

September 29, 2015

# Appendix A

Memorandum of Understanding  
with respect to Voluntary Payments  
to be paid by:

Brown University  
Rhode Island School of Design  
Providence College  
Johnson & Wales University

June 5, 2003

Exhibit C

MEMORANDUM OF UNDERSTANDING  
with respect to  
VOLUNTARY PAYMENTS  
to be paid to the  
CITY OF PROVIDENCE, RHODE ISLAND  
by  
BROWN UNIVERSITY  
and  
RHODE ISLAND SCHOOL OF DESIGN  
and  
PROVIDENCE COLLEGE  
and  
JOHNSON & WALES UNIVERSITY  
Dated as of June 5, 2003

**PARTIES:**

**The City:** The City of Providence, Rhode Island is a municipal corporation, located in The State of Rhode Island, having a mailing address of Department of Administration, City Hall, 25 Dorrance Street, Providence, Rhode Island 02903.

**Brown:** Brown University is an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education established in 1764 by colonial charter and existing pursuant to the law of the State of Rhode Island, having a mailing address of University Hall, One Prospect Street, Providence, Rhode Island 02912.

**RISD:** Rhode Island School of Design is an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education established by charter and existing pursuant to the law of the State of Rhode Island; having a mailing address of Two College Street, Providence, Rhode Island 02903.

**PC:** Providence College is an independent, private, non-profit, tax-exempt, Rhode Island, Roman Catholic religious institution of higher education, established by charter and existing pursuant to the law of the State of Rhode Island, having a mailing address of 549 River Avenue, Providence, Rhode Island 02918.

**J&W:** Johnson & Wales University is an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education, established by charter and existing pursuant to the law of the State of Rhode Island, having a mailing address of 8 Abbott Park Place, Providence, Rhode Island 02903.

**The Institutions:** Collectively, Brown, RISD, PC, and J&W.

**INTRODUCTION:**



This Memorandum of Understanding ("Memorandum") between the four Institutions and the City sets forth the understandings of the parties with respect to financial assistance to be provided to the City by the Institutions.

By entering into this Memorandum, the Institutions acknowledge the importance of the relationship between the Institutions and the City and, therefore, agree to make additional voluntary contributions to the City. The parties recognize that the Institutions, like other non-profit, religious, and charitable organizations, provide substantial economic and non-economic benefits to the City and the community.

#### **THE UNDERSTANDING OF THE PARTIES:**

While this Memorandum is in effect, each of the Institutions will make voluntary contributions to the City as described in this Memorandum.

##### **1.0 Voluntary Payments.**

1.1 Voluntary Payments. Each of the Institutions will volunteer payments to the City which will be comprised of the "Voluntary Payment" described in Section 1.1.1, the "Augmented Voluntary Payment" described in Section 1.1.2, and the "Transition Payments" described in Section 2.2.

1.1.1 Voluntary Payment. The Voluntary Payment will be paid in equal semiannual payments on December 1 and May 1 beginning on December 1, 2003 and the Voluntary Payment will cease and will be zero after May 1, 2023. The amount of the "Voluntary Payment" for each of the Institutions for each of the twenty applicable fiscal years of the City is listed in the schedule in Exhibit A.

1.1.2 Augmented Voluntary Payment. The Augmented Voluntary Payment also will be paid in equal semiannual payments on December 1 and the following May 1 beginning on December 1, 2003. The Augmented Voluntary Payment will cease and will be zero after May 1, 2007. The amount of the "Augmented Voluntary Payment," for each of the Institutions for each of the four applicable fiscal years, is listed in the schedule in Exhibit B.

1.1.3 New Properties. The Institutions have recently acquired, or are in the process of acquiring, the properties listed in the schedule in Exhibit B (the "New Properties") and have volunteered the Augmented Voluntary Payments in lieu of any Transition Payments relating to the New Properties. If, while this Memorandum is in effect, a full or partial payment of real estate taxes is paid to the City with respect to a New Property (other than with respect to taxes being paid by J&W for the New Properties owned by J&W, which tax payments are not covered by this Memorandum), the Institution shall be entitled to use such payment as an offset to reduce the amount of the Augmented Voluntary Payment. In addition, if an Institution should for any reason fail to complete the acquisition transaction for a New Property in whole or in part, then no Augmented Voluntary Payment will be made with respect to such New Property.



(or the Augmented Voluntary Payment will be reduced pro rata if only a portion of such New Property is acquired) and any previously paid Augmented Voluntary Payments relating to such New Property (or portion thereof not acquired) will be credited toward other voluntary payments to be made by that Institution hereunder.

**2.0 Transition Arrangements for Future Acquisitions.**

**2.1 Acquisition Parcels.** If, at any time while this Memorandum is in effect, any Institution acquires a parcel of real estate in the City (other than a New Property) that is subject to real estate taxes, but will as a result of such acquisition become tax-exempt, then each such parcel shall be deemed to be a "Transition Parcel". Each Institution agrees to notify the City of its future acquisition of any parcel of real estate in the City to the same extent that other non-profit tax-exempt entities are required to provide notice of acquisition of property to the City pursuant to Rhode Island law or pursuant to any City ordinance that is uniformly applied to all non-profit, tax-exempt entities.

**2.2 Transition Payments.** After a Transition Parcel becomes exempt from real estate taxes, the Institution will contribute "Transition Payments" according to the Transition Payment Schedule listed below while this Memorandum is in effect. These payments are referred to as "Transition Payments" because they are intended to reduce the impact upon the City caused by the acquisition of the Transition Parcel by the Institution. One-half of the Transition Payment for a Transition Parcel will be paid on May 1 and one-half will be paid on December 1 of the applicable Calendar Years following the assessment date as of when the Transition Parcel becomes a tax-exempt parcel.

**Transition Payment Schedule for a Transition Parcel (or portion thereof)**

<u>Calendar Year</u>	<u>Amount of Transition Payment</u>
1. Initial Year	100% of Initial Transition Payment
2. Second Year	100% of Initial Transition Payment
3. Third Year	100% of Initial Transition Payment
4. Fourth Year	100% of Initial Transition Payment
5. Fifth Year	100% of Initial Transition Payment
6. Sixth Year	66.7% of Initial Transition Payment
7. Seventh Year	66.7% of Initial Transition Payment
8. Eighth Year	66.7% of Initial Transition Payment
9. Ninth Year	66.7% of Initial Transition Payment
10. Tenth Year	66.7% of Initial Transition Payment
11. Eleventh Year	33.3% of Initial Transition Payment
12. Twelfth Year	33.3% of Initial Transition Payment
13. Thirteenth Year	33.3% of Initial Transition Payment
14. Fourteenth Year	33.3% of Initial Transition Payment
15. Fifteenth Year	33.3% of Initial Transition Payment



**2.3 Amount of Initial Transition Payment.** The amount of the "Initial Transition Payment" for an exempted Transition Parcel shall be equal to the real estate taxes that were payable (after applicable abatements or any appeals that were pending when the Transition Parcel was acquired by the Institution or as otherwise legally permitted) with respect to such exempted Transition Parcel with respect to the Tax Year in which the Institution acquired the Transition Parcel. If such Transition Parcel should thereafter cease for any reason to be tax-exempt, then Transition Payments with respect to that Transition Parcel will be suspended, so long as the Transition Parcel remains taxable. If such Transition Parcel returns to tax-exempt status while this Memorandum is in effect, the Transition Payments will resume at the same point in the schedule that they were suspended. *For clarity, in no event will a Transition Payment and a real estate tax payment be made with respect to the same Transition Parcel for any one calendar year. For example, if the 6<sup>th</sup> Transition Payment is made, and the Transition Parcel becomes taxable for seven years, then when it becomes tax-exempt in the next year, the 7<sup>th</sup> Transition Payment would be made in the amount equal to 66.7% of the Initial Transition Payment.*

### **3.0 Miscellaneous.**

**3.1 Voluntary Undertakings.** All parties agree that this Memorandum is a voluntary undertaking by the Institutions that was entered into even though the properties utilized by the Institutions are exempt from taxation and that the parties expect that such tax exemption will continue into the future. In the event, however, that Other Payments or Taxes (as defined in Section 3.5 of this Memorandum) are imposed upon any of the Institutions or their properties in the future that were not imposed upon the Institutions or their properties as of the date of the execution of this Memorandum, all parties agree that this Memorandum will terminate as to all of the Institutions thirty (30) days after the imposition of such taxes or fees, however any Institution may elect, in writing and at its sole option, within such thirty (30) day period, to continue this Memorandum in effect with regard to that Institution. For the purpose of interpreting this Section 3.1 only, the parties agree that the City may challenge the tax-exempt eligibility of any particular parcel based upon the use of such property utilizing any challenge that is legally available to the City as of the date of the execution of this Memorandum and for the purpose of interpreting this Section 3.1 only, the term Other Taxes or Payments shall exclude any property taxes that could be lawfully assessed or imposed as of the date of this Memorandum upon any Institution, or upon any property of any Institution, based upon the use of such property.

