



CITADELPHIA CINCH NEGOTIATION

Confidential Information for the Citadelphia Arts Consortium Clyde Coburn, VP and General Counsel

You are the VP and General Counsel for Citadelphia Arts Consortium, an umbrella organization for fine arts performance groups in Citadelphia. The CEO sets the long-term vision, works with board members, oversees fundraising, and connects with Citadelphia officials. You are responsible for negotiating contracts for constructing, maintaining, and renovating fine arts properties and for all H.R. matters, including guest conductors and other contributors to performance excellence. Generally, a member arts organization identifies the “talent” they’d like to hire – as an employee or for single or series gigs – and your job is to make a contract happen, without undue financial stress on the organization.

After seven years in this position, you recognize the importance of knowing future program priorities and the anticipated talent needs of each member organization. By learning of opportunities via national and international arts grapevines, you can bring the very best to Citadelphia. The musical fine arts and arts management worlds are relatively small; major players mostly attend the same conferences and read the same blogs, where they discuss upcoming performance plans and aspirations. This makes your grapevine pretty efficient. More than once, you’ve picked up news of a piano soloist, violin competition winner, or baritone looking to make a move or take a gig. Awareness of short and long-term program plans and the talent needs of your member organizations enables you to play matchmaker.

You’ve also discovered that some high-level performers have “cross-over” talent. The classical pianist may also be an accomplished jazz player. Perhaps the Consortium can foster some efficiencies when its ballet plans to perform Gershwin jazz and its symphony wants to schedule a piano concerto in the same season. Or, if you know that the Citadelphia Opera’s dialect-drama coach will be on sabbatical for two years, you can keep your ears open for a visitor. That’s why you keep in regular touch with leadership in each Consortium member organization.

Composition of the Current Challenge

Speaking of immediate initiatives, the Citadelphia Symphony Orchestra (CSO) Music Director, Marty Maestro, recently asked you to negotiate the commission for a symphonic composition by Canadian composer Sandy Alder, a longtime Professor and Chair of a Music Composition in Canada’s most renowned university music faculty. The piece would be performed several times during the opening weekend of the CSO’s bicentennial season, two years from now. If possible, it would also be adapted (re-orchestrated) for an outdoor pops & fireworks concert at Citadelphia City’s 250th anniversary that same year.

The CSO’s Maestro is emphatic about your reaching an agreement with Alder. Maestro explained that he has long been a fan of Alder’s and knows the spirit of many of Alder’s past



orchestral pieces is exactly right for this piece. His music tends to be uplifting, lively, and melodic, sort of updated Coplandesque, not surprising given that Alder studied with legendary composer Aaron Copland.

Maestro explained Alder's reputation for being easy to work with, reliable, and professional is also tremendously important to him. Maestro was sorely disappointed the last time he commissioned a piece from a flashier big-name composer. The problem with some famous composers is that they think they can write anything they want, no matter what was requested for the commission. While Alder is not a household name among the public, he is well-liked, and his work is well-respected in the classical music world.

When you emailed an inquiry to Professor Alder, he immediately responded that he is represented by Fran Foley at Famous Force, LLP, an agency for performance and creative talent. He gave you Foley's email address.

Issues for Negotiation

1) Timing and process

As is customary, the CSO's Maestro insists that the composer agree to a process that includes an initial consultation for discussion of the desired mood of the piece, and which instrumentalists can deliver spectacular performances in solo sections, if needed. The composer would submit a preliminary "sketch" – something short, just indicating central musical themes. The composer would be open to comments and, based on these, would complete the piece. The composer would be invited to its premier performance. If the composer is not open to making adjustments or if, based on the sketch, the piece is unsuitable or just plain terrible, the orchestra would want the right to terminate the contract (without significant financial cost).

Of course, this composition sketch must be provided well in advance of the concert date – at least nine months and preferably a full year. That is necessary to leave time for finding a replacement if the contract were terminated.

Assuming all goes well, the piece should be fully completed and orchestrated and all instrumentalists' parts finished at least three months before the concert date. Rehearsals would start shortly thereafter.

As is traditional, the composer should be available to come in the week before the concerts – certainly by Wednesday – to help rehearse the orchestra. The composer would attend the concerts, and of course, receive on-stage recognition and applause. While not essential, it's nice if the composer agrees to make a few remarks about the new composition, either on-stage just before the concert at a pre-concert donors' reception, or both.

[For the purposes of this exercise, you need not agree upon precise dates, just on timing in relation to the scheduled concert, which is two years from now.]



2) The piece and the price

The music director has stated his preference for a 15 – 20 minute piece. It should be upbeat, lively, and triumphant, with well-developed brass segments.

Background industry information

You know some composers charge by the finished minute for commission pieces. As a general matter, the price per finished minute varies by the complexity of the piece – a solo, trio, quartet, chamber, or full orchestra composition. Even within the same genre, different composers charge very different prices. For example, the rate for a solo piece might range from \$50 to \$1,000 per finished minute. At the other end of the scale, the price for an orchestral composition might range from \$250 to \$2,000 per finished minute, or even much higher for a more senior, famous composer.

