

PARKING AGREEMENT

THIS AGREEMENT is made as of the 25th day of February, 2014, by and between the following parties:

CITY OF ROCHESTER, a municipal corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "the City");

EASTMAN SCHOOL OF MUSIC, with its principal place of business at 26 Gibbs St. Rochester, New York 14604 (hereinafter "ESM").

RECITALS:

WHEREAS, ESM is located at 26 Gibbs St. Rochester, New York 14604 (the "Property"); and

WHEREAS, ESM has students and staff who desire parking in the area near the Property; and

WHEREAS, the Cultural Center Commission is the owner of a parking garage located at 475 E. Main Street, Rochester, New York, known as the East End Parking Garage Site (the "EEPG"); and

WHEREAS, the Cultural Center Commission pursuant to Resolution No. 2 of 2013 agreed to a rate structure ("Rate Structure") for ESM students and staff parking in the EEPG; and

WHEREAS, the Cultural Center Commission will be transferring the EEPG to the City provided the City agrees to the Rate Structure; and

WHEREAS, the City has agreed to the Rate Structure as a condition to accepting title to the EEPG; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions contained herein, the City and the ESM agree as follows:

SECTION 1. MONTHLY CHARGES:

A. ESM STUDENTS

ESM students shall pay the following monthly fees for student parking:

August 1, 2013	\$41.00
April 1, 2015	\$42.25
April 1, 2017	\$43.50

April 1, 2019	\$44.80
April 1, 2021	\$46.15
April 1, 2023	\$47.50
April 1, 2025	\$48.95
April 1, 2027	\$50.40

B. ESM STAFF PARKING RATES

ESM staff shall pay the following monthly fees for parking:

August 1, 2013	\$66.78
April 1, 2015	\$68.85
April 1, 2017	\$70.85
April 1, 2019	\$72.97
April 1, 2021	\$75.16
April 1, 2023	\$77.41
April 1, 2025	\$79.74
April 1, 2027	\$82.13

The rates shall remain constant through each two year term.

Once the City takes title to the EEPG, it will implement the same Rate Schedule as set forth above.

SECTION 2. PARKING PASS FEE

Every ESM student and/or staff parking in the EEPG must pay a fee of fifteen Dollars (\$15) for a parking pass. If a replacement parking pass is needed, the ESM student and/or staff will be charged the replacement parking pass fee charged to the general public.

SECTION 3. PAYMENT

ESM students shall pay their monthly parking fees directly to the EEPG attendant or to the City's Bureau of Parking by mail to: Bureau of Parking at 80 Commercial Street, Rochester, NY 14614. ESM shall have no financial responsibility for nonpayment of any monthly parking fees by ESM students.

The City will directly bill the ESM for faculty and staff parking net of the 111 complimentary parking spots through October 2019 as indicated in the parking garage agreement dated October 13, 1989.

SECTION 4. VERIFICATION OF STATUS

A. Students

When registering with the City's Bureau of Parking to obtain a parking pass for the EEPG, each ESM student shall verify their status as an ESM student by supplying a copy of their ESM school identification card. At the beginning of each semester thereafter, the ESM student will submit a copy of their then current ESM school identification card with their monthly payment.

B. STAFF

The ESM will coordinate the registration with the City's Bureau of Parking to obtain a parking pass for the EEPG. The registration form will be completed by an ESM staff and faculty member and reviewed by Eastman. This review includes a confirmation of employment. ESM will forward the registration form to EEPG. . On April 1st of each year, the ESM will submit an updated staff and faculty listing, verifying employment.

SECTION 5. TERM

The term of this Agreement shall commence as of August 1, 2013 and shall terminate at July 31, 2029, unless sooner terminated as provided below. Upon termination of this Agreement, ESM students and staff shall pay the rate charged to the general public unless the parties enter into another Rate Schedule Agreement in the future.

SECTION 6. EARLY TERMINATION

A. "UNUSABLE FOR PARKING"

The City may permanently close all or a substantial portion of the EEPG prior to the termination of this Agreement for safety reasons, if determined, in its sole and absolute discretion that safety reasons exist or if the City of Rochester in its governmental capacity orders such closure. Such closure shall also be deemed a determination that the EEPG is "unusable for parking" as this phrase is used in this Agreement.

In the event that the EEPG becomes unusable for parking, this Agreement shall terminate within thirty (30) days written notice by the City to ESM.

B. CONDEMNATION

In the event that the EEPG, or any part of thereof shall be taken in condemnation proceeding or by exercise of any right of eminent domain, the City shall be entitled to the full amount of any condemnation award regarding

its fee interest in the EEPG. ESM shall not be entitled to any portion of any condemnation award for fee interest because of this Agreement. In no event shall this Agreement be termed, deemed or considered a leasehold interest.

In the event that the EEPG or any part of it is taken in condemnation, this Agreement shall terminate within thirty (30) days written notice by the City to ESM.

