

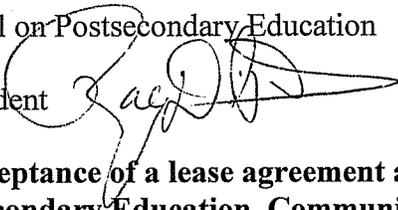


COMMUNITY COLLEGE
OF RHODE ISLAND

Office of the President

March 20, 2015

TO: Members of the RI Council on Postsecondary Education

FROM: Ray M. Di Pasquale, President 

RE: **Recommendation for acceptance of a lease agreement among the Rhode Island Council on Postsecondary Education, Community College of Rhode Island and the Rhode Island Department of Public Safety for the use by the Municipal Police Training Academy of certain space and facilities at the Community College of Rhode Island's Lincoln (Flanagan) Campus**

The Community College of Rhode Island is requesting that the Council approve a lease agreement with the Rhode Island Department of Public Safety for use by the Municipal Police Training Academy of certain space and facilities at its Lincoln (Flanagan) Campus.

The Training Academy has been operating at the Lincoln Campus since 1981 under an agreement dating back to that same year. Recently, the College and the Department of Public Safety have negotiated and agreed upon an updated lease which reflects the changes in the operation of the Academy over the years, as well as changes in the College's operations at that campus.

The initial term of this new lease is for a period of three (3) years beginning, July 1, 2014 through June 30, 2017. The rent for this term is \$19,475.00 per year, payable on the first day of July each year. The rent for any agreed upon Extended Term shall be negotiated by the parties. The lease also sets out the Department of Public Safety's use of the premises as office, instruction, and storage space related to the operation of the Academy, as well as use of the Field House and pool located on that campus.

The lease has been reviewed by the College's General Counsel and is attached to this memo.

I recommend:

THAT the Rhode Island Council on Postsecondary Education approve the lease among the RI Council on Postsecondary Education, Community College of Rhode Island, and the Rhode Island Department of Public Safety, Municipal Police Training Academy. The Agreements' final execution will also be subject to the approval of the State Properties Committee.

Knight Campus

LEASE AGREEMENT

LEASE AGREEMENT made and entered this ___ day of _____, 2015 between the RHODE ISLAND COUNCIL ON POSTSECONDARY EDUCATION, a public corporation created and established pursuant to Chapter 59, Title 16 of the General Laws of Rhode Island, by and through the COMMUNITY COLLEGE OF RHODE ISLAND, a state institution of higher education (collectively the "Landlord"), and the RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY, a department of the State of Rhode Island (hereinafter, the "Tenant").

WHEREAS, Landlord is the administrator of that certain land and buildings located in Lincoln, Rhode Island commonly known as the Flanagan Campus (the "Lincoln Campus"); and

WHEREAS, the Tenant currently operates a portion of the Municipal Police Training Academy (the "Academy") at the College's Lincoln Campus; and

WHEREAS, the Tenant has a continuing need for the use of classroom, conference room, office space, as well as the College's cafeteria, bookstore, and Field House on the Lincoln Campus for its operation of the Academy; and

WHEREAS, the Landlord wishes to continue to provide Tenant with the use of certain space and facilities at its Lincoln Campus for the operation of the Academy;

NOW THEREFORE, in consideration of the above, the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I LEASED PREMISES

1.1 The Landlord does hereby demise and let unto the Tenant and the Tenant does hereby hire and take from the Landlord, upon the terms and conditions set forth herein, the use of space and facilities at its Lincoln Campus, as more fully described on Exhibit A attached hereto and made a part hereof (the "Premises") for the term of this lease.

ARTICLE II TERM

2.1 The initial term of this lease shall be for a period of three (3) years beginning on July 1, 2014 and ending on June 30, 2017 (the "Initial Term").

2.2 The initial term of this lease may be extended for two additional terms of one (1) year each upon such terms and conditions as the parties may agree (the "Extended Term") commencing on the date immediately following the expiration of the Initial Term. If Tenant wishes to so extend the initial term of this lease it shall provide notice of its intention to Landlord not less than three (3) months before the expiration of the initial term unless such notice is waived in writing by Landlord.

ARTICLE III
USE OF PREMISES

3.1 During the initial or any extended term of this lease the Tenant shall use and occupy the Premises as office, instruction, and storage space related to the operation of the Academy. The Tenant may not use the premises for any other purpose without the prior written consent of the Landlord which consent shall not be unreasonably withheld.

3.2 The schedule for the Tenant's use of the Landlord's Field House and the hours for use of the Landlord's pool at the Lincoln Campus shall be coordinated with and approved in advance (four to six weeks prior to the start of an Academy's class) by the Director of Athletics of the Community College. Tenant's use of the athletic fields at the Lincoln Campus shall also require the prior approval (four to six weeks prior to the start of an Academy's class) of the Director of Athletics of the College.

