

AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of JUNE, 2006, between the City of Naperville, an Illinois municipal corporation, with offices located at 400 South Eagle Street, Naperville, Illinois, 60540 (hereinafter "CITY") and North Central College, an Illinois not-for-profit corporation, with offices located at 30 North Brainard Street, Naperville, Illinois 60540 (hereinafter "COLLEGE").

RECITALS

WHEREAS, the COLLEGE intends to construct an approximately 58,000 square foot Fine Arts Center (hereinafter "Fine Arts Center") at the northwest corner of Chicago Avenue and Ellsworth Street. The proposed facility is intended for performances open to the public and student instruction, and will consist of a 605-seat concert hall, 150-seat "black box" theater, rehearsal spaces/classrooms, faculty offices and art gallery; and

WHEREAS, the CITY has determined that the current variety of on-street parking, college parking lots, and private parking lots will not be sufficient to accommodate the parking demands generated by the Fine Arts Center; and

WHEREAS, the COLLEGE has projected its parking demand based on three levels of events as delineated in Table 1 attached hereto; and

WHEREAS, the CITY has relied on the COLLEGE'S projections of its parking demand; and

WHEREAS, the CITY continues to strive to provide convenient parking for the growing demand in the downtown area, and

WHEREAS, due to the close proximity of the CITY'S Central Parking Facility to the downtown business area and the Fine Arts Center, the unmet parking demand for the Fine Arts

Center will reduce the downtown parking supply at the Central Parking Facility for certain events; and

WHEREAS, the CITY and the COLLEGE recognize the necessity of adding parking to the downtown parking supply; and

WHEREAS, the COLLEGE agrees to financially contribute to the construction of additional parking within the downtown area due to the impact of the Fine Arts Center.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. RECITALS INCORPORATED.

1.1. The recitals set forth above are incorporated herein as though fully set forth.

2. DEFINITIONS.

2.1. Existing COLLEGE Parking Spaces shall mean and refer to those 118 total parking spaces that are expected to support the parking demand generated by Events at the Fine Arts Center and located as follows:

- a. 15 spaces at the Fine Arts Center parking lot
- b. 44 spaces at the parking lot located at the northwest corner of Jefferson Avenue and Ellsworth Street, 111 East Jefferson Avenue and currently the site of the Kuhn, Mitchell, Moss law office.
- c. 59 on-street parking spaces located on Ellsworth Street, Jefferson Avenue, Brainard Street and Van Buren Avenue north and east of the Fine Arts Center.

2.2. Level I Events are defined as North Central College Student/Faculty, Ensemble Concerts and rehearsals with a number of anticipated annual occurrences of 50 and a projected parking demand of 90-120 spaces per occurrence.

2.3. Level II Events are defined as any North Central College Artists and Local/Regional Non-Profit Presentations with a number of anticipated annual occurrences of 86 and a projected parking demand of 150-200 spaces per occurrence.

2.4. Level III Events are defined as Commercial Concerts/Performances/Presentations with a number of anticipated annual occurrences of 10 and a projected parking demand of 270-302 spaces per occurrence.

3. ANNUAL FINANCIAL CONTRIBUTION BY THE COLLEGE TO THE CITY.

3.1. The COLLEGE's financial contributions provided in this Section will commence on the date of the first performance at the Fine Arts Center.

3.2. The COLLEGE shall pay to the CITY the following sums as its contribution to providing parking within the downtown area:

- a. For all Events for which there is paid admission, \$ 50 per ticket, except for faculty, staff and students.
- b. For any Level II or Level III events ending after 7:00p m at which attendance is greater than 300 persons, regardless of whether it is paid admission, the COLLEGE will pay the CITY a \$.50 per ticket charge for at least 90% of attendees, allowing a maximum credit of 10% for faculty, staff and students attending such events.

3.3. The annual payments to the CITY by the COLLEGE pursuant to Section 3.2 above shall not be less than the following:

- a. In the first two years following the first performance, the COLLEGE shall be obligated to pay a minimum contribution to the CITY of \$6,500.
- b. For each year subsequent to the first two (2) years following the first performance, the COLLEGE shall be obligated to pay a minimum contribution to the CITY of \$13,000

3.4. The COLLEGE shall make said payments prorated in arrears on a quarterly basis with the first payment due on the first day of the calendar quarter following the first performance/presentation at the Fine Arts Center. The COLLEGE shall provide the CITY a report calculating the payments each quarter.

4. EFFECT OF CITY IMPOSED FEE PARKING.

4.1. If the CITY imposes fee parking at the Central Parking Facility (whether the existing facility or reconstructed), the COLLEGE's financial obligations shall cease as of the effective date of such fee imposition.

5. AGREEMENT REVIEW AND RENEGOTIATION.

5.1. Review of Agreement Every Four (4) Years. The parties acknowledge and agree that the terms contained in this Agreement shall be reviewed and subject to revision every four (4) years following the first performance. The review shall be conducted to ensure that the COLLEGE's financial contributions are adequately compensating for the impact of the Fine Arts Center on the downtown parking supply. This review shall include analysis of whether the customers of the Fine Arts Center are utilizing the Existing COLLEGE Parking Spaces. If the parties are unable to reach an agreement at any such review period, the parties shall submit the matter to binding arbitration in accordance with Section 9 herein.

