

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 646



Approved November 21, 2012

RESOLVED, That the Members of the Providence City Council
hereby Authorize Approval of the Memorandum of Agreement by and between the
City of Providence and Rhode Island School of Design.


IN CITY COUNCIL

NOV 19 2012

READ AND PASSED


PRES.

CLERK

I HEREBY APPROVE.


Mayor
Date: 11/21/12

MEMORANDUM OF AGREEMENT

by and between

the

City of Providence

and

Rhode Island School of Design

The City of Providence, Rhode Island (the "City"), a Rhode Island municipal corporation having a mailing address of City Hall, 25 Dorrance Street, Providence, RI 02903, and Rhode Island School of Design ("RISD"), an independent, private, non-profit, tax-exempt, Rhode Island institution of higher education having a mailing address of Two College Street, Providence, RI 02903, agree as follows, effective as of June 29, 2012:

I. Introduction

The City recognizes that RISD provides substantial economic, educational, cultural, and other benefits to the City and the community. RISD recognizes that the City provides essential services and infrastructure that enable RISD to pursue and fulfill its mission. By entering into this Agreement, the parties acknowledge the importance of their relationship to each other and their willingness to continue to work cooperatively together for their mutual benefit and growth.

II. Payments to the City by RISD

Provided that the obligations of the City set forth in Section III of this Agreement have been satisfied and at all times during the term of this Agreement remain satisfied, RISD will pay the City the amount of \$253,900 each fiscal year from 2012 through 2022. RISD will make such annual payments by no later than June 30 of each such fiscal year, or by such other business day on which the parties may otherwise mutually agree in writing.

III. Grant of Parking Rights to RISD by the City

As a condition precedent of receiving the payments set forth in Section II of this Agreement, the City must have entered into a mutually agreeable parking agreement with RISD, no later than October 30, 2012, pursuant to which the City will provide to RISD 70 parking spaces on public streets near the RISD campus, for use primarily by RISD faculty and staff. The parking agreement will be consistent with the terms contained on Exhibit A, and mapped on the attached Exhibit B, and will be for the period January 1, 2013 through December 30, 2023.

At its option, and upon notice to the City at least 90 days before the expiration of the then-current term, RISD may extend the term for two additional periods of ten years each at reasonable market-based rates to be mutually determined by the parties.

The City will take all administrative, legislative, and other actions necessary to implement this grant of parking rights and to keep it in full force and effect throughout the term.

IV. Preservation of Existing Memorandum of Understanding

The June 5, 2003 Memorandum of Understanding ("MOU") by and among the City, RISD, and three other educational institutions remains in full force and effect and is not modified by this Agreement in any way. By way of clarification and not of amendment, the payments by RISD under this Agreement will not constitute "Other Payments and Taxes" under the June 5, 2003 MOU, but RISD reserves any rights it may have under said MOU with respect to any other attempts by the City to assess such "Other Payments and Taxes" as defined by the MOU (including, without limitation, efforts to inventory or assess RISD's tangible personal property or to assess master fire alarm or similar user fees on any basis other than a uniform assessment of the city's actual costs).

V. Acknowledgment of RISD's Continuing Tax-Exempt Status

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

VI. Non-Performance, Default, and Remedies

Each party will act in good faith in implementing the terms of this Agreement.

If at any time the City ceases to fulfill its material obligations under Section III of this Agreement and the terms of the parking agreement to be entered into by the parties referenced in that Section, RISD will have no obligation to make any further payment hereunder until the City has resumed fulfilling those obligations. In addition, RISD will be entitled to a pro rata refund of prior payments applicable to the time period of any such failure of the City to fulfill those material obligations and/or to a credit in such amount toward future such payments. In addition, if the City fails to cure any such failure to fulfill those material obligations within 60 days of receiving notice of such failure from RISD, RISD may, at its option and in its sole discretion, terminate this Agreement and will thereafter have no further payment or other obligations to the City under this Agreement, other than any such obligations that existed prior to the time of RISD's notice to the City of any such failure.

In the event that the City has fulfilled its obligations under Section III of this Agreement and RISD fails to make any payment to the City in accordance with the time frame specified for such payment, the City will be entitled to seek damages and any other such relief afforded by law. In the event that either of the parties files a voluntary bankruptcy petition, or is adjudicated bankrupt or insolvent, or files any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future Federal Bankruptcy Act, or any present or future applicable federal, state, or other statute or law, or seeks or consents to the

appointment of any receiver or liquidator, the other party may terminate this Agreement upon notice, subject to the laws governing federal or state insolvency.

VII. Miscellaneous

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which will be deemed to constitute one instrument. Photocopies, facsimiles, and electronic versions of this Agreement will be deemed originals and treated as binding.

This Agreement, including all attached exhibits, constitutes the entire understanding and agreement of the parties hereto with respect to the subject 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. No subsequent conditions, representations, warranties, agreements, or amendments to or modifications of this Agreement will be valid and binding upon the parties unless they are embodied in a subsequent writing signed by both of the parties.


This Agreement will be governed by, and interpreted and construed in accordance with, the laws of the State of Rhode Island. Any dispute arising hereunder must be filed in a court of competent jurisdiction located in Providence, Rhode Island.

Any notice or demand that must or may be given under this Agreement or by law must be in writing and will be deemed to have been given when delivered by personal delivery; one business day after being deposited with a nationally recognized overnight courier; or two 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 this Agreement. All notices or demands sent to the City must 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 RISD must 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.

This Agreement is contingent upon the approval of both the City's City Council and RISD's Board of Trustees.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its respective duly authorized officer effective as of June 29, 2012.

THE CITY OF PROVIDENCE




Angel Taveras,
Mayor

6/29/12

Date

RHODE ISLAND SCHOOL OF DESIGN



John Maeda,
President

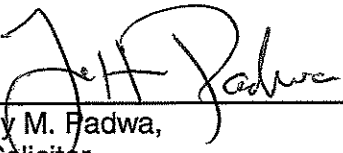
6/29/12

Date

Michael A. Solomon,
President, City Council

Date

Approved as to form and correctness:



Jeffrey M. Radwa,
City Solicitor

6/29/12

Date

EXHIBIT A

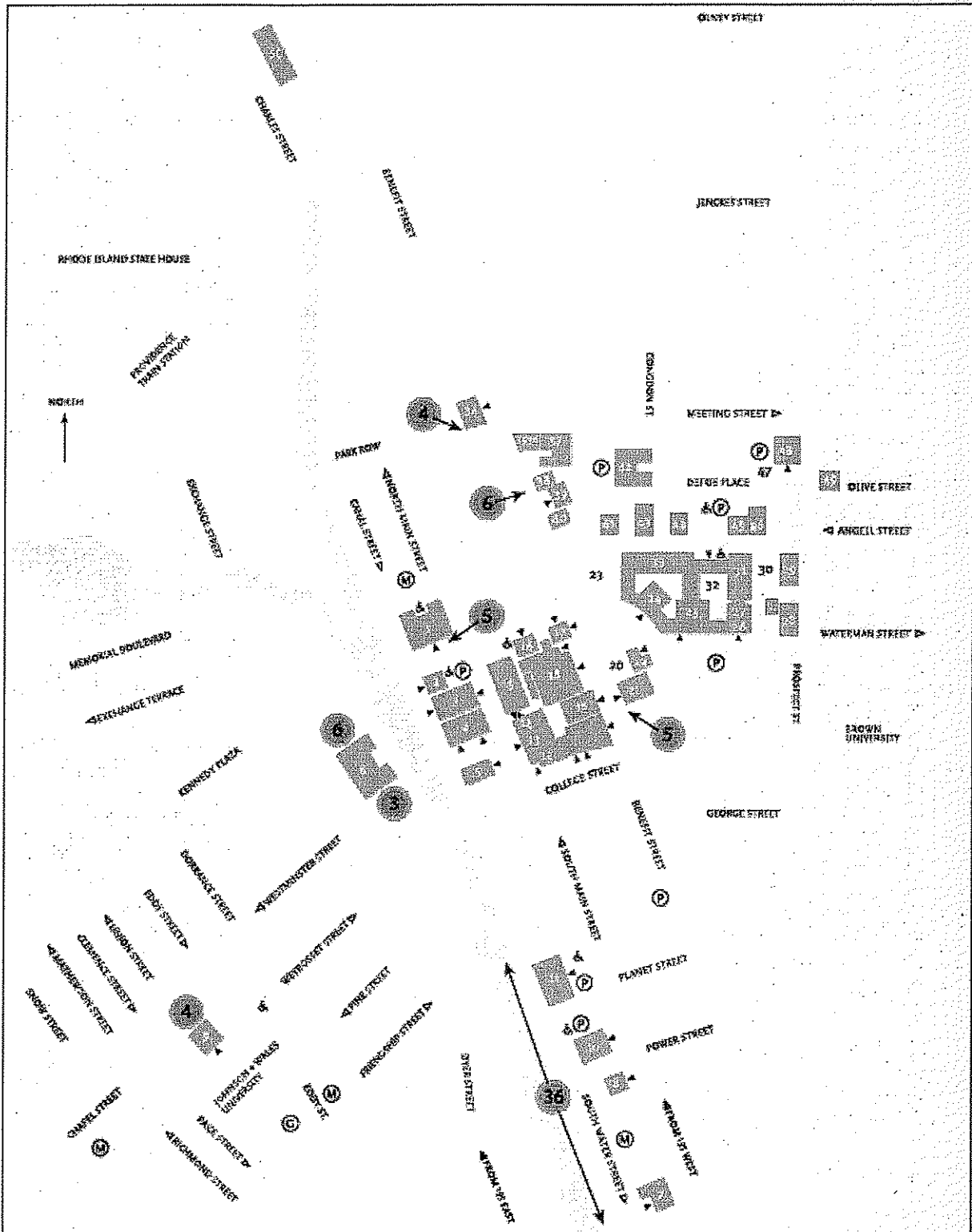
LIST OF DESIGNATED PARKING SPACES

Street	Spaces	RISD Exclusive Use	RISD Non-Exclusive Use
Benefit Street	11	8 a.m. to noon, Monday to Friday	Noon to 6 p.m., Monday to Friday
Fulton Street	6	8 a.m. to 6 p.m., Monday to Friday	N/A
Meeting Street	4	8 a.m. to 6 p.m., Monday to Friday	N/A
Middle Street	4	8 a.m. to noon, Monday to Friday	Noon to 6 p.m., Monday to Friday
South Water Street (east side)	16	8 a.m. to 10 a.m., Monday to Friday	10 a.m. to 6 p.m., Monday to Friday
South Water Street (west side)	20	N/A	8 a.m. to 6 p.m., Monday to Friday
Washington Place	5	8 a.m. to noon, Monday to Friday	Noon to 6 p.m., Monday to Friday
Westminster Street	3	8 a.m. to 6 p.m., Monday to Friday	N/A
Westminster Street	1	24/7/365	N/A

EXHIBIT B

MAP OF DESIGNATED PARKING SPACES

MAP OF DESIGNATED PARKING SPACES



PARKING LICENSE AGREEMENT

This Parking License Agreement (this "License Agreement") is made as of _____, 2012, by and between 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 ("Licensor") and Rhode Island School of Design, a Rhode Island non-profit corporation having a mailing address of Two College Street, Providence, Rhode Island 02903 ("Licensee") (collectively referred to as the "Parties," and singularly as a "Party").

RECITALS

A. WHEREAS, Licensor is the owner of certain real property designated and accepted as public streets, as such streets are identified on Exhibit "A" attached hereto and incorporated herein by reference (the "Public Streets").

B. WHEREAS, Licensee's university campus (the "Campus") is in close proximity to the Public Streets and the Licensee owns and utilizes a substantial portion of the real properties immediately adjacent to the Public Streets referenced herein.

C. WHEREAS, as required by that certain Memorandum of Agreement, dated June 29, 2012 by and between the Parties ("the MOA"), Licensor desires to convey to Licensee an irrevocable license for parking, on both an exclusive and a non-exclusive basis, in 70 parking spaces upon the Public Streets, all as further described below.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. Parking License.

a. Licensor hereby grants Licensee a license (the "Parking License") for vehicular parking by Licensee's authorized faculty and staff on the 70 parking spaces identified on Exhibit "A" (the "Parking License Area") on an exclusive and/or non-exclusive basis at the times specified on Exhibit "B." The Licensor further agrees that during the non-exclusive license periods, parking in the designated portions of the Parking License Area by anyone other than a Permit holder of the Licensee will be limited to two hours of parking. Licensee agrees that holders of overnight parking permits may park within the Parking License Area (other than the one 24-hour exclusive parking space) between the hours of 6:00 p.m. and 7:45 a.m. Occupancy of the Parking License Area by an overnight parking permit holder after 7:45 a.m. will subject such overnight permit holder to ticketing.

b. The License Agreement is effective for an "Initial Parking License Term" of

eleven years beginning on January 1, 2013 and ending on December 31, 2023. Upon completion of the Initial Parking License Term on December 31, 2023, the Parking License will expire without the necessity of any further documentation thereof, unless the Parking License is extended as hereafter provided. Licensee shall have the right to extend the Initial Parking License term for two consecutive extension periods of ten years each (each an "Extension Period" and collectively the "Extension Periods"). Licensee shall exercise each such Extension Period by delivering written notice to the Licensor no later than three months prior to the expiration of the then-current term, nor sooner than 12 months prior to the expiration of the then-current term. Should Licensee fail to deliver written notice within such time period, then Licensee shall be deemed to have waived its right to exercise the Extension Period, and this License Agreement shall expire and be of no further force or effect at the end of the then-current term.

c. In consideration of the payments by Licensee to Licensor provided for in the MOA, Licensee shall not be required to pay a license fee during the Initial Parking License Term. During the Extension Periods, Licensee shall pay an annual license fee at reasonable, market-based rates to be mutually determined by the parties.

d. Licensor shall, at its expense, stripe a total of 70 parking spaces in the Parking License Area. Should such striping of the Parking License Area result in an undercount of spaces (fewer than 70), the Licensor shall provide additional striped parking spaces at a mutually agreeable location equally convenient to the Campus. Licensor agrees that any additional spaces designated for this purpose will be added to the Parking License Area.

2. Parking Permit System. Licensee, at its sole cost and expense, shall institute a parking permit system for the Parking License Area (the "Permit System") so that the Licensor can accurately and readily identify the parking License participants. As part of the Permit System, Licensee shall provide stickers, hang tags, or such other means of identification as determined by Licensee (the "Parking ID") to its authorized faculty and staff entitled to utilize the Parking License Area. The Permit holders shall display such Parking IDs in or on their vehicles in accordance with standards determined by Licensee. Licensee shall determine the number of Parking IDs that are provided to authorized faculty and staff. Further, Licensee shall provide Licensor with the license plate numbers/letters for each vehicle belonging to its authorized faculty and staff entitled to utilize the Parking License Area. Licensor shall enforce the Permit System, by reference to such license plate numbers/letters, as more particularly provided in Section 4. All income and other fees derived from or generated by the Permit System shall be kept exclusively by Licensee, and all income and other fees derived from or generated by enforcement of the Parking System by the Licensor shall be kept exclusively by the Licensor.

3. Parking Meters. To the extent that any of the parking spaces in the Parking License Area are not currently metered, no meters shall be installed at such parking spaces during the term of this License Agreement.

4. Signs and Other Enforcement Obligations of Licensor. In consultation with Licensee, Licensor shall provide standard parking signs in the Parking License Area, in such quantity and in such places as Licensor shall determine in its good faith and reasonable discretion, which

signs shall state "Monday through Friday, [hours], Parking by RISD Permit Only, Tow Zone" or words to that effect, and will further state "Monday through Friday, [hours], Two Hour Parking Except by RISD Permit, Tow Zone" or words to that effect. Any person parking in the Parking License Area without a RISD permit during the exclusive period, or in excess of two hours during the non-exclusive period without a RISD permit, will be deemed by Licensor to be in violation of the Licensor's parking ordinances and the Licensor will enforce the exclusivity of the license by ticketing, towing, booting, or other enforcement mechanisms as utilized by the City in its regular enforcement of parking violations. Without derogating from the Licensor's enforcement obligations, Licensor hereby delegates to Licensee, through Licensee's Department of Public Safety and/or Licensee's parking enforcement department, the authority to place tickets provided to Licensee by Licensor on any vehicle violating Parking License Area restrictions, provided that any revenue generated by such enforcement action by Licensee shall be payable exclusively to Licensor.

5. Maintenance. Licensor agrees to maintain the parking areas located in the Parking License Area in good repair and operable condition, consistent with Licensor's normal municipal obligations regarding on-street parking, including snow removal, striping, maintenance, repair and resurfacing.

6. Indemnification. Licensee shall indemnify, defend and hold Licensor harmless from and against any claims, expenses, liabilities, loss, damage and costs, including reasonable attorney's fees, in any actions or proceedings in connection therewith, incurred in connection with, related to, arising from, or due to or as a result of the death of any person or any accident, injury, loss or damage, however caused, to any person or property, or any other type of claim or loss, arising from Licensee's exercise of, or use of, the License set forth herein ("Losses"), except Losses resulting from Licensor's failure to comply with its obligations under this License Agreement and/or the negligence or willful misconduct of Licensor, or any of the agents, servants or employees of Licensor.

7. Remedies and Enforcement. In the event of a breach or threatened breach by a Party of the provisions hereof, the other party shall be entitled to full and adequate relief by injunction and other available legal and equitable remedies.

8. No Right to Charge the General Public; No Assignment or Sub-Licensing. In no event may Licensee charge the general public for parking in the Parking License Area. Any income generated by the general public using the Parking License Area (pursuant to the public's non-exclusive rights to use such area) shall be kept exclusively by Licensor. Except for issuing parking stickers or hang tags to its faculty and staff, Licensee shall have no right to assign or sub-license this License Agreement without the prior written consent of Licensor, which consent may be granted or withheld in the Licensor's sole discretion.

9. Successors and Assigns. This License Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No third party shall be entitled to enforce any term, covenant or condition of this License Agreement, or have any rights hereunder.

10. Amendment. This License Agreement may only be amended by a document executed by the Parties to this License Agreement or their successors or permitted assigns.

11. Waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition of this License Agreement shall be construed as a waiver of or acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant or condition.

12. Severability. If any term or provisions of this License Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this License Agreement shall not be affected thereby, and each such remaining terms and provisions shall be valid and enforced to the extent permitted by law.

13. Applicable Law. The License Agreement shall be construed, governed and enforced in accordance with the laws of the State of Rhode Island.

14. No Partnership or Joint Venture. Nothing in this License Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said Parties liable for the debts or obligations of the other.

15. Section Headings. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

16. Entire Agreement. This License Agreement sets forth the entire agreement between the Parties regarding the subject matter hereof. There are no statements, promises, representations or understandings, oral or written, not herein expressed.

17. Notice. Any notice to be given hereunder shall be directed as follows:

If to Licensor: City of Providence
 City Hall
 25 Dorrance Street
 Providence, Rhode Island 02903
 Attn: Mayor's Office

With a copy to: City Solicitor

If to Licensee: Rhode Island School of Design
 Two College Street
 Providence, Rhode Island 02903
 Attn: Director of Public Safety

With a copy to: General Counsel

18. No Recordation. This License Agreement shall not be recorded by either Party.

19. Counterparts/Facsimile. To facilitate execution, this License Agreement may be executed by facsimile or electronic mail in .pdf format and in as many counterparts as may be deemed appropriate by the parties, all of which when taken together shall be deemed an original and shall comprise one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

LICENSOR:

City of Providence

By: Angel Taveras 8/21/12
Angel Taveras
Mayor

Witness

By: _____
Michael Solomon, President
Providence City Council

Approved as to form and correctness:

Jeff M. Padwa 8/20/12
Jeffrey M. Padwa, City Solicitor

LICENSEE:

Rhode Island School of Design

By: John Maeda 8/20/12
John Maeda
President

Witness

EXHIBIT A

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