3.3 The Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of the Landlord. Upon the expiration or sooner termination of this lease all alterations, additions or improvements shall be surrendered to the Landlord with the Premises as a part thereof without compensation to the Tenant unless otherwise agreed to by the parties.

ARTICLE IV
RENT

4.1 Tenant shall pay rent to the Landlord, at such place as it shall designate from time to time, annually, beginning on July 1, 2014 and on the first day of July for each remaining year of the Initial Term of this Lease Agreement. During the Initial Term of this Lease Agreement, the annual rent shall be \$19,475.00 . The rent for any agreed upon Extended Term shall be negotiated by these parties upon Landlord's receipt of Tenant's notice of its desire to extent as set forth in Section 2.2 above.

ARTICLE V
TELEPHONE, OFFICE, LIFE GUARD, AND PARKING

5.1 Tenant shall also during any term of this Lease, be solely responsible for and shall pay when due its own telephone expenses.

5.2 Tenant shall, in addition to rent, be responsible and pay for the services of two (2) Life Guards during any use by the Tenant of the Landlord's pool hereunder. The charge for such Life Guards' services will be \$30.00 per hour (\$15.00 per hour for each) during the Initial Term of this Lease Agreement, will be paid to the Landlord on a monthly basis.

5.3 Landlord shall provide Tenant's recruits parking in the Student Parking Lots located on the Lincoln Campus, without charge. Academy staff shall be provided parking (up to 5 spaces) in the Administration Parking Lot located on the Lincoln Campus. If additional parking for Academy staff is needed, it may be requested in advance by the Tenant.

ARTICLE VI MECHANICS AND OTHER LIENS

6.1 Tenant shall not permit or suffer to be filed against the Premises or any interest therein any mechanics' liens, materialman's liens, or other liens, claims or encumbrances of any kind.

6.2 If any such lien, claim or encumbrance is filed against the premises, it shall be the duty of the Party responsible for the filing of said lien, claim or encumbrance, within sixty (60) days after receipt of notice of such lien, claim or encumbrance, to cause the premises to be released there from, either by payment, posting a bond, or payment into the registry of court, of an amount necessary to relieve and release the premises from such lien, claim or encumbrance, or in any other manner which, as a matter of law, shall result in such release within such period of sixty (60) days.

ARTICLE VII INDEMNIFICATION

7.1 Landlord agrees that it shall, up to the limitation of liability as contained in R.I.G.L. 9-31-1 et seq., hold harmless and indemnify the Tenant, its agents, servants and employees against and from: 1) any penalty, damages or charges for any violation of any applicable law or ordinance whether occasioned by negligence or willful act of Landlord or Landlord's agents, employees, servants, invitees or visitors; and 2) all claims, loss costs, damage or expenses arising out of or from any accident, incident or occurrence in any way connected to the use in or about the premises caused by the negligence of Landlord or the Landlord's agents or employees. Provided, however, that the Landlord, at its unilateral option, may elect to defend any such action, claim, loss, penalty or violation at its expense. If the Landlord opts to defend any such claim, it may do so in the name of the Tenant, its agents, officers and employees and Tenant agrees to cooperate with Landlord in the defense

of such action. It is further provided that if the opinion of the Landlord or the Tenant there is a conflict in representing both the Landlord or the Tenant, the Tenant shall assume the costs and expenses of its defense.

7.2 Tenant agrees that Tenant shall, up to the limitation of liability as contained in R.I.G.L. 9-31-1 et seq., hold harmless and if necessary indemnify the Landlord, its governing boards, the R.I. Council on Postsecondary Education and the R.I. Board of Education, their members, officers, agents, servants, employees, faculty and students against and from: 1) any penalty, damages or charges for any violation of any applicable law or ordinance whether occasioned by negligence or willful act of Tenant or Tenant's agents, employees, servants, invitees or visitors; and 2) all claims, loss costs, damage or expenses arising out of or from any accident, incident or occurrence in any way connected to the use in or about the premises caused by the negligence of Tenant or the Tenant's agents or employees. Provided, however, that the Tenant, at its unilateral option, may elect to defend any such action, claim, loss, penalty or violation at its expense. If the Tenant opts to defend any such claim, it may do so in the name of the Landlord, its agents, officers and employees and Landlord agrees to cooperate with Tenant in the defense of such action. It is further provided that if the opinion of the Tenant or the Landlord there is a conflict in representing both the Landlord or the Tenant, the Landlord shall assume the costs and expenses of its defense.

ARTICLE VIII MAINTENANCE AND REPAIRS

8.1 Tenant shall keep the premises neat and clean and maintain the Premises in good order, condition and repair consistent with its condition at the commencement of this Lease Agreement, normal wear and tear excepted.

