system consistent with generally accepted accounting principles and no less than those recommended in the Accounting Manual for Recipients of Grant Funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee. SYMPHONY further agrees to submit to CITY a copy of its most recent audited report at the same time said report is submitted to the State government.
8. **CHANGES.** Any changes in this Agreement will require a written amendment executed by all parties hereto.
9. **ASSIGNMENT AND SUBLETTING.** SYMPHONY will not assign any rights to funds, except as set forth herein, without prior written authorization from CITY.
10. **TERMINATION.** This Agreement may be terminated by either party by giving written

notice to the other at least 30 days before the effective date of such termination. In the event of such termination, SYMPHONY will be entitled to receive just and equitable compensation for any eligible operating expenses paid or incurred as of the termination date, but in no event will this amount exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS and NO/100 (\$7,500).

11. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** SYMPHONY will immediately notify CITY of any change in conditions or of any other event which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.
12. **ASSURANCES.** SYMPHONY hereby assures CITY that SYMPHONY is legally entitled to funds from CITY.
13. **OPERATING INFORMATION.** SYMPHONY will provide any relevant information requested by CITY concerning SYMPHONY's program, including, but not limited to, contracts for third party financial arrangements, annual financial statements and audit reports, schedules, and fees.
14. **PROJECT TERM.** CITY and SYMPHONY have previously agreed that the project term for this contract is from July 1, 2023, to June 30, 2024. Accordingly, funds allocated by CITY to SYMPHONY can be used to reimburse SYMPHONY for eligible project expenses beginning on July 1, 2023. In no event will CITY participate in project expenses incurred after June 30, 2024.
15. **REPORTING.** SYMPHONY will submit to the Board of Mayor and Aldermen a quarterly report setting out how funds allocated by CITY to SYMPHONY assist in carrying out the purpose of the project as described under the terms of this Agreement. The report shall be transmitted to the Board of Mayor and Aldermen.
16. **INDEPENDENT CONTRACTOR.** SYMPHONY'S relationship with CITY is that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. SYMPHONY is not the agent of the CITY and is not authorized to make any representation, contract, or commitment on behalf of CITY. Neither SYMPHONY nor its employees will, under any circumstances, be considered servants, agents, partners or a joint venture of CITY, and CITY will at no time be legally responsible for any negligence or other wrongdoing by SYMPHONY, or its employees or agents.
17. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** SYMPHONY will indemnify, defend, and hold harmless CITY, including without limitation, its officers, agents, employees, and volunteers from and against:
  - a) Any and all claims, demands, losses, damages, defense costs, or liability of any

kind or nature which CITY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with SYMPHONY'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the CITY. Such indemnification includes any damage to the person(s), or property(ies) of SYMPHONY and third persons.

- b) Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to SYMPHONY and its officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

IN WITNESS WHEREOF, the signatures of the parties hereto as of the date and year first written in duplicate original form.

**Symphony of the Mountains**

**City of Kingsport, Tennessee**

\_\_\_\_\_  
**Scott Eddlemon, General Manager**

\_\_\_\_\_  
**Patrick W. Shull, Mayor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed Name**

**Attest:**

\_\_\_\_\_  
**Angela Marshall, Deputy City Recorder**

**Approved as to form:**

\_\_\_\_\_  
**Rodney B. Rowlett, III, City Attorney**