**3.2 Exemption of MOU Properties.** The term "MOU Properties" refers to the New Properties and any Transition Parcels that are covered from time to time by this Memorandum.

**3.3 Tax-Exemption.** The parties agree that nothing in this Memorandum affects, alters, diminishes or increases the legal status, force, or effect of the Institutions' tax exemption. Each Institution represents to the City that it is a charitable corporation and is exempt from Federal income taxes under § 501(c)(3) of the Internal Revenue Code, as amended.



3.4 Change in Laws. The City agrees that, if at any time after the date of this Memorandum, there is a change in state laws resulting in the imposition of a tax whether in the nature of a user fee or otherwise (or there is an obligation in the nature of a real estate tax, regardless of the basis upon which the tax is calculated, or there is an obligation that has the effect of such a tax), with the result in any such event that directly or indirectly any Institution is required to make payments directly or indirectly to the City with respect to all or any portion of the MOU Properties then, while this Memorandum remains in effect, such payment(s) will be credited against and shall reduce the Transition Payment and any other payments that each Institution has volunteered to make under this Memorandum.

3.5 Other Payments or Taxes. If, while this Memorandum is in effect, the City assesses or imposes any taxes, fees, charges, or payments that are not in effect as of the date this Memorandum is executed ("Other Payments or Taxes") in respect to any Institution's tax-exempt properties or that have the effect of a tax on any Institution or on any Institution's currently tax-exempt property or currently tax-exempt operations, then in addition to any other right that such Institution may have, the Institution may contest the making of such Other Payments or Taxes and/or may offset (i.e., deduct) such Other Payments or Taxes from the Transition Payments or other payments volunteered to be made under this Memorandum and pay the Other Payments or Taxes under protest reserving the Institution's rights. The term "Other Payments or Taxes" shall exclude water and sewer use charges and the like, and other fees charged to property, but only if they are uniformly applicable to similar property (regardless of ownership or use) in the City. In no event shall a decision by an Institution to continue this Memorandum in effect despite the imposition of Other Payments or Taxes constitute or be construed as an admission that such Other Payments or Taxes may lawfully be imposed. An Institution reserves the right to challenge the imposition of Other Payments or Taxes regardless of whether it chooses to continue this Memorandum in effect.

3.6 Notice of Intent Not to Pay. Each Institution's voluntary undertaking to make the Voluntary Payments described in this Memorandum has been memorialized in this document to permit the City to take into account such payments when it prepares budgets for the City. With regard to any payments referred to in this Memorandum, it will be each Institution's decision on a yearly basis whether to make such payments due during a fiscal year, and each Institution will give notice to the City of such decision at least fourteen months before the fiscal year in which such payments will not be made.

3.7 General. Captions and section titles are for convenience of reference only, and shall not be used to construe this Memorandum. References to a Section include subsections thereof. The term "including" shall be interpreted to mean "including without limitation," unless the context otherwise expressly specifies. Footnotes and italicized explicative provisions are material parts of this Memorandum as fully as if set forth in the body of this Memorandum in regular typeface. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one instrument. This Memorandum constitutes the entire understanding between the parties and supersedes all



previous discussions, negotiations, and agreements between the City and the Institutions with respect to the understandings herein.

3.8 Duration of this Memorandum. This Memorandum shall continue in effect until June 30, 2023, unless sooner terminated as provided herein.

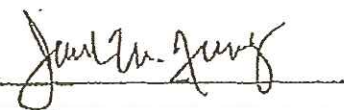
3.9 Sales Terminate Undertaking. The Institution's voluntary undertaking to make the Transition Payments described in this Memorandum will terminate as to a specific MOU Property upon the sale or other disposition of such MOU Property to a corporation, partnership, limited partnership, trust, or other legal entity, that is not owned or controlled by an Institution.

IN WITNESS WHEREOF, each of the parties has caused this Memorandum to be executed by their respective duly authorized officers as of the day and year first written above.

THE CITY OF PROVIDENCE

By: 


Approved as to form and correctness

By: 


BROWN UNIVERSITY

By: 

PROVIDENCE COLLEGE

By: 

RHODE ISLAND SCHOOL OF  
DESIGN

By: 

JOHNSON & WALES  
UNIVERSITY

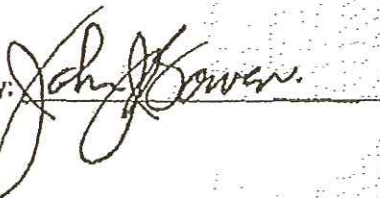
By: 

Exhibit A

Fiscal Year Ending	Brown	J&W	PC	RISD	Total
30-Jun-04	\$1,065,161	\$274,205	\$234,588	\$156,046	\$1,730,000
30-Jun-05	\$1,081,138	\$278,318	\$238,107	\$158,387	\$1,755,950
30-Jun-06	\$1,097,355	\$282,493	\$241,678	\$160,763	\$1,782,289
30-Jun-07	\$1,113,816	\$286,730	\$245,304	\$163,174	\$1,809,024
30-Jun-08	\$1,130,523	\$291,031	\$248,983	\$165,622	\$1,836,159
30-Jun-09	\$1,147,481	\$295,396	\$252,718	\$168,106	\$1,863,701
30-Jun-10	\$1,164,693	\$299,828	\$256,509	\$170,627	\$1,891,657
30-Jun-11	\$1,182,164	\$304,325	\$260,356	\$173,187	\$1,920,032
30-Jun-12	\$1,199,896	\$308,890	\$264,262	\$175,784	\$1,948,832
30-Jun-13	\$1,217,894	\$313,523	\$268,226	\$178,422	\$1,978,065
30-Jun-14	\$1,236,163	\$318,226	\$272,249	\$181,098	\$2,007,736
30-Jun-15	\$1,254,705	\$323,000	\$276,333	\$183,814	\$2,037,852
30-Jun-16	\$1,273,526	\$327,844	\$280,478	\$186,571	\$2,068,419
30-Jun-17	\$1,292,629	\$332,762	\$284,685	\$189,370	\$2,099,446
30-Jun-18	\$1,312,018	\$337,753	\$288,955	\$192,211	\$2,130,937
30-Jun-19	\$1,331,698	\$342,820	\$293,289	\$195,094	\$2,162,901
30-Jun-20	\$1,351,674	\$347,962	\$297,689	\$198,020	\$2,195,345
30-Jun-21	\$1,371,949	\$353,182	\$302,154	\$200,990	\$2,228,275
30-Jun-22	\$1,392,529	\$358,479	\$306,686	\$204,005	\$2,261,699
30-Jun-23	\$1,413,416	\$363,857	\$311,287	\$207,065	\$2,295,625
				Total:	\$40,003,944



Exhibit B

Fiscal Year ending	Brown	J&W	PC	RISD	Total Annual Augmented Voluntary Payment
30-Jun-04	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-05	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-06	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-07	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
Total					\$8,472,000

New Properties

0 Harborside Boulevard (Plat 56, Lots 74, 308, 315)  
250 Shipyard Street (Plat 56, Lot 330)  
310 Shipyard Street (Plat 56, Lot 292)  
25 Fields Point (Plat 56, Lot 257)  
541 Smith Street (Plat 69, Lot 13)  
539 Smith Street (Plat 69, Lot 14)  
90 Ruggles Street (Plat 69, Lot 22)  
25 Dickens Street (Plat 69, Lot 37)  
21 Dickens Street (Plat 69, Lot 352)  
10 Park Lane (Plat 50, Lot 721)  
70 Ship Street (Plat 21, Lot 105)  
15 Westminster Street (Plat 20, Lots 1, 2)

# Appendix B

## Memorandum of Agreement

Brown University

April 30, 2012



**MEMORANDUM OF AGREEMENT**  
by and between  
the  
**CITY OF PROVIDENCE**  
and  
**BROWN UNIVERSITY**

This Memorandum of Agreement (this "Agreement") is entered into by Brown University, an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education established in 1764 by colonial charter and existing pursuant to the laws of the State of Rhode Island, having a mailing address of University Hall, One Prospect Street, Providence, Rhode Island 02912 ("Brown"), and the City of Providence, Rhode Island a municipal corporation located in the State of Rhode Island, having a mailing address of City Hall, 25 Dorrance Street, Providence, Rhode Island 02903 (the "City").

