

LICENSE AGREEMENT FOR ACCESS AND USE

This License Agreement ("Agreement") is made and entered into this 16th day of March 2022 ("Effective Date") by and between City of Wheaton, Illinois, an Illinois home rule municipality ("City") and Wheaton Park District, an Illinois park district and unit of local government ("Park District"). City and the Park District are sometimes hereinafter referred to individually as a "Party" and together as the "Parties."

RECITALS

WHEREAS, the Park District owns certain real property located in Wheaton, Illinois commonly referred to as Memorial Park ("Park Property"); and

WHEREAS, the Park Property includes a variety of amenities, including a newly constructed bandshell facility ("Bandshell"); and

WHEREAS, the City funds and operates the Wheaton Municipal Band ("WMB"), and WMB has used portions of the Park Property for concerts since 1952, and more recently, has utilized the Bandshell for storage, rehearsal, and a summer concert series on traditionally held on Thursday nights; and

WHEREAS, WMB is a voluntary association of band musicians, band administrative staff and a band director, who are all independent contractors and not City employees, pursuant to independent contractor contracts between the City and the WMB participants; and

WHEREAS, the City, subject to the approval of the City Council, manages and budgets the WMB through its "Band Commission" (Ch 2 Sec 2-276 et seq.) and effectuation of its independent contractor agreements; and

WHEREAS, the Park District recently completed a major capital improvement project in Memorial Park, including the construction of a new Bandshell facility which will serve to support and enhance WMB's activities; and

WHEREAS, due to the Park District's significant investment in the renovation of Memorial Park and the Bandshell, the Park District's Board of Park Commissioners ("Park Board") desires to formalize the Park District's relationship with the City for purposes of WMB's access to, operations, and use of portions of Memorial Park and the Bandshell (collectively, the "Licensed Premises"), for storage, rehearsal, and the summer concert series (collectively, the Licensed Activities"); and

WHEREAS, the Park Board finds and hereby declares that it is in the best interests of the Park District and its residents to grant the City a license for WMB to use the Licensed Premises for the Licensed Activities, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, and for such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 INCORPORATION OF RECITALS

1.1 The above Recital paragraphs are contractual in nature and are incorporated into and made a part of this Agreement.

ARTICLE 2 CONDITIONS PRECEDENT TO PARK DISTRICT'S OBLIGATIONS

2.1 Insurance. The City, on behalf of the WMB shall keep in full force and effect at all times during this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with this Agreement. WMB shall provide coverage that is at least as broad as

- A. Comprehensive general liability insurance, including contractual liability coverage, with coverage of no less than \$1,000,000 per occurrence.

The Park District, and its elected and appointed officials, officers, employees, agents, and volunteers (collectively the "Additional Insureds") shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of the City's insurance and shall not contribute with it. The Park District shall have the right, but not the obligation, to prohibit WMB and any of its officers, officials, employees, volunteers, agents or invitees from entering the Licensed Premises until evidence that insurance has been placed in compliance with the requirements of this Article is received by the Park District.

ARTICLE 3 WMB'S USE OF THE LICENSED PREMISES

3.1 Grant of non-exclusive License. Subject to the terms and conditions of this Agreement, the Park District hereby grants the City for use by WMB the following rights ("License"):

- A. Access. WMB and its officers, officials, employees, agents, volunteers, and invitees shall have access to and use of the Licensed Premises for the Licensed Activities during the term of this Agreement. For purposes of clarification, the Licensed Premises is more accurately described and depicted in Exhibit A, attached hereto and incorporated herein by reference. In addition to the terms and conditions set forth in this Agreement, WMB's access to and use of the Licensed Premises shall also be governed by the Park District's Bandshell Use Guidelines, as may be amended from time to time, a current copy of which is attached hereto as Exhibit B and incorporated herein by reference.

- B. Ingress/Egress. WMB and its officers, officials, employees, agents, volunteers, and invitees shall also have reasonable access and means of ingress and egress to, over, upon or across other portions of the Park Property for the limited purpose of enabling reasonable access to and use of the Licensed Premises.