8.2 Notwithstanding the above, Landlord shall be responsible to maintain the Premises in good order, condition and repair, including without limitation, the buildings, their roofs and other matters that may affect structural integrity or interfere with the intended use and occupancy of the Tenant, including the plumbing, electrical, heating, air conditioning and similar mechanical systems, unless such damage and interference was caused by the Tenant or Tenant's use of the Premises.

ARTICLE IX
ASSIGNMENT AND SUBLETTING

9.1 The Tenant shall not assign, mortgage, pledge or encumber this Lease in whole or part without the prior written consent of the Landlord, which consent shall be in the sole and absolute discretion of the Landlord.

9.2 Any assignment, mortgage, pledge or encumbrance made by the Tenant without such consent of the Landlord shall be null, void and of no effect and constitute a material default of this Lease.

9.3 Tenant is strictly prohibited from subletting and/or subleasing the Leased Premises or any portion thereof to any third party.

ARTICLE X
DEFAULT

The occurrence at any time during the initial term or any extended term of this lease of any of the following shall constitute an event of default:

10.1 The failure of the Tenant to make any rent payment within fifteen (15) days from the due date.

10.2 The failure of the Tenant to pay all applicable taxes and/or assessments as required by this Lease.

10.3 The assignment, mortgage, pledge or encumbrance of this Lease or any part hereof in violation of Article IX.

10.4 The neglect or failure of either party to perform or observe any of the other terms, conditions, covenants or agreements contained herein which neglect or failure shall continue for thirty (30) days after receipt of written notice of such neglect or failure from the other party.

ARTICLE XI
REMEDIES AND TERMINATION OF LEASE

11.1 Upon the occurrence of any event of default by one party, the other party may terminate this lease without further obligation by giving notice of termination to the defaulting party as provided herein which notice shall set forth the reason for the termination along with the effective date of termination.

11.2 In addition to the right to terminate this lease the non-defaulting party shall have all rights and remedies, including damages, costs and reasonable attorney's fees, allowed by law or in equity.

ARTICLE XII
SURRENDER OF PREMISES

12.1 If, at the expiration of the initial term or any extended term, this Lease has not, for any reason, been renewed or further extended, or upon sooner termination of this Lease as set forth herein, the Tenant shall peaceably surrender the premises to the Landlord.

ARTICLE XIII
REPRESENTATIONS AND WARRANTIES

13.1 The Landlord represents and warrants to the Tenant that it has full power and authority to enter into and perform its obligations under this Lease and that the execution, delivery and performance of this lease has been duly authorized by all requisite action on its part.

13.2 The Landlord further represents and warrants to the Tenant that so long as the Tenant keeps and performs the terms and conditions of this lease, it shall have quiet and peaceful possession of the premises.

ARTICLE XIV
FIRE AND CASUALTY DAMAGE

14.1 If, at any time during the initial term or any extended term of this lease, the Premises shall be damaged by fire or other casualty a just abatement of rent shall be made until the damage has been fully repaired by the Landlord.

14.2 The Landlord shall provide written notice to the Tenant of its intention to repair the damages to the premises within thirty (30) days from the date of said fire or casualty together with a completion date of all repairs, which shall not exceed ninety (90) days from the date of the fire, or other casualty, which caused the damage. In the event that the Landlord has elected not to repair the damages, fails to provide written notice of its intention to repair the damages to the Tenant as set forth herein, or fails to complete the repairs by date of completion then this lease shall, at the sole option of the Tenant, terminate and be of no further force and effect. The Tenant shall be entitled to a return of any advance rental payment made prior to the effective date of termination.

ARTICLE XV
HAZARDOUS MATERIALS

15.1 Tenant shall not use or bring onto the Premises any pollutants or hazardous materials or substances except with the prior consent of the Landlord and in strict compliance with all applicable federal and state laws and regulations.

15.2 In addition to any other indemnification provided for herein, Tenant shall indemnify, defend and hold harmless, Landlord, its officers, employees and agents, from any and all payment, liability, loss or damage, including reasonable attorney's fees and court costs, arising out of any claims, demands, or actions, costs and expenses caused by Tenant's use or maintenance of pollutants or hazardous materials or substances on the Premises or related to the clean up or remediation of the Premises caused by Tenant's use or maintenance of pollutants or hazardous materials or substances on the Premises, except that this indemnification shall not apply to any pollutants or hazardous materials or substances that existed on the Premises prior to Tenants occupancy and possession.

ARTICLE XVI
FORCE MAJEURE

16.1 If either party shall be unable to carry out any of its obligations under this lease due to events beyond the reasonable control of and without the fault or negligence of the party claiming force majeure, including without limitation, an act of God, sabotage, accidents, appropriation or diversion of steam energy, equipment, materials, or commodities by order or rule of any governmental authority having jurisdiction thereof, any changes in applicable laws or regulations affecting performance, any act of governmental or judicial authority, war, blockage, insurrection, riot, fire, explosion, flood, nuclear emergency, epidemic, lightning, hurricane