5.2. Upon thirty (30) days written notice by either party, this Agreement may be reviewed if the parking supply is impacted negatively by the redevelopment of private parking lots, reconfiguration of on-street parking spaces, or if the supply is impacted positively in the event that the COLLEGE adds parking near the Fine Arts Center.

5.3. It is understood and agreed that if the COLLEGE exceeds the number of Level III Events or maximum projected parking demand in any year, the parties shall renegotiate the terms of this Agreement. If the parties are unable to reach agreement during said renegotiation, the parties shall submit the matter to binding arbitration in accordance with Section 9 herein.

6. CITY RIGHT TO AUDIT AND ACCESS TO RECORDS.

6.1. The CITY shall have the right to conduct an annual audit of the ticket sales of the COLLEGE as well as other documents pertinent to this Agreement. Upon request by the CITY, the COLLEGE shall, within a reasonable period of time, provide the CITY with full access to relevant records in order to perform such an audit. During the review process provided in Section 5.1, the COLLEGE and the CITY will cooperate with each other and the parties will freely share relevant documents and information with each other in order to provide for meaningful agreement review discussions.

7. TERM.

7.1. The term of this Agreement shall commence on the date of the first performance/presentation at the Fine Arts Center and shall continue for twenty years thereafter.

8. OPTION TO RENEW.

8.1. The parties agree that the CITY shall have an option to renew this agreement at the expiration of 20 years following the first performance for an additional twenty year term. The CITY shall notify the COLLEGE in writing of its intent to exercise its option to renew at least 180 days prior to the expiration of the term. The CITY'S exercise of the option to renew will be based upon an analysis of whether the COLLEGE's financial contributions during the term adequately compensated for the impact of the Fine Arts Center on the downtown parking supply, including whether the customers of the Fine Arts Center are utilizing the Existing COLLEGE Parking Spaces. If the parties are unable to reach an agreement for renewal, the parties shall submit the matter to binding arbitration in accordance with Section 9 herein.

9. BINDING ARBITRATION.

9.1. The exclusive remedy for disputes arising out of Sections 5 and 8 of this Agreement is binding arbitration in Naperville, Illinois. Either party may notify the other party in writing of its intention to pursue arbitration as the remedy for a dispute. The parties shall attempt to agree upon an arbitrator within five (5) business days after receipt of the notice of intent to pursue arbitration. If the parties are unable to agree upon an arbitrator within said five (5) day period, each party shall submit three names of potential arbitrators, each of which must be on the list of certified approved mediators kept by the Supervising Judge of the Eighteenth Judicial Circuit pursuant to Local Court Rule 14.06. The parties shall determine by the toss of a coin who shall strike first, then alternately strike names one at a time until one arbitrator is selected. If the arbitrator selected is unavailable for hearing for more than three (3) months a new arbitrator will be selected from the current panel if mutually agreed or the parties will create a new panel through submission of three names each from the list of certified approved mediators referenced above.

9.2. The fees and expenses of the arbitrator and the cost of a written transcript, if any, shall be divided equally between the CITY and the COLLEGE, provided, however, that each party shall be responsible for compensating its own representative, attorney and witnesses.

9.3. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law.

10. NOTICE

10.1. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, or by personal service, to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

City Manager
City of Naperville
400 S. Eagle St.
P.O. Box 3020
Naperville, IL 60566-7020

Vice President of Business Affairs
North Central College
30 North Branard Street
Naperville, IL 60540

10.2. Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

11. GOVERNING LAW.

11.1. This Agreement has been made in accordance with, and its interpretation and enforcement shall be governed by, the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

12. NON-ASSIGNMENT.

12.1. This Agreement shall not be assigned by either party hereto

13. MODIFICATION AND AMENDMENT.

13.1. This Agreement may be modified or amended from time to time by the CITY and the COLLEGE, provided, however, that no such amendment or modification shall be effective unless reduced to writing, duly authorized, and signed by the City Manager and either the President or a Vice President of the COLLEGE.

14. SEVERABILITY.

14.1. Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein

15. ENTIRE AGREEMENT.

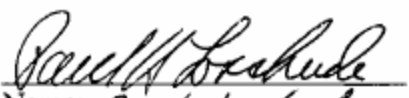
15.1. This Agreement sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement, including exhibits, if any.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives on the day and date first written above

CITY OF NAPERVILLE

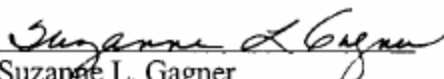
NORTH CENTRAL COLLEGE

By: 
Peter F. Burchard
City Manager

By: 
Name: Paul H. Loschelder
Title: V.P. Business Affairs

ATTEST

ATTEST

By: 
Suzanne L. Gagner
City Clerk


By: 
Name: Alice H. Stonebraker
Title: Admin Asst. to V.P.
Business Affairs

TABLE 1
Parking Demand

Activity	Activity Level	Number of Evening Occurrences Each Year	Required Parking
NCC Student/Faculty Ensemble Concerts and Rehearsals	I	50	90-120
NCC Touring Artists and Local/Regional Non-Profit Presentations	II	86	150-200
Commercial Concerts	III	10	270-302