**I. Introduction**

The parties recognize that Brown provides substantial economic, educational and non-economic benefits to the City and the community. Further, Brown is amenable to working with the City to advance the growth of Brown while simultaneously assisting the City.

In recognition of the parties' mutual interests, Brown and the City have therefore entered into this Agreement as follows.

**II. Payments to the City**

Provided that the "Conditions to Payment" (hereafter defined) have been satisfied and at all times during the term of this Agreement remain satisfied, Brown shall make the payments (in readily available funds) as follows:

June 1, 2012 - Three Million Nine Hundred Thousand Dollars	(\$3,900,000) (the "initial payment")
June 1, 2013 - Three Million Nine Hundred Thousand Dollars	(\$3,900,000)
June 1, 2014 - Three Million Nine Hundred Thousand Dollars	(\$3,900,000)
June 1, 2015 - Three Million Nine Hundred Thousand Dollars	(\$3,900,000)
June 1, 2016 - Three Million Nine Hundred Thousand Dollars	(\$3,900,000)
June 1, 2017 - Two Million Dollars	(\$2,000,000)
June 1, 2018 - Two Million Dollars	(\$2,000,000)
June 1, 2019 - Two Million Dollars	(\$2,000,000)
June 1, 2020 - Two Million Dollars	(\$2,000,000)
June 1, 2021 - Two Million Dollars	(\$2,000,000)
June 1, 2022 - Two Million Dollars	(\$2,000,000)

**III. Conditions to Payment**

The "Conditions to Payment" shall mean that:

1. Title to certain real property shall be conveyed by the City to Brown as described in Section IV below (the "Street Conveyance Condition").

IN CITY COUNCIL  
JUN 21 2012

READ  
WHEREUPON IT IS ORDERED THAT  
THE SAME BE RECEIVED  
*[Signature]*  
CLERK



2.A License of certain property and parking rights shall be entered into between the City and Brown as described in Section V below (the "Parking License Condition").

3.The "Legal Compliance Conditions" described in Section IV and VI below shall have been satisfied and shall remain satisfied.

#### **IV. Street Conveyance Condition**

The "Street Conveyance Condition" shall mean that no later than December 31, 2012, the City shall have conveyed to Brown good, clear, record and marketable title to approximately 65,000 s.f. of City owned streets adjacent to the Brown campus that are bounded on both sides by Brown properties, specifically: one block of Olive Street between Thayer and Brown Streets, two blocks of Brown Street between George and Charlesfield Streets, and one block of Benevolent Street between Brown and Magee Streets (the "Street Conveyance"). The property to be conveyed by the Street Conveyance is depicted on Exhibit A attached hereto.

#### **V. Parking License Condition**

The "Parking License Condition" shall mean that no later than June 30, 2012, the City shall have entered into an agreement with Brown pursuant to which the City will license to Brown on a non-exclusive basis, for an initial term of 20 years beginning no later than July 1, 2013, 250 parking spaces on public streets near the Brown campus as identified by Brown in the attached Exhibit B. The parking spaces shall be used primarily for Brown University faculty and staff parking.

The Parking License shall provide for two (2) additional ten-year option terms. The Parking License shall provide that no rental payments shall be due during the initial License Term (the payments required hereunder being the required consideration to consummate such License Agreement), provided; however, Brown will pay the City market rental rates during the option terms pursuant to a mutually agreeable mechanism to establish market rental rates to be included in the Parking License.

Brown, at its sole cost and expense, shall institute a parking permit system approved by the City so that the City can accurately and readily identify such Parking License participants. The Parking License shall provide that all income and other fees derived from or generated by the parking program instituted by Brown under the Parking License permit system shall be kept exclusively by Brown, and that all income and other fees derived from or generated by enforcement and compliance activities shall be kept exclusively by the City. In no event shall the Parking License be used to permit Brown to charge the general public for parking in the subject parking areas. Any income generated by the general public using the subject parking spaces shall be kept exclusively by the City. To the extent that any of the subject properties are not currently metered, they shall not be metered during the term of this license. The City will enforce the agreement by ticketing those who park for more than the allotted time without a Brown permit and those who park during the time that is designated as no parking without a Brown permit.

#### **VI. Legal Compliance Condition**



The "Legal Compliance Condition" shall mean that the City shall have caused to occur all legislative and administrative actions necessary under applicable law in order for the Street Conveyance to occur, the Parking License to be entered into, and none of the foregoing shall have been made the subject of any appeal or legal challenge (or if the same shall have occurred, the same shall have been favorably and finally disposed of), or found to be invalid in any legal proceeding, nor shall there be any further administrative or legislative actions to amend, modify, rescind, regulate or restrict the Street Conveyance, the Parking License or Brown's rights there under.

#### **VII. Existing Memorandum Unaffected**

The June 5, 2003 Memorandum of Understanding (the "MOU") by and amongst the City, Brown, and three other educational institutions (a copy of which is attached hereto as Exhibit C) remains in full force and effect and is not modified by this Agreement in any way.

#### **VIII. Non Performance, Default, and Remedies**

The parties agree that each shall act in good faith in implementing the terms of the agreement.

If at any time a Condition to Payment is not satisfied, Brown shall have no obligation to make any further payment hereunder. In addition, if any payments have previously been made and a Condition to Payment becomes unsatisfied, and such failure continues for at least 60 days after notice from Brown, the City shall return any payments previously made to the City, EXCEPT that in no event shall any portion of the "initial payment" be returned to Brown, nor shall any offset or credit be associated therewith at any time.

In the event that either party shall fail to perform fully the obligations contained in this agreement, the other party shall be entitled to fully enforce the outstanding obligations.

In the event that the Conditions to Payment have been satisfied and Brown fails to make any payment to the City in accordance with the time frame specified for such payment, the City shall, as its exclusive remedy, be entitled to seek damages in a court of law. There shall be no notice and cure opportunities for Brown with respect to monetary defaults.

In the event that the City breaches any of its material obligations under this Agreement or the Parking License and the City fails to cure any such breach within sixty (60) days from receiving written notice of the same, Brown shall be permitted to terminate this Agreement and no further payments required under the terms of this Agreement shall be due. Upon the City effectuating a cure, the notice of default shall be deemed null and void and this Agreement shall continue in full force and effect.

In the event that the City does not return the advanced monies in accordance with the provision of this paragraph, Brown shall be entitled to offset such amount, as a credit, to any and all fees and taxes or other monetary obligations (including payments due under the 2003 Memorandum of Understanding between the City from Brown) of any kind due to the City of Providence until such time as the full amount due and payable to Brown under this provision shall have been satisfied.

#### **IX. Miscellaneous**

The parties agree that this Agreement represents an effort on the part of Brown and the City to address mutual needs and the effect of the same is not intended to nor shall it affect, alter, diminish or modify the legal status, force, and effect of Brown's tax exempt status in any way. Nothing in this Agreement shall prohibit or restrict Brown in its right to challenge any attempt to affect, alter, diminish or modify the legal status, force, and effect of Brown's tax exempt status in any way.