On the lower end of the experience level, some composers charge an hourly rate for the time it takes them to compose a piece. Others, particularly at the higher end, prefer to set a flat fee for a substantial piece. That fee would depend on the composer's fame and time availability and the commissioner's budget constraints (or how wealthy the composer perceives the commissioner or its funder to be). Flat fees might be \$20,000, \$30,000 or \$50,000 or more; there's no real ceiling.

Price, Cost, and Other Considerations for this Commission

You applaud the idea of commissioning a great composer for a big piece to open the CSO's bicentennial season and the citywide celebration. The world and Citadelphia's citizens should know that their classical music scene is second to none and that Citadelphia is a player on the stage of cultural creation.

From a budgetary perspective, you are concerned composer Alder will be too expensive. He is quite senior and well-known. As a professor, he doesn't have unlimited time to work on commissioned pieces, so he may be selective about commissions he accepts. The fact that Alder now has an agent negotiating for him suggests that he'll want top dollar.

Of course, paying less for this commission would be better than paying more, whatever way you get to the number. That's particularly true now, due to some impending much-higher-than-anticipated expenses the orchestra will incur next year. [These circumstances and expenses are explained in the next section.]

You'd be a hero if you could arrange for a fee between \$5,000 and \$10,000. If possible, you would like to limit the CSO's *net* cost for this commission to \$15,000, though you could go up to \$20,000. If Alder's agent demands more than \$20,000, you won't be able to make this work without other expense reductions or additional funding. While you're not sure if Alder can help reduce some upcoming expenses, the potentially good news is that you may be able to secure some extra funding with a little cooperation from Alder.



Extraordinary Upcoming Expenses

While the CSO has been on reasonably sound financial footing of late, it will soon face a serious budgetary squeeze from some large upcoming expenses. Chief among them, and not yet publicly known: the CSO's Maestro recently informed you that he has committed to a position at the Berlin City Opera, beginning eighteen months from now, and he would like to start "guest appearances" there starting next year. (He's still under contract with the CSO and actively planning the bicentennial concert. So it's entirely right for him to commission this piece and work with the composer to bring it about.)

You anticipate that the orchestra players (and perhaps the board) will resist naming a new music director immediately. Instead, they will want to work with a selection of guest conductors who might be candidates for the open position. The music director's chemistry with the orchestra and with the orchestra board is important. Everyone is likely to be happier if they have an opportunity to work together before a new director is chosen.

Unfortunately, a series of guest conductors is an extraordinary expense. A guest conductor typically charges about \$15,000 for a long weekend of concerts and pre-concert rehearsals. Conductors who are "auditioning" might offer a price break, but you estimate that a year of guests will cost the CSO a net \$200,000 *more* than previously budgeted for the music director's salary. Put differently, the music director's salary of about \$350,000 ends up being about \$8,000 per concert weekend, plus consideration for other responsibilities. Having guests will cost much more – an average of \$6,000-\$7,000 per concert weekend more, over 30 or so weekends – about \$200,000.

That's why you want to keep net costs for Alder's commission down. Yes, the piece must be great and the celebration grand, but funds will be tight.

Funding sources

If Alder's agent insists on a fee higher than \$20,000 (and even if he doesn't), you may be able to obtain donor funding for this commission. That would decrease budgetary impact and allow much greater flexibility in the fee amount. But it will require Alder's cooperation in naming the piece.

You understand that composers prefer to title their original compositions. Generally, a commissioning entity will respect a composer's chosen title. However, you just met a wealthy Citadelpia arts donor and longtime CSO patron whose wife, Rose, passed away recently. He told you that a namesake granddaughter was born a few days later. You strongly believe that if the piece's title could include "Rose," you could secure a gift to underwrite it - easily



\$10,000 and perhaps up to \$25,000. This donation would enable you to exceed the \$15,000 - \$20,000 limit. Or, if the fee is lower, the donation might cover it.

Resolving the title issue might be tricky. You know the music director wants the piece to express celebration, strength, triumph – that sort of thing. But perhaps it could be worked out. (“Citadelphia Symphony Rose Up”? Too corny? Titling music is not on your resume.)

Other Financial Terms Related to Delivery of the Commission

Of course, no matter what the commission fee is, you will also have to negotiate other terms for delivery of the commission:

- Cost of a “music copyist” for the separate orchestral parts. A symphony score is not the end of the project. For a piece to be performed, each instrumentalist needs separate sheet music for their instrument’s parts. The composer can be asked to do this (or to hire someone for it), or the commissioning entity can undertake it. While copyist rates vary, a fair estimate is \$2,000 for a substantial orchestral piece.
- Who will cover the cost of the composer’s visit to Citadelphia for an initial consultation? Airfare? Hotel? What’s reasonable? Is it necessary? Could it be done via Zoom? If you assume \$500 in airfare and just one night’s stay, that will cost about \$1,000, including a fancy dinner, etc.
- Who will cover the cost of the composer’s travel to the pre-concert rehearsal and premiere performance? Airfare? Hotel? What’s a reasonable budget for that? You estimate these at \$3,000, including wining and dining.