3.2 Dates and Times. WMB shall have access to and use of the Licensed Premises, including reasonable means of ingress and egress, during the dates and times set forth on Exhibit C, attached hereto and incorporated herein by reference. The dates and times set forth on Exhibit C shall be amended on an annual basis by mutual written agreement of the Parties to reflect the performance and practice schedule for the upcoming year. The dates and times set forth on Exhibit C may be further amended from time to time during the term of this Agreement by mutual written agreement of the Parties. WMB may secure access to and use of the Licensed Premises on additional days and/or for additional or extended hours subject to availability and based on the mutual agreement of the Parties.

3.3 License Fee. There shall be no fee for the License granted hereunder. However, the City shall be responsible for reimbursing the Park District for all direct costs associated with WMB's access to and use of the Licensed Premises, including the costs for a facility support attendant provided by Park District. The 2022 estimated hourly staff rate is \$25 per hour and overtime rate is \$37.50 per hour for staff. The Park District reserves the right to modify the estimated hourly staff rates from time to time during the term of this Agreement, and shall notify City of any such changes in writing.

3.4 Hazardous Materials. No explosives or flammable or hazard materials of any kind shall be transported across, brought upon, or stored or deposited on, the Park Property or the Licensed Premises. As used in this Agreement, "Hazardous Materials" means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as "hazardous substances" pursuant to Section 1251 et. Seq. (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. Seq. (42 U.S.C. Section 6903), or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et. Seq. (42 U.S.C. Section 9601) or any other applicable environmental law.

3.5 Compliance with Laws; Manner of Use. The City shall comply with all applicable federal, state, county and local statutes, ordinances, rules, regulations, and codes in its conduct of the Licensed Activities and manage WMB in the same manner, while it uses the licensed premises so that WMB shall conduct, and shall cause its officers, officials, employees, agents, volunteers, and invitees to conduct, the Licensed Activities in a safe manner and in strict accordance with the terms of this Agreement. The City shall not nor shall it permit WMB to make or permit to be made

any use of the Licensed Property which is directly or indirectly forbidden by law, ordinance, rule or regulation, or which may be dangerous to life, limb or property, or which may increase the Park District's insurable or uninsurable risk or liability. The City shall require WMB to cooperate with the Park District, the City, and the Wheaton Police, Fire and Building Departments, and shall strictly follow all public safety requirements regarding its use of the Licensed Premises and its conduct of the Licensed Activities. WMB shall comply fully with any and all federal, state, and local laws, rules, regulations, ordinances, orders, guidelines, or directives of any kind related to the COVID-19 pandemic, including but not limited to the Restore Illinois Plan, guidance issued by the DCEO, Illinois Department of Public Health, CDC, any other federal, state, or local agencies or departments, any other executive orders issued by the Governor of the State of Illinois, and any rules, regulations, policies or procedures issued by the Park District all as may be amended from time to time

3.6 Waiver and Release of Liability. The City acknowledges and agrees that WMB shall conduct the Licensed Activities entirely at the City's own risk. The City on behalf of WMB acknowledges that the Park District shall not provide any supervision, security or protection in connection with the Licensed Activities. The Park District shall not be liable or responsible for damage caused by fire, vandalism or other casualty to, or for the destruction, loss, or theft of, any vehicle, equipment, material, supply or other personal property at any time during the Agreement, except such proximately caused by the willful and wanton conduct of the Park District. To the fullest extent permitted by the laws of the State of Illinois, the City on behalf of WMB hereby forever waives, relinquishes and discharges and holds harmless and agrees to indemnify the Park District, and its elected and appointed officials, officers, employees and agents from any and all claims of every nature whatsoever, which WMB may have at any time against the Park District Indemnitees, including without limitation claims for personal injury or property damage sustained or incurred by WMB or any person claiming by, through or under WMB, relating directly or indirectly to the Licensed Activities, the condition of the Licensed Premises, or use by the Park District or WMB of the Licensed Premises. Nothing in this agreement shall be deemed or interpreted to waive, release, or in any manner compromise either the Park District or the City privileges or immunities which are fully reserved by the Park District and the City to the maximum extent allowed by law. There are no intended third person beneficiaries of this Agreement.