General captions and section titles are for convenience of reference only, and shall not be used to construe this Agreement. References to a Section include subsections thereof.

The term "including" shall be interpreted to mean "including, without limitation," unless the context otherwise expressly specifies.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one instrument. Photocopies, facsimile and electronic versions (such as pdf, jpeg, and tif) of this Agreement shall be deemed originals and treated as binding.

This Agreement, including all exhibits attached hereto, constitutes the entire understanding and agreement of the parties hereto with respect to the matters hereof and supersedes all prior understandings and agreements in their entirety, if any, there being no other oral or written promises, conditions, representations, understandings, agreements or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties, agreements or amendments to or modifications of this Agreement shall not be valid and binding upon the parties unless the same shall be embodied in a subsequent writing signed by both of the parties hereto.

Any notice or demand which must or may be given under this Agreement or by law shall be in writing and shall be deemed to have been given when delivered by personal delivery; one (1) business day after being deposited with a nationally recognized overnight courier; or two (2) business days after being deposited in the United States mail, certified, return receipt requested, full postage prepaid, addressed to the respective parties at the addresses set forth in the in this Agreement. All notices or demands sent to the City shall be sent to the attention of the Mayor's Office, with a copy sent simultaneously (in accordance with the methods herein provided) to the attention of the City Solicitor. All notices or demands sent to Brown shall be sent to the attention of the President with a copy sent simultaneously (in accordance with the methods herein provided) to the attention of the General Counsel.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its respective duly authorized officers as of the day and year first written above.

THE CITY OF PROVIDENCE

By: Angel Taveras 4-30-12  
Angel Taveras, Mayor

By: Providence City Council

By: Michael A. Solomon 4-30-12  
Michael A. Solomon, Council President

Approved as to form and correctness:

Jeffrey M. Padwa 4/30/12  
Jeffrey M. Padwa, City Solicitor

BROWN UNIVERSITY

By: Ruth J. Simmons 4/30/12  
Ruth J. Simmons, President

Approved as to form and correctness:

By: Beverly E. Ledbetter 4/30/12  
Beverly E. Ledbetter, General Counsel











Exhibit C

MEMORANDUM OF UNDERSTANDING  
with respect to  
VOLUNTARY PAYMENTS  
to be paid to the  
CITY OF PROVIDENCE, RHODE ISLAND  
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BROWN UNIVERSITY  
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JOHNSON & WALES UNIVERSITY  
Dated as of June 5, 2003

**PARTIES:**

**The City:** The City of Providence, Rhode Island is a municipal corporation, located in The State of Rhode Island, having a mailing address of Department of Administration, City Hall, 25 Dorrance Street, Providence, Rhode Island 02903.

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**J&W:** Johnson & Wales University is an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education, established by charter and existing pursuant to the law of the State of Rhode Island, having a mailing address of 8 Abbott Park Place, Providence, Rhode Island 02903.

**The Institutions:** Collectively, Brown, RISD, PC, and J&W.

**INTRODUCTION:**



This Memorandum of Understanding ("Memorandum") between the four Institutions and the City sets forth the understandings of the parties with respect to financial assistance to be provided to the City by the Institutions.

By entering into this Memorandum, the Institutions acknowledge the importance of the relationship between the Institutions and the City and, therefore, agree to make additional voluntary contributions to the City. The parties recognize that the Institutions, like other non-profit, religious, and charitable organizations, provide substantial economic and non-economic benefits to the City and the community.

#### **THE UNDERSTANDING OF THE PARTIES:**

While this Memorandum is in effect, each of the Institutions will make voluntary contributions to the City as described in this Memorandum.

##### **1.0 Voluntary Payments.**

1.1 Voluntary Payments. Each of the Institutions will volunteer payments to the City which will be comprised of the "Voluntary Payment" described in Section 1.1.1, the "Augmented Voluntary Payment" described in Section 1.1.2, and the "Transition Payments" described in Section 2.2.

1.1.1 Voluntary Payment. The Voluntary Payment will be paid in equal semiannual payments on December 1 and May 1 beginning on December 1, 2003 and the Voluntary Payment will cease and will be zero after May 1, 2023. The amount of the "Voluntary Payment" for each of the Institutions for each of the twenty applicable fiscal years of the City is listed in the schedule in Exhibit A.

1.1.2 Augmented Voluntary Payment. The Augmented Voluntary Payment also will be paid in equal semiannual payments on December 1 and the following May 1 beginning on December 1, 2003. The Augmented Voluntary Payment will cease and will be zero after May 1, 2007. The amount of the "Augmented Voluntary Payment," for each of the Institutions for each of the four applicable fiscal years, is listed in the schedule in Exhibit B.

1.1.3 New Properties. The Institutions have recently acquired, or are in the process of acquiring, the properties listed in the schedule in Exhibit B (the "New Properties") and have volunteered the Augmented Voluntary Payments in lieu of any Transition Payments relating to the New Properties. If, while this Memorandum is in effect, a full or partial payment of real estate taxes is paid to the City with respect to a New Property (other than with respect to taxes being paid by J&W for the New Properties owned by J&W, which tax payments are not covered by this Memorandum), the Institution shall be entitled to use such payment as an offset to reduce the amount of the Augmented Voluntary Payment. In addition, if an Institution should for any reason fail to complete the acquisition transaction for a New Property in whole or in part, then no Augmented Voluntary Payment will be made with respect to such New Property.



(or the Augmented Voluntary Payment will be reduced pro rata if only a portion of such New Property is acquired) and any previously paid Augmented Voluntary Payments relating to such New Property (or portion thereof not acquired) will be credited toward other voluntary payments to be made by that Institution hereunder.

## 2.0 Transition Arrangements for Future Acquisitions.

2.1 Acquisition Parcels. If, at any time while this Memorandum is in effect, any Institution acquires a parcel of real estate in the City (other than a New Property) that is subject to real estate taxes, but will as a result of such acquisition become tax-exempt, then each such parcel shall be deemed to be a "Transition Parcel". Each Institution agrees to notify the City of its future acquisition of any parcel of real estate in the City to the same extent that other non-profit tax-exempt entities are required to provide notice of acquisition of property to the City pursuant to Rhode Island law or pursuant to any City ordinance that is uniformly applied to all non-profit, tax-exempt entities.

2.2 Transition Payments. After a Transition Parcel becomes exempt from real estate taxes, the Institution will contribute "Transition Payments" according to the Transition Payment Schedule listed below while this Memorandum is in effect. These payments are referred to as "Transition Payments" because they are intended to reduce the impact upon the City caused by the acquisition of the Transition Parcel by the Institution. One-half of the Transition Payment for a Transition Parcel will be paid on May 1 and one-half will be paid on December 1 of the applicable Calendar Years following the assessment date as of when the Transition Parcel becomes a tax-exempt parcel.