2) Ownership of the piece and royalty rights.

The general rule is that the composer or the composer’s publisher owns the copyright for a commissioned piece. The commissioner typically has the right to first performance and to perform it subsequently without charge for a specified period, generally not more than 5 years. Outside of that, the composer may decide only to let selected entities perform it, generally for a price, or to publish it for broader use, subject to royalty fees. Of course, when a composer just writes a new piece, one that was not commissioned, the composer receives royalties each time it is played – in live public performances or recordings.

One important issue to negotiate with Alder’s agent is royalty rights on recordings of the CSO’s first performance. The CSO is planning a live video recording of this concert, including its performance of Alder’s piece, and would like to be able to sell that – in CD or streaming format - without paying royalties on the recordings to Alder. (Alder doesn’t know this, but it shouldn’t be surprising).



You see some room for creativity, outside the usual terms for other future performances and royalties. Particularly if Alder's agent insists on a high up-front commission, you might push the envelope past the common five-year period. You'd like to negotiate for CSO's right to play it in perpetuity, without charge. And, if possible, you would like that right to extend to all Citadelphia Arts Consortium organizations.

Although unorthodox, another option might be for the CSO to take a share of Alder's or his publisher's royalties on *other* public performances and recordings. Even if a shared royalty arrangement wouldn't yield much revenue in the long run, that might also help justify paying a relatively high commission, if anyone on your board questions it.

Of course, no matter who receives royalties, Professor Alder would always be credited as the composer, in any performance or recording.

3) Termination

As discussed above under "Timing and process," it's important that the orchestra maintain a right to terminate the contract. Because one never knows how the future will unfold, you generally ask for a right to terminate on 30 days' notice, with little or no cancellation penalty, unless the composer demonstrates substantial completion of work on the project.

Termination must be permitted after submission of the composition "sketch piece" – if the music director finds the piece entirely unsuitable or if the composer is unwilling to cooperate on requested adjustments. There should also be a right to termination without penalty if the composer fails to meet negotiated deadlines for the submission of the finished piece. [In "real life," you could spend quite a bit of time on the particulars – a schedule, graduated payments, specific penalties, and the like. For this exercise, while discussion of these issues is fine, we suggest that you not be too concerned about specifics here.]

The bottom line on bargaining range and essential terms

There's \$15,000 - \$20,000 in the budget for this commission but, if necessary, you could increase that by the amount of any donation to underwrite the piece. So, if the donation were \$10,000, then Citadelphia could theoretically pay \$30,000, and so on. Or you could increase the total commission if there were a way to take a sizeable bite out of other anticipated expenses.

Of course, the best of all worlds would be negotiating a fee in a much lower range with Alder's agent, with a donation to fully cover it. That would free up the budgeted dollars and you could put them toward other anticipated costs. And, though you can't count on it, royalty rights could bring in some future revenue.



Dollars aside, it's important that the contract set forth a sensible collaborative process and timing for production of the commissioned piece, including a preliminary sketch phase, and provisions for reasonable termination.

Next steps

Speaking of conducting, your next step is to negotiate via email, with Fran Foley, Professor Alder's agent at Famous Force, LLP. To start it off, you already sent the following email to Fran Foley:

From: Clyde Coburn, VP Citadelphia Arts Consortium
To: Fran Foley, Famous Force
Subject: Professor Alder – Possible Orchestral Commission

We understand from Professor Sandy Alder that you represent him in all non-university, professional music work. We would like to discuss the possibility of Professor Alder composing an orchestral piece in honor of Citadelphia Symphony Orchestra's bicentennial two years from now. We would want the piece to be adaptable for performance later that year at a Pops concert in honor of Citadelphia city's 250th-anniversary celebration. Please let me know if Professor Alder would be interested, what his commission fees would be when he would be able to produce a piece, and what other interests he might have.

I look forward to your response.

Respectfully,

Clyde Coburn

VP & General Counsel

Citadelphia Arts Consortium

If you are unable to reach a deal with Alder, you will have to tell Marty Maestro to come up with a plan B, or another composer candidate. He will not be happy. In terms of plan B, you had thought of suggesting a competition with a prize (say \$5,000) for composition students in Citadelphia's university music departments. The orchestra would play the winning composition. That would celebrate Citadelphia, but the piece itself might not be great. And it would involve an awful lot of administrative work to pull it off - naming judges, advertising, all of that. You suspect Marty Maestro will not like this idea because it would be, in essence, a wild card for a major portion of a big concert. On the other hand, one option - especially if Alder is very expensive - might be to have Alder's commissioned composition be in the 12-15 minute range and run a student competition for a much shorter piece, with a \$1,000 or \$2,000 prize.

Prepare to negotiate with the composer's agent.