3.7 Condition of the Property. Except as otherwise specifically provided in this Agreement, the Park District has not made, and by grant of the non-exclusive License hereunder does not make, any representations with respect to the condition of the Licensed Premises or its suitability for any purposes, including but not limited to the City or WMB's intended purposes, it being acknowledged and agreed by the City that the City and WMB are solely responsible for ascertaining all conditions affecting the Licensed Premises prior to its execution of this Agreement, and prior to each use thereof by WMB, and its officers, officials, employees, agents, volunteers, and invitees, or any of them.

3.8 Reservation of Rights. The License granted hereunder is not exclusive, and the Park District reserves the right to continue its use and the public's use of the Park Property and the Licensed Premises. The Park District shall have the right to use the Park Property, including the Licensed Premises, at any time for any purpose which does not unreasonably interfere with the Licensed Activities during the term of this Agreement. Any rights to the Licensed Premises not

specifically granted to the City and WMB under this Agreement are reserved to the Park District, its successors and assigns. The Park District shall have the right to enter upon the Licensed Premises at any time(s) to inspect, maintain or repair the Park Property, including the Licensed Premises and improvements thereon, to determine Licensee's compliance with the terms and conditions of this Agreement, and for any other lawful purpose(s).

ARTICLE 4 INDEMNIFICATION AND HOLD HARMLESS

4.1 Indemnification of the Park District. The City on behalf of itself and WMB hereby indemnifies and shall defend and hold harmless the Park District, and its elected and appointed officials, officers, employees, volunteers and agents (the "Park Indemnitees") from and against any and all suits, liabilities, claims, losses, costs, and damages, including but not limited to consequential damages, penalties, fines and expenses, of every kind or nature whatsoever, including without limitation court costs and attorneys', paralegals' and consultants' fees (the "Legal Expenses"), suffered, incurred or sustained by any of the Park Indemnitees, including without limitation, liabilities for the death of, or injury to, any person or the loss, destruction or theft of, or damage to, any property, or liabilities imposed under any Environmental Laws, to the extent relating directly or indirectly to, or arising directly or indirectly from, the exercise by the City and WMB, or their officers, officials, employees, agents, volunteers, and invitees, or any other person acting on its or their behalf or with its or their authority or permission, of the obligations, rights or privileges imposed upon, or granted to, WMB under this Agreement or their use of the Licensed Premises. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.1. The City on behalf of WMB shall similarly defend, indemnify and hold harmless the Park Indemnitees against and from any and all suits, claims, losses, costs, damages (including but not limited to consequential damages), penalties, fines and expenses, including without limitation Legal Expenses, suffered, sustained or incurred by any of the Park Indemnitees to the extent resulting from the City or WMB's breach of any provision of this Agreement or otherwise incurred by Park District in enforcing the terms of this Agreement.

4.2 Notice of Claims. The Park District shall promptly give written notice of its claim to the City whenever the Park District shall have determined that there are facts or circumstances that render the City liable for indemnification under this Agreement. Such notice (the "Claim Notice") shall set forth in reasonable detail the basis for the claim. If any claim for indemnification arises out of a claim asserted by a third party (a "Third-Party Claim"), the Park District shall serve the Claim Notice within thirty (30) days of its receipt of such claim asserted by a third party.

4.3 Third-Party Claims. If the Claim Notice states that a Third-Party Claim has been asserted against the Park District, WMB shall have thirty (30) days after its receipt of the Claim Notice to acknowledge to the Park District, in writing, that WMB intend to control the defense of the Third-Party Claim through counsel of its own choosing, including settlement.