### Transition Payment Schedule for a Transition Parcel (or portion thereof)

<u>Calendar Year</u>	<u>Amount of Transition Payment</u>
1. Initial Year	100% of Initial Transition Payment
2. Second Year	100% of Initial Transition Payment
3. Third Year	100% of Initial Transition Payment
4. Fourth Year	100% of Initial Transition Payment
5. Fifth Year	100% of Initial Transition Payment
6. Sixth Year	66.7% of Initial Transition Payment
7. Seventh Year	66.7% of Initial Transition Payment
8. Eighth Year	66.7% of Initial Transition Payment
9. Ninth Year	66.7% of Initial Transition Payment
10. Tenth Year	66.7% of Initial Transition Payment
11. Eleventh Year	33.3% of Initial Transition Payment
12. Twelfth Year	33.3% of Initial Transition Payment
13. Thirteenth Year	33.3% of Initial Transition Payment
14. Fourteenth Year	33.3% of Initial Transition Payment
15. Fifteenth Year	33.3% of Initial Transition Payment



**2.3 Amount of Initial Transition Payment.** The amount of the "Initial Transition Payment" for an exempted Transition Parcel shall be equal to the real estate taxes that were payable (after applicable abatements or any appeals that were pending when the Transition Parcel was acquired by the Institution or as otherwise legally permitted) with respect to such exempted Transition Parcel with respect to the Tax Year in which the Institution acquired the Transition Parcel. If such Transition Parcel should thereafter cease for any reason to be tax-exempt, then Transition Payments with respect to that Transition Parcel will be suspended, so long as the Transition Parcel remains taxable. If such Transition Parcel returns to tax-exempt status while this Memorandum is in effect, the Transition Payments will resume at the same point in the schedule that they were suspended. *For clarity, in no event will a Transition Payment and a real estate tax payment be made with respect to the same Transition Parcel for any one calendar year. For example, if the 6<sup>th</sup> Transition Payment is made, and the Transition Parcel becomes taxable for seven years, then when it becomes tax-exempt in the next year, the 7<sup>th</sup> Transition Payment would be made in the amount equal to 66.7% of the Initial Transition Payment.*

### **3.0 Miscellaneous.**

**3.1 Voluntary Undertakings.** All parties agree that this Memorandum is a voluntary undertaking by the Institutions that was entered into even though the properties utilized by the Institutions are exempt from taxation and that the parties expect that such tax exemption will continue into the future. In the event, however, that Other Payments or Taxes (as defined in Section 3.5 of this Memorandum) are imposed upon any of the Institutions or their properties in the future that were not imposed upon the Institutions or their properties as of the date of the execution of this Memorandum, all parties agree that this Memorandum will terminate as to all of the Institutions thirty (30) days after the imposition of such taxes or fees, however any Institution may elect, in writing and at its sole option, within such thirty (30) day period, to continue this Memorandum in effect with regard to that Institution. For the purpose of interpreting this Section 3.1 only, the parties agree that the City may challenge the tax-exempt eligibility of any particular parcel based upon the use of such property utilizing any challenge that is legally available to the City as of the date of the execution of this Memorandum and for the purpose of interpreting this Section 3.1 only, the term Other Taxes or Payments shall exclude any property taxes that could be lawfully assessed or imposed as of the date of this Memorandum upon any Institution, or upon any property of any Institution, based upon the use of such property.

**3.2 Exemption of MOU Properties.** The term "MOU Properties" refers to the New Properties and any Transition Parcels that are covered from time to time by this Memorandum.

**3.3 Tax-Exemption.** The parties agree that nothing in this Memorandum affects, alters, diminishes or increases the legal status, force, or effect of the Institutions' tax exemption. Each Institution represents to the City that it is a charitable corporation and is exempt from Federal income taxes under § 501(c)(3) of the Internal Revenue Code, as amended.



3.4 Change in Laws. The City agrees that, if at any time after the date of this Memorandum, there is a change in state laws resulting in the imposition of a tax whether in the nature of a user fee or otherwise (or there is an obligation in the nature of a real estate tax, regardless of the basis upon which the tax is calculated, or there is an obligation that has the effect of such a tax), with the result in any such event that directly or indirectly any Institution is required to make payments directly or indirectly to the City with respect to all or any portion of the MOU Properties then, while this Memorandum remains in effect, such payment(s) will be credited against and shall reduce the Transition Payment and any other payments that each Institution has volunteered to make under this Memorandum.

3.5 Other Payments or Taxes. If, while this Memorandum is in effect, the City assesses or imposes any taxes, fees, charges, or payments that are not in effect as of the date this Memorandum is executed ("Other Payments or Taxes") in respect to any Institution's tax-exempt properties or that have the effect of a tax on any Institution or on any Institution's currently tax-exempt property or currently tax-exempt operations, then in addition to any other right that such Institution may have, the Institution may contest the making of such Other Payments or Taxes and/or may offset (i.e., deduct) such Other Payments or Taxes from the Transition Payments or other payments volunteered to be made under this Memorandum and pay the Other Payments or Taxes under protest reserving the Institution's rights. The term "Other Payments or Taxes" shall exclude water and sewer use charges and the like, and other fees charged to property, but only if they are uniformly applicable to similar property (regardless of ownership or use) in the City. In no event shall a decision by an Institution to continue this Memorandum in effect despite the imposition of Other Payments or Taxes constitute or be construed as an admission that such Other Payments or Taxes may lawfully be imposed. An Institution reserves the right to challenge the imposition of Other Payments or Taxes regardless of whether it chooses to continue this Memorandum in effect.

3.6 Notice of Intent Not to Pay. Each Institution's voluntary undertaking to make the Voluntary Payments described in this Memorandum has been memorialized in this document to permit the City to take into account such payments when it prepares budgets for the City. With regard to any payments referred to in this Memorandum, it will be each Institution's decision on a yearly basis whether to make such payments due during a fiscal year, and each Institution will give notice to the City of such decision at least fourteen months before the fiscal year in which such payments will not be made.

3.7 General. Captions and section titles are for convenience of reference only, and shall not be used to construe this Memorandum. References to a Section include subsections thereof. The term "including" shall be interpreted to mean "including without limitation," unless the context otherwise expressly specifies. Footnotes and italicized explicative provisions are material parts of this Memorandum as fully as if set forth in the body of this Memorandum in regular typeface. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one instrument. This Memorandum constitutes the entire understanding between the parties and supersedes all



previous discussions, negotiations, and agreements between the City and the Institutions with respect to the understandings herein.

3.8 Duration of this Memorandum. This Memorandum shall continue in effect until June 30, 2023, unless sooner terminated as provided herein.

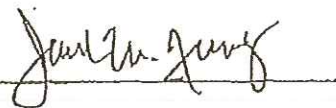
3.9 Sales Terminate Undertaking. The Institution's voluntary undertaking to make the Transition Payments described in this Memorandum will terminate as to a specific MOU Property upon the sale or other disposition of such MOU Property to a corporation, partnership, limited partnership, trust, or other legal entity, that is not owned or controlled by an Institution.

IN WITNESS WHEREOF, each of the parties has caused this Memorandum to be executed by their respective duly authorized officers as of the day and year first written above.

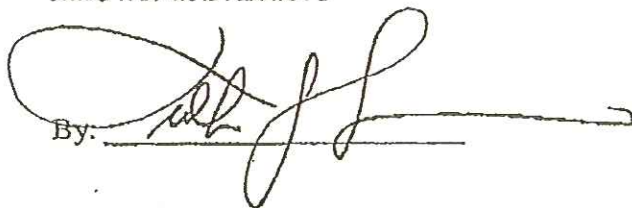
THE CITY OF PROVIDENCE

By: 

Approved as to form and correctness

By: 


BROWN UNIVERSITY

By: 

PROVIDENCE COLLEGE

By: 

RHODE ISLAND SCHOOL OF  
DESIGN

By: 

JOHNSON & WALES  
UNIVERSITY

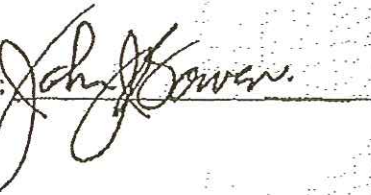
By: 



Exhibit A

Fiscal Year Ending	Brown	J&W	PC	RISD	Total
30-Jun-04	\$1,065,161	\$274,205	\$234,588	\$156,046	\$1,730,000
30-Jun-05	\$1,081,138	\$278,318	\$238,107	\$158,387	\$1,755,950
30-Jun-06	\$1,097,355	\$282,493	\$241,678	\$160,763	\$1,782,289
30-Jun-07	\$1,113,816	\$286,730	\$245,304	\$163,174	\$1,809,024
30-Jun-08	\$1,130,523	\$291,031	\$248,983	\$165,622	\$1,836,159
30-Jun-09	\$1,147,481	\$295,396	\$252,718	\$168,106	\$1,863,701
30-Jun-10	\$1,164,693	\$299,828	\$256,509	\$170,627	\$1,891,657
30-Jun-11	\$1,182,164	\$304,325	\$260,356	\$173,187	\$1,920,032
30-Jun-12	\$1,199,896	\$308,890	\$264,262	\$175,784	\$1,948,832
30-Jun-13	\$1,217,894	\$313,523	\$268,226	\$178,422	\$1,978,065
30-Jun-14	\$1,236,163	\$318,226	\$272,249	\$181,098	\$2,007,736
30-Jun-15	\$1,254,705	\$323,000	\$276,333	\$183,814	\$2,037,852
30-Jun-16	\$1,273,526	\$327,844	\$280,478	\$186,571	\$2,068,419
30-Jun-17	\$1,292,629	\$332,762	\$284,685	\$189,370	\$2,099,446
30-Jun-18	\$1,312,018	\$337,753	\$288,955	\$192,211	\$2,130,937
30-Jun-19	\$1,331,698	\$342,820	\$293,289	\$195,094	\$2,162,901
30-Jun-20	\$1,351,674	\$347,962	\$297,689	\$198,020	\$2,195,345
30-Jun-21	\$1,371,949	\$353,182	\$302,154	\$200,990	\$2,228,275
30-Jun-22	\$1,392,529	\$358,479	\$306,686	\$204,005	\$2,261,699
30-Jun-23	\$1,413,416	\$363,857	\$311,287	\$207,065	\$2,295,625
				Total:	\$40,003,944



Exhibit B

Fiscal Year ending	Brown	J&W	PC	RISD	Total Annual Augmented Voluntary Payment
30-Jun-04	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-05	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-06	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
30-Jun-07	\$326,000	\$114,000	\$76,000	\$1,602,000	\$2,118,000
Total					\$8,472,000

New Properties

0 Harborside Boulevard (Plat 56, Lots 74, 308, 315)  
250 Shipyard Street (Plat 56, Lot 330)  
310 Shipyard Street (Plat 56, Lot 292)  
25 Fields Point (Plat 56, Lot 257)  
541 Smith Street (Plat 69, Lot 13)  
539 Smith Street (Plat 69, Lot 14)  
90 Ruggles Street (Plat 69, Lot 22)  
25 Dickens Street (Plat 69, Lot 37)  
21 Dickens Street (Plat 69, Lot 352)  
10 Park Lane (Plat 50, Lot 721)  
70 Ship Street (Plat 21, Lot 105)  
15 Westminster Street (Plat 20, Lots 1, 2)



# Appendix C

## Memorandum of Agreement

Johnson & Wales University

March 22 2012



MEMORANDUM OF AGREEMENT  
with respect to  
PAYMENTS  
to be paid to the  
CITY OF PROVIDENCE, RHODE ISLAND  
by  
JOHNSON & WALES UNIVERSITY  
Dated as of \_\_\_\_\_, 2012

**PARTIES:**

The City of Providence, Rhode Island ("City") is a municipal Corporation, located in the State of Rhode Island, having a mailing address of City Hall, 25 Dorrance Street, Providence, Rhode Island 02903.

Johnson & Wales University ("JWU") is an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education established and existing pursuant to the law of the State of Rhode Island, having a mailing address of 8 Abbott Park Place, Providence, Rhode Island 02903.

**INTRODUCTION:**

This Memorandum of Agreement ("Agreement") between JWU and the City sets forth the understandings of the parties with respect to financial assistance to be provided to the City by JWU.

By entering into this Agreement, JWU acknowledges the importance of the relationship between JWU and the City and the essential services that are provided to JWU by the City and agrees to make payments to the City as provided in this Agreement. The parties recognize that JWU, like other nonprofit, religious, and charitable organizations, provides substantial economic, educational and non-economic benefits to the City and the community, including the pending development of two parcels of vacant land in the City in accordance with Section 37-5-8 of the Rhode Island General Laws and this Agreement.

**THE UNDERSTANDING OF THE PARTIES:**

While this Agreement (or any amendment or extension hereof) is in effect, the parties hereto agree as follows:

**1.0 Payments.**

(a) With respect to those certain parcels of land located in the City of Providence commonly referred to as parcels 31 and 36 on the plan (the "Plan") titled: "Rhode Island Department of Transportation, improvements to interstate route 195, Providence, Rhode Island, Proposed Development Parcels, West Side, McGuire Group Inc., Date: 03-02-06" (collectively, the "Subject Lots"), JWU will pay the City Five Hundred Thousand Dollars (\$500,000.00) per annum. Such payments (the "Annual Payments") will be made annually on June 30, or such other business day within the fiscal year on which the parties agree. The first such payment will be made upon JWU's acquisition of fee title to one or more of the Subject Lots, but in no event later than June 30, 2012. In the event that, during the term hereof JWU acquires another parcel designated on the Plan in addition to the Subject Lots, the annual payment shall be increased by \$500,000.00 per year from and after the date of such acquisition.



(b) With respect to certain "Street Areas" (as defined below) which service only property currently owned by JWU, in the event JWU acquires title to the Street Areas, JWU shall pay to the City, as purchase price or otherwise, the greater of (i) \$1,400,000.00, or (ii) an amount equal to \$65 per square foot for the Read Street Area, plus \$7 per square foot for the Harborside Boulevard and Shipyard Street Areas. As used herein, the term "Street Areas" shall mean, collectively, the following street areas in the City:

- 1) The "Read Street Area" -- An area approximately 225 feet long by 8 feet wide (1800 sq. feet), formerly known as Read Street (the "Read Street Area"); and
- 2) The "Shipyard Street Area" -- A portion of Shipyard Street approximately 1,426 feet long by 60 feet wide (85,560 sq. feet) from the southwest corner of Plat 56, Lot 260 to the terminus at Harborside Boulevard; and
- 3) The "Harborside Boulevard Area" -- A portion of Harborside Boulevard approximately 1,850 feet long by 60 feet wide (111,000 sq. feet) from the City line south to the intersection with Save the Bay Drive

1.1 Term. The payments specified in Section 1.0 (and as may be increased pursuant to Section 1.2 below) shall continue for a period of ten (10) years from and after the execution of this Agreement unless this Agreement is terminated earlier as provided in section 1.4 below. In the ninth (9<sup>th</sup>) fiscal year following the execution of this Agreement, provided JWU still owns the Subject Lots, the parties agree to negotiate in good faith the terms of an extension of this Agreement (it being the intent of the parties that this Agreement is to be extended for successive ten year terms upon similar and mutually agreeable terms and conditions while JWU owns the Subject Lots). In the event JWU sells or disposes of the Subject Lots, the provisions of Section 2.4 below shall apply.

1.2 Escalator Clause for Annual Payments. Beginning in the third (3<sup>rd</sup>) fiscal year following the execution of this Agreement, JWU shall increase the amounts required under Section 1.0 by the increase in the Consumer Price Index, for all Urban Consumers (CPI-U): Boston-Brockton-Nashua, MA-NH-ME-CT, All Items (unadjusted) (1982-84=100), published monthly by the Bureau of Labor Statistics, U.S. Department of Labor<sup>1</sup> (the "CPI Increase") if any. To be clear, the CPI Increase, if any, to be applied to the payments to be made during the 3<sup>rd</sup> fiscal year will be based on any increase in CPI from the first (1<sup>st</sup>) fiscal year following execution of this Agreement to the second (2<sup>nd</sup>) fiscal year following execution of this Agreement. Under no circumstances shall the amount specified in Section 1.0 be reduced by this Section 1.2.

1.3 Existing Memorandum Unaffected. The June 5, 2003 Memorandum of Understanding ("MOU") by and amongst the City, JWU, and three other educational institutions (a copy of which is attached hereto as Exhibit A), remains in full force and effect and is not modified by this Agreement in any way, except as expressly set forth in Section 1.4, Section 1.5, and Section 2.5 below. JWU shall continue to make its annual payments throughout the term of that MOU (in accordance with, and subject to, its terms), which by its terms expires on June 30, 2023. In the event the MOU is determined to be void or unenforceable prior to the expiration of its term, JWU and the City hereby agree that they will continue

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<sup>1</sup> If the Bureau of Labor Statistics should cease to publish such Index in its present form and calculated on the present basis, a comparable index or an index reflecting changes in the cost of living determined in a similar manner or by substitution, combination or weighting of available indices, expenditure groups, items, components or population, published by the Bureau of Labor Statistics or by a responsible financial periodical or recognized authority shall be designated by the parties hereto to be the Consumer Price Index thereafter.



to be bound by the terms and conditions of the MOU, including JWU's obligation to make annual payments throughout the term of the MOU in accordance with, and subject to, its original terms.

**1.4 Early Termination.** This Agreement shall, at the option of JWU, terminate and be of no further force and effect in the event of any of the following:

- (a) The Subject Lots have not been acquired by JWU on or before December 31, 2012 for any reason other than a breach by JWU of the Purchase & Sale Agreement between JWU and the State of Rhode Island for the Subject Lots, or
- (b) The City breaches any of its obligations under this Agreement (including, without limitation, the City's agreements set forth in this Section 1.4 or in Sections 1.5 or 2.3 below), and the City fails to cure any such breach within thirty (30) days from receiving written notice of same from JWU (unless the nature of the subject breach is such that it may not reasonably be cured within 30 days, in which event then the City shall have such additional time as may be reasonable to cure such default, provided that the City commences pursuit of such cure within said 30 days and diligently pursues same thereafter).

JWU shall use its reasonable best efforts to acquire fee title to the Subject Lots within the timeframe set forth in subsection (a) above. In the event of any early termination under this Section 1.4, no further payments shall be made by JWU under this Agreement.

**1.5 Offset.** In the event that the City receives any of the following payments after the date of this Agreement:

- (a) Payments to the City by JWU for the Subject Lots due to a change in the law as described in Section 3.4 of the MOU or a default by the City under this Agreement,
  - (b) Payments to the City due to the imposition of any "Other Payments or Taxes" on JWU as described in Section 3.5 of the MOU, or
  - (c) Except as otherwise provided herein, any other taxes, fees, or payments relating to or based in any way upon all or any portion of the Subject Lots, the Initial Building (as defined below), or any other improvements or property therein or thereon (other than payments already required to be made by non-profit, tax-exempt educational institutions as of the date of this Agreement or newly required payments applicable to all similar property regardless of ownership or use),
- then, JWU may offset (i.e., deduct) the amount of all such payments from future payments to be made under this Agreement to the extent such amounts are not deducted from payments due to the City under the MOU (expressly in accordance with, and subject to the terms and provisions of, the MOU).

Notwithstanding anything contained herein to the contrary, prior to JWU exercising any remedies for a default by the City under this Agreement (including, without limitation, any rights to offset), JWU shall first provide the City with written notice of such default (which notice shall describe the nature of the default in reasonable detail), whereupon the City shall have a period of no less than thirty (30) business days to cure such default (or such additional time as the circumstances may reasonably require, provided that the City is diligently pursuing such cure). Upon effectuating such cure, the notice of default shall be deemed null and void and this Agreement shall continue in full force and effect.

## **2.0 Development.**

**2.1** The City shall use its reasonable best efforts to cooperate with JWU in connection with its efforts to acquire the Subject Lots from the State of Rhode Island, and to expedite and facilitate JWU's acquisition of necessary permits and approvals to develop such land (but in all instances, the acquisition,



development and operation of the Subject Lots shall be in compliance with all applicable laws, ordinances, and the comprehensive plan for the City).

2.2 JWU agrees to use its reasonable best efforts to timely pursue all necessary permits and approvals, and thereafter commence construction of a development project in accordance with Section 37-5-8 of the Rhode Island General Laws. Said development project shall consist of one or two new buildings (collectively, the "Initial Building"). JWU further agrees that the costs associated with planning, designing, constructing, equipping, and landscaping the Initial Building shall be no less than \$50,000,000.00, and that Rhode Island-based union general contractors, the Building Futures program, and Rhode Island-based architects and engineers will be used in connection with the development of the Initial Building.

2.3 JWU shall integrate retail uses into at least fifty percent (50%) of the street level space of the Initial Building so long as the City does not assess or collect real property tax payments (beyond the payments set forth in this Agreement) with respect to any portion of the street level space used for "non-exempt retail" (as defined herein), except to the extent such non-exempt retail use exceeds fifty percent (50%) of such street level space. As used herein, "non-exempt retail" shall mean retail operations which are open to the public and are not covered by Section 2.5 (i) below. The City may assess and collect taxes on personal property not owned by JWU and used for such non-exempt retail operations. Notwithstanding the foregoing, in the event that the Initial Building consists of more than one (1) building, then only one of the buildings (the "First Building") shall benefit from and be subject to the provisions of this Section 2.3, and any retail uses in buildings beyond such First Building shall be subject to the terms and provisions of Section 2.5 below. If multiple buildings consisting of the Initial Building are constructed simultaneously, JWU may select which such building will be the First Building.

2.4 If any of the Subject Lots (or any portion thereof) are subsequently sold to a third party, or if JWU enters into a joint venture, lease (including, without limitation, space leases and ground leases), or other arrangement with a developer or other party to use any portion of the Subject Lots (other than retail usage of the street level space of the Initial Building as provided herein), then the full real property taxes shall be paid to the extent required by applicable law (provided, however, that in the event such full taxes for the Subject Lots are less than the payments that would have been due to the City under this Agreement had such sale, joint venture, lease or other arrangement not occurred, then JWU shall pay the City an amount equal to the difference between such full taxes and the payments hereunder during the remainder of the then-current term of this Agreement, but shall have no obligation to renew or extend this Agreement thereafter). JWU agrees that it will not sell the Subject Lots (or any portion thereof) to any person or entity that is exempt from City real estate taxes unless such person or entity has entered into an agreement with the City regarding payments in lieu of taxes.

2.5 JWU agrees to make real property tax payments to the City for any retail or other commercial uses open to the public which are integrated into any buildings or properties now or hereafter owned or acquired by JWU in the City (including the Subject Lots), except for: (i) retail or other commercial uses operated by JWU for the purpose of teaching or training its students under one or more curricula adopted in programs of study offered by JWU and that meet any applicable legal requirements concerning tax exempt uses, or (ii) non-exempt retail uses which are integrated into fifty percent (50%) or less of the street level of the Initial Building (as more specifically set forth in Section 2.3 above).

2.6 The City will use its best reasonable efforts to avoid the development of that portion of Claverick Street that runs through JWU's campus between Pine and Friendship Streets. JWU acknowledges that if



such portion of Claverick Street is not developed, some form of fire/safety access may need to be provided by JWU in accordance with applicable law or as may otherwise be reasonably required by the City. Further, JWU acknowledges that in the event Claverick Street falls subject to the jurisdiction of some other authority, the City may not be able to prevent development of said portion of Claverick Street.

### 3.0 Miscellaneous.

3.1 General captions and section titles are for convenience of reference only, and shall not be used to construe this Agreement. References to a Section include subsections thereof.

3.2 The term "including" shall be interpreted to mean "including, without limitation," unless the context otherwise expressly specifies.

3.3 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one instrument. Photocopies, facsimile and electronic versions (such as pdf, jpeg, and tif) of this Agreement shall be deemed originals and treated as binding.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by their respective duly authorized officers as of the day and year first written above.

THE CITY OF PROVIDENCE

JOHNSON & WALES UNIVERSITY

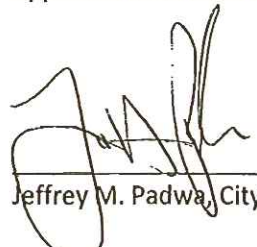
By:   
Angel Taveras, Mayor

By:   
John J. Bowen, Chancellor

By: Providence City Council

Approved as to form and correctness:

By: \_\_\_\_\_  
Michael A. Solomon, Council President

  
Jeffrey M. Padwa, City Solicitor





# Appendix D

Accelerated Payment (5 years)  
2003 Memorandum of Understanding

Johnson & Wales University

July 9, 2012



JOHNSON & WALES  
UNIVERSITY

UNIVERSITY OFFICE

*Wayne M. Kezirian  
Senior Vice President  
and General Counsel*

July 9, 2012

HAND DELIVERED

Mr. Michael D'Amico  
Director of Administration  
Providence City Hall  
Providence, RI 02903

*Re: Partial Prepayment (5 years) -2003 Memorandum of Understanding*

Dear Mr. D'Amico:

Pursuant to the recent discussions between Mayor Angel Taveras and Chancellor John Bowen, I have enclosed a check from Johnson & Wales University made payable to the City of Providence in the amount of \$1,615,355. This check represents the acceleration of all voluntary payments that would be due to be paid to the City by Johnson & Wales University through the fiscal year ending June 30, 2017 pursuant to the "Memorandum of Understanding with respect to Voluntary Payments entered into between the City and Brown University and, Rhode Island School of Design and Providence College and Johnston and Wales University" which is dated as of June 5, 2003 (the "MOU").

These prepayments are made subject to all of the terms of the MOU which provides that the voluntary payments to be made by the University to the City will be reduced by the amount of any taxes (including "Other Payments or Taxes" as defined in Section 3.5 of the MOU) that might be imposed upon the University by the City during the term of the MOU. Therefore, in the event that any taxes or "Other Payments or Taxes" are imposed on the University by the City during the term of the MOU, the amounts the University has prepaid under the MOU will first be allocated and applied to the payment of those future taxes or "Other Payments or Taxes" and the balance will be applied to satisfy the adjusted voluntary payment(s) remaining due under the MOU. The City's acceptance and negotiation of the enclosed check will constitute the City's acknowledgement that the enclosed payment will be applied to satisfy future taxes and "Other Payments or Taxes" to the extent levied or assessed by the City for any period for which the University has prepaid amounts due under the MOU with the balance being applied to the adjusted voluntary payments due under the MOU for the applicable fiscal year.

Mailing: 8 Abbott Park Place, Providence, RI 02903

Office: Vena Center, 3rd Floor, 111 Dorrance Street, Providence, RI 02903

401-598-1066 Direct Fax 401-633-6875 wayne.kezirian@jwn.edu www.jwn.edu

Providence, R.I. North Miami, Fla. Denver, Colo. Charlotte, N.C.



Mr. Michael D'Amico  
July 9, 2012 -- Page 2 of 2

The University's leadership and particularly Chancellor Bowen and President Runcy applaud the efforts of the Mayor and the Council to address the City's current financial difficulties in a positive and productive manner. The University has accelerated the voluntary payments due under the MOU in support of those continuing efforts. Please feel free to contact me if you have any questions concerning this prepayment.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Wayne M." followed by a long, sweeping horizontal line that extends to the right.

Enclosure: Check # 365915

Mailing: 8 Abbott Park Place, Providence, RI 02903  
Office: Yena Center, 3rd Floor, 111 Dorrance Street, Providence, RI 02903  
401-598-1066 Direct Fax 401-633-6875 wayne.kezirian@jwu.edu www.jwu.edu  
Providence, R.I. North Miami, Fla. Denver, Colo. Charlotte, N.C.



365915

DATE	INVOICE NO.	INVOICE DATE	DESCRIPTION	DISCOUNT AMOUNT	NET AMOUNT
Jul 9, 2012	06-JUL-2012	Jul 6, 2012		0.00	1,615,355.00

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT.

*Thank You.*

0.00 1,615,355.00



JOHNSON & WALES  
UNIVERSITY

8 ABBOTT PARK PLACE • PROVIDENCE, RHODE ISLAND • 02903

THE WASHINGTON TRUST COMPANY  
23 BROAD STREET  
WESTERLY, RI 02891

$$\begin{array}{r} 57.85 \\ \hline 115 \end{array}$$

No 365915

DATE	CHECK NO.	AMOUNT
Jul 9, 2012	365915	1,615,355.00

One Million Six Hundred Fifteen Thousand Three Hundred Fifty-Five Dollars And Zero Cents

PAY  
TO THE  
ORDER OF

CITY OF PROVIDENCE  
DEPT ADMIN  
737 WESTMINSTER ST  
PROVIDENCE,RI 02903  
United States

VOID AFTER 180 DAYS

Just the

**AUTHORIZED SIGNATURE**

**Security features. Details on back.**

11 36591511 1:0115008581: 9338017011





# Appendix E

## First Amendment to March 2012 Memorandum of Agreement

Johnson & Wales University

August 29, 2013



FIRST AMENDMENT TO  
MEMORANDUM OF AGREEMENT  
with respect to  
PAYMENTS  
to be paid to the  
CITY OF PROVIDENCE, RHODE ISLAND  
by  
JOHNSON & WALES UNIVERSITY  
Dated as of August 30, 2013

COMMITTEE ON AVAL & MEMO  
REFERRED TO SPECIAL  
FIRST READING  
IN CITY COUNCIL

CLERK

This *First Amendment to Memorandum of Agreement* ("Amendment") is made and entered into as of the date and year written above, by and between the City of Providence, Rhode Island, a municipal corporation located in the State of Rhode Island and having a mailing address of City Hall, 25 Dorrance Street, Providence, RI 02903 (the "City"), and Johnson & Wales University, an independent, private, non-profit, tax-exempt Rhode Island institution of higher education established and existing pursuant to the laws of the State of Rhode Island and having a mailing address of 8 Abbott Park Place, Providence, RI 02903 ("JWU").

**Recitals**

A. On March 22, 2012, the City Council of the City ratified and approved that certain *Memorandum of Agreement* by and between the City and JWU (the "MOA") pursuant to *Resolution of the City Council No. 176*. The MOA provides for, among other things, annual payments of at least \$500,000 each to be made by JWU to the City. Capitalized terms used herein and not defined herein shall have the meanings set forth in the MOA.

B. The parties desire to amend the MOA to include the cost of a garage (approximately 745 car capacity) at 35 Richmond St. (the "Garage") and the rehabilitation of a former manufacturing building (approximately 17,500 square feet) at 161 Clifford St. (the "Physician Assistant Studies Building") as part of the \$50 million construction expenditure requirement under the MOA and to accelerate certain payments to be made by JWU to the City under that certain *Memorandum of Understanding* dated June 5, 2003, by and among the City, JWU, and three other educational institutions (the "2003 MOU").

**Terms and Conditions**

NOW THEREFORE, for and in consideration of the mutual promises, agreements, forbearances, and undertakings set forth herein, JWU and the City hereby agree as follows:

1. JWU acknowledges and agrees that the parcel (Assessor's Plat 24, Lot 662) on which the Garage is being constructed and the parcel (Assessor's Plat 24, Lot 537) on which the Physician Assistant Studies Building is located, both constitute "Transition Parcels" under Section 2.0 of the 2003 MOU and are subject to annual "Transition Payments" as set forth in Section 2.0 of the 2003 MOU. The parties further agree that notwithstanding anything contrary in the MOA or the 2003 MOU, including but not limited to the Transition Payment terms, JWU will accelerate the payments on the two Transition Parcels identified above by paying 100% of the Initial Transition Payment [for such Transition Parcels] each year for ten years.

2. The third sentence of Section 2.2 of the MOA is hereby amended by adding the language highlighted in bold-face type as set forth below:

*"JWU further agrees the costs associated with planning, designing, constructing, equipping, and landscaping the Initial Building, the Garage, and the Physician Assistant Studies Building, shall be no less than \$50,000,000.00, and that Rhode Island-based union general contractors, the Building Futures program, and Rhode Island-based architects and engineers will be used in connection with the development of the Initial Building, the Garage, and the Physician Assistant Studies Building."*

3. In the event of any inconsistency between the terms or provisions of this Amendment and the MOA or the 2003 MOU, the terms and provisions of this Amendment shall control. Except as otherwise expressly provided for herein, the terms of the 2003 MOU and MOA shall remain in full force and effect and are hereby ratified, affirmed, and approved.

IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed by its duly authorized official(s) as of the date and year first written above.

Johnson & Wales University

By: 

John J. Bowen, Chancellor

The City of Providence

By: 

Angel Traveras, Mayor

Providence City Council

By: \_\_\_\_\_

Michael A. Solomon, Council President

Approved as to form and correctness:

By: \_\_\_\_\_

Jeffrey M. Padwa, City Solicitor

2011 DEC 30 PM 5:10

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