C. DESTRUCTION

If, during the term of this Agreement, the EEPG shall be destroyed or damaged in whole or in part by fire or other cause, the City shall give ESM immediate notice thereof. The City shall give ESM written notice within one hundred twenty (120) days of such occurrence whether or not the damage will be repaired. No person shall be required to pay monthly parking fees for any period during which space is unavailable as a result of destruction.

In the event that the damage to the EEPG is not repaired, this Agreement shall terminate within thirty (30) days written notice by the City to ESM.

SECTION 7. ESM DEFAULT

In the event that ESM defaults in or violates the terms and provisions of this Agreement, and fails to end, cure or remedy such default or violation within thirty (30) days of receipt of a written notice from the City specifying the default or violation, the City may terminate this Agreement upon thirty (30) days written notice by the City to ESM.

SECTION 8. SALE OF THE EEPG

If the City sells the EEPG and the new owner chooses not to assume this Agreement, the Agreement shall terminate within thirty (30) days of receipt of a written notice from the City to ESM of the sale.

SECTION 9. LEGAL REQUIREMENTS

ESM students' and staff's use of the EEPG must comply with all applicable law, orders, regulations, rules, ordinances, and requirements of the Federal, State, County and local Governments and any published rules and requirements issued by the City's Bureau of Parking (collectively the "Legal Requirements").

Failure to comply with the Legal Requirements may lead to the City, in its sole and absolute discretion, revoking the applicable student and/or staff's parking pass for a period of time or permanently. Notice of any revocation shall be sent to pass holders directly as well as to ESM.

If more than twelve (12) ESM students and staff fail to comply with the Legal Requirements in any year, the City may terminate this Agreement within thirty (30) days written notice by the City to ESM.

SECTION 10. OPERATING AGREEMENT

The parties acknowledge that it is the normal practice of the City to retain an independent operator to manage and operate the EEPG, pursuant to an operating agreement. The terms of any such operating agreement executed subsequent to the execution of this Agreement shall be consistent with the terms of this Agreement.

SECTION 11. INDEMNIFICATION

The City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the EEPG, or to any property belonging to ESM or any other person which may arise from any other cause whatsoever, unless the foregoing results from the fraud, misconduct, or an intentional or negligent act or omission of the City or its contractors.

SECTION 12. NOTICES

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and either (a) personally delivered (including delivery by an overnight express delivery service if a receipt is obtained) or (b) mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

CITY: Director of Finance
City of Rochester
City Hall, Room 108A
30 Church Street
Rochester, New York 14614

WITH A COPY TO: Corporation Counsel
City of Rochester – Department of Law
City Hall, Room 400A
30 Church Street
Rochester, New York 14614

TO ESM: Eastman School of Music
26 Gibbs St.
Rochester, New York 14604

or to such other address as the City and/or ESM may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

SECTION 13. INDEPENDENT CONTRACTORS

Nothing contained in this Agreement shall be construed to make the City and ESM partners or joint ventures or to render either of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

SECTION 14. WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

SECTION 15. REMEDIES CUMULATIVE.

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

SECTION 16. MODIFICATIONS.

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party.

SECTION 17. PARTIAL INVALIDITY.

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 18. FURTHER ACTS.

Each party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, documents and instruments as may reasonably be required by the other party in order to carry out fully and effectuate the transactions herein contemplated.

SECTION 19. SECTION HEADINGS

The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. Unless otherwise set forth, references in this Agreement to sections and subsections shall mean the sections and subsections of this Agreement.

SECTION 20. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 21. ENTIRE CONTRACT

This Agreement embodies the entire agreement between the parties hereto and may be amended only by a document in writing signed by the parties hereto and properly acknowledged.

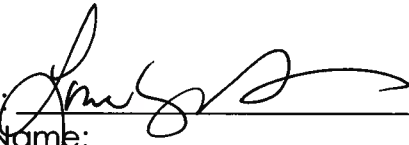
SECTION 22. APPLICABLE LAW

This agreement shall be governed by the laws of the State of New York. Any action or proceeding regarding this agreement shall be brought in the Supreme Court of New York State, in the Seventh Judicial District.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF ROCHESTER

By: 
Name: _____
Title: _____

EASTMAN SCHOOL OF MUSIC

By: 
Name: Michele M. GIBSON
Title: Sr Associate Dean

1/21/2014

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

On the 25th day of February in the year 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Lovely A. Warren, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Angela Sorber
Notary Public

ANGELA SORBER
Notary Public, State of New York
Monroe County
Registration # 01SO4888920
Commission Expires April 6, 2015

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On the 21 day of January in the year ²⁰¹⁴~~2013~~ before me, the undersigned, a Notary Public in and for said State, personally appeared Michele M. Gibson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Diane J. Germain
Notary Public

Diane J. Germain
Notary Public in the State of New York
Monroe County
Commission Expires December 27, 2017
Registration #01GE6138889