4.4 Cooperation. Each Party shall cooperate with the other in connection with the indemnifications contained in this Article 4, including, without limitation, making available to the other all relevant information reasonably available to it that is material to the defense of a Third-Party Claim.

ARTICLE 5 TERM AND TERMINATION

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall extend through December 31, 2022. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless either Party gives the other Party written notice of its intent not to renew not less than ninety (90) days prior to the expiration of the then current term.

5.2 Termination. The Park District shall have the right to terminate this Agreement and the non-exclusive License granted hereunder immediately upon City's or WMB's failure to remedy any breach or default of any term, obligation, or condition of this Agreement within thirty (30) days after written notice of such breach is delivered to City. Upon the effective date of termination, the respective rights and obligations of the Parties shall cease with the exception of any obligation that accrued prior to the effective date that remains unsatisfied on the effective date, including but not limited to any obligation under Paragraphs 2.1, 3.6 and 4.1 above.

ARTICLE 6 NOTICES

6.1 Any notice required or permitted to be given under this Agreement shall be in writing and shall be effective: (i) as of the date personally delivered; (ii) one (1) business day after the date delivered to a nationally recognized overnight courier service, delivery prepaid for next business day delivery; or (iii) at the time of being sent by email if delivery thereof is confirmed and notice has been sent to the following addresses and/or email addresses:

If to the City:	City Clerk City of Wheaton 303 West Wesley Street Wheaton, Illinois 60187
If to the Park District:	Wheaton Park District 102 E. Wesley St. Wheaton, IL 60187 Attn: Michael Benard, Executive Director Email: mbenard@wheatonparks.org

Notice by facsimile transmission is not permitted.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Amendments and Modifications. This Agreement may be amended or modified only by a written instrument executed by the Parties.

7.2 Governing Law. This Agreement shall be governed by and construed in accordance

with the laws of the State of Illinois without giving effect to its principles of conflicts of law. Jurisdiction over any dispute shall be in the Circuit Court of DuPage County, Illinois.

7.3 Entire Agreement. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof. This Agreement, the exhibits and other writings referred to herein, constitute the entire understanding of the parties with respect to the subject matter hereof.

7.4 Time of the Essence. Time is of the essence in this Agreement. If the time for performance of any obligation hereunder shall fall on a Saturday, Sunday or holiday (national or State of Illinois) such that the transaction contemplated hereby cannot be performed, the time for performance shall be extended to the next such succeeding day where performance is possible.

7.5 Counterparts/Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instruments. All electronic or .pdf signatures shall be treated as original signatures for all purposes.

7.6 Severability. If any term, condition or provision of this Agreement is adjudicated invalid or unenforceable, the remainder of this Agreement, other than such term, condition or provision, shall not be affected and shall remain in full force and effect, to the fullest extent permitted by law.

7.7 Article Headings. The Article headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement.

7.8 Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver. No such waiver shall be deemed a waiver of any subsequent breach or default.

7.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective legal representatives, heirs and successors in interest.

7.10 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

7.11 Further Assurances. The Parties agree to execute all documents and instruments reasonably required in order to consummate the matters contemplated herein.

7.12 Joint Participation. The Parties hereto participated jointly in the negotiation and preparation of this Agreement, and each Party has obtained the advice of legal counsel to review and comment upon the terms and conditions contained herein. Accordingly, it is agreed that no rule of construction shall apply against or in favor of any Party. This Agreement shall be construed as if it was jointly prepared by the Parties and any uncertainty or ambiguity shall not be interpreted against one Party and in favor of the other.

7.13 No Third-Person Beneficiaries. This Agreement does not confer any rights or benefits on any third person.

7.14 Authorization. The undersigned duly authorized representatives of the City and the Park District represent and warrant that no additional consents, approvals or authorizations are necessary or required to effectuate this Agreement.

7.15 No Waiver of Tort Immunity Defenses. Nothing contained in this Agreement is intended to constitute nor shall constitute a waiver of the rights, defenses, and immunities provided or available to the Park District or the City under the Illinois Local Governmental and Governmental Employees Tort Immunity Act with respect to claims by third parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dateset forth opposite his/her signature below.

