

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 176

Approved March 22, 2012


WHEREAS, on February 23, 2012, Mayor Angel Taveras submitted a Memorandum of Agreement reached between the City of Providence and Johnson & Wales University for the time period from June 30, 2012 through June 30, 2022; and

WHEREAS, the Providence City Council considered the matter on March 1, 2012, and referred it to the Committee on Finance; and

WHEREAS, the Committee on Finance met on March 15, 2012, and voted unanimously to recommend approval to the full Council;


NOW, THEREFORE, BE IT RESOLVED, that the Memorandum of Agreement between the City of Providence and Johnson & Wales University is hereby ratified and approved.

IN CITY COUNCIL
MAR 20 2012
READ AND PASSED


PRES.

CLERK

I HEREBY APPROVE.


Mayor
Date: 3/22/12



Mayor of Providence

Angel Taveras

February 23, 2012

HAND-DELIVERED

Hon. Michael A. Solomon
President
Providence City Council
Providence City Hall
Providence, RI 02903

RE: Memorandum of Agreement with Johnson & Wales University

Dear President Solomon,

Please find enclosed with this correspondence a Memorandum of Agreement with respect to payments to be made to the City of Providence by Johnson & Wales University for a time period from June 30, 2012 through June 30, 2022.

I hereby submit the enclosed agreement to the Providence City Council for your approval.

Sincerely,

A handwritten signature in black ink, reading "Angel Taveras", is written over a horizontal line.

Angel Taveras
Mayor

Enclosure

City of Providence, Rhode Island 02903-1789
Phone (401) 421-7740 Fax (401) 274-8240



JOHNSON & WALES
UNIVERSITY

Barbara L. Bennett, J.D.
*Senior Vice President of Law & Policy
and Corporate Secretary*

Via Hand Delivery

February 17, 2012

Matthew Jerzyk
Director of Policy and Municipal Affairs
Senior Counsel to the Mayor
Office of Mayor Angel Taveras
Providence City Hall
Providence, RI 02903

***Re: Memorandum of Agreement with respect to payments to be made to the City of
Providence, RI, by Johnson & Wales University ("MOA")***

Dear Matt,

Enclosed, as promised, are two counterparts of the MOA that have been signed by John Bowen for Johnson & Wales University. I would appreciate it if you could attend to getting the necessary signatures of the Mayor, the City Solicitor, and the City Council President. Naturally, we are willing to help in this effort in any way we can. Once the MOA has been signed by everyone, please return one fully-executed original to me for our records.

We are all very happy with the proposed MOA and I look forward to working with you to bring it to closure.

Best regards,

Sincerely,
Johnson & Wales University

Barbara L. Bennett
Senior Vice President of Law & Policy

Cc (w/encs.): Michael D'Amico, Chief of Staff and Director of Administration
Zachary G. Darrow, Esq.

One Cookson Place, 6th Floor, Providence, RI 02903
401-598-2838 Fax 401-598-2233 bbennett@jwu.edu www.jwu.edu
Providence, R.I. North Miami, Fla. Denver, Colo. Charlotte, N.C.



CITY OF PROVIDENCE
Angel Taveras, Mayor

MEMORANDUM

DATE: February 17, 2012
TO: Jeff Padwa
FROM: Matt Jerzyk (Maria Radcliffe)
SUBJECT: Johnson and Wales University

Jeff,

Please sign the attached. The Mayor at Matt's request already signed it. Please send back to me or Matt after you execute.

Thank you,

-Maria

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 (9th) 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 (3rd) 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 Labor¹ (the "CPI Increase") if any. To be clear, the CPI Increase, if any, to be applied to the payments to be made during the 3rd fiscal year will be based on any increase in CPI from the first (1st) fiscal year following execution of this Agreement to the second (2nd) 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

¹ 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.

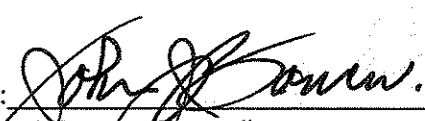
3.3 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one instrument. Photocopies, facsimile and electronic versions (such as pdf, jpeg, and tif) of this Agreement shall be deemed originals and treated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

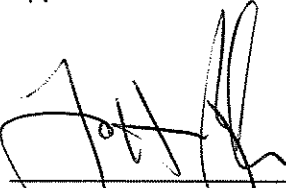
By: 
Angel Taveras, Mayor

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