CITY OF WHEATON, ILLINOIS

By: Philip J. Suess

Date: 3/22/2022

Its: Mayor

Attest: Andrea Rose dale

Its: City Clerk

WHEATON PARK DISTRICT

By: [Signature]
President, Board of Park Commissioners

Date: 3/16/22

Attest: [Signature]
Secretary, Board of Park Commissioners

EXHIBIT A

Depiction of Licensed Premises

MEMORIAL PARK

Areas blacked out are not to be accessed by the Wheaton Municipal Band during use of Memorial Park Bandshell.

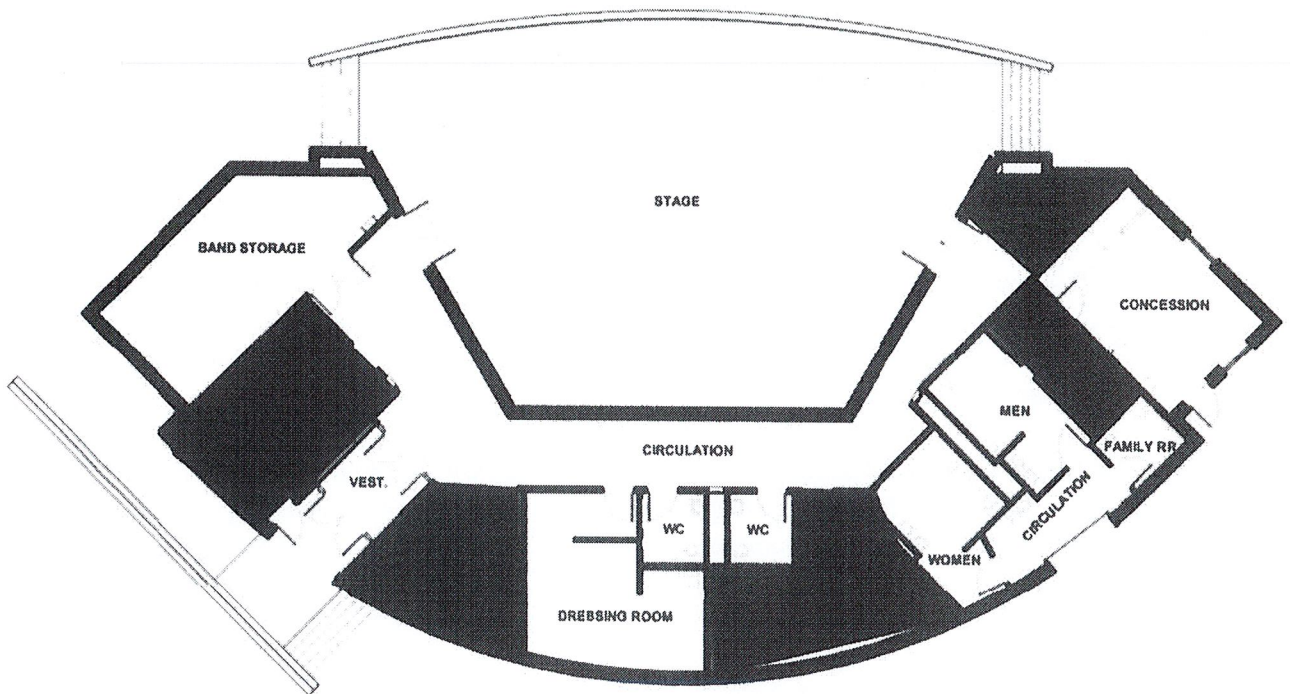


EXHIBIT B



Memorial Park Bandshell Use Guidelines for Wheaton Municipal Band

- A) WMB is authorized to sell merchandise at each performance. If the WMB wishes to sell pre-packaged food and beverages, they must provide the Wheaton Park District with a written plan for managing concession sales in compliance with DuPage County Health Department Guidelines.
- B) PARK DISTRICT agrees to provide a private and secure storage area for the Band no earlier than the Monday following the Cream of Wheaton event (typically the first Monday of June). Subject to the approval of the Wheaton Park District, the WMB may continue to utilize this area for the storage of certain equipment beyond the termination date of this License Agreement.
- C) WMB is authorized to place, at their own cost, one (1) refrigerator within the WMB storage area referenced in item B with an electrical pull not to exceed 20 amps. Said refrigerator must be emptied, cleaned, and unplugged within seven (7) days of the last Performance date listed in this License Agreement.
- D) PARK DISTRICT will provide a door access code for the WMB storage area referenced in item B. Building keys and alarm codes will not be provided. With advance notice and subject to the approval of the Wheaton Park District, WMB may secure access to the Licensed Premises on days and times outside of those listed in the License Agreement.
- E) WMB is authorized access to the following areas within the Building: WMB storage room, backstage hallway, backstage restrooms, stage, one (1) dressing room (Dressing Room A), and the concession area for use by the Friends of the Municipal Band. Subject to the approval of the Wheaton Park District, the second dressing room may be made available during performances involving a guest conductor.
- F) WMB and the Friends of the Municipal Band, may occupy the concession sales area for pre-packaged food and beverage services on performance nights as listed in this License Agreement. Access of the concession area by the WMB and the Friends of the Municipal Band begins at 5:00 pm on performance nights. WMB concession supplies are to be stored within the storage area and refrigerator referenced in items B and C. WMB will not have access to refrigeration and storage areas within the concession area on performance nights. The Concession area must be cleaned and returned to its original state after each use including washing and sanitizing all used surface and glass areas, removal of garbage from the room, and supplies and equipment removal.

- G) The Friends of the Wheaton Municipal Band must also provide a Certificate of Insurance naming the Wheaton Park District as additionally insured at the limits described in Article 2 of this License Agreement related to their occupancy and use of the concession stand as described in item F.
- H) WMB may not alter the dressing rooms or use them for storage beyond performance nights.
- I) PARK DISTRICT will provide a minimum one (1) Park District facility attendant per rehearsal night and one (1) Park District facility attendant per performance night as described in the License Agreement. The facility attendant will perform the following duties: provide access to the facility, unlock and maintain the backstage and public restrooms, facilitate access required by the WMB and Friends of the Band, garbage removal, general site maintenance and assistance and to support the electrical, sound, and lighting access required by the WMB.
- J) PARK DISTRICT will provide WMB logo and branding guidelines for use on promotional and marketing materials. The Park District Director of Marketing will be given a minimum of five (5) business days to approve all promotional materials, websites, or ticketing that will contain the Park District brand, logo, or identifying information as owners of the property.

EXHIBIT C

Dates of Times for Access and Use of Licensed Premises

2022 Performance & Practice Schedule

Date	Time+	Specific Performance Use
Sunday May 29	11 a.m. to 6:30 p.m.	Percussion auditions in band room
Wednesday, June 8	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, June 9	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, June 15	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, June 16	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, June 22	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, June 23	5 p.m. to 10:45p.m.	Concert / Performance
Wednesday, June 29	5 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, June 30	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, July 6	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, July 7	5 p.m. to 10:45 p.m.	Concert / Performance
Saturday, July 9	Noon to 1 p.m.; 10:15 p.m. to 11:15 p.m.	Percussion Load Out/In
Wednesday, July 13	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, July 14	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, July 20	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, July 21	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, July 27	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, July 28	5 p.m. to 10:45 p.m.	Concert / Performance
Wednesday, August 3	6 p.m. to 10:45 p.m.	Rehearsal / Practice
Thursday, August 4	5 p.m. to 10:45 p.m.	Concert / Performance

+ Based on the City of Wheaton Ordinance No. O-2019-21 section C. CESSATION OF AMPLIFIED SOUND: All amplified sound shall cease at 9:30 p.m. On rehearsal evenings non-amplified sound is permitted until 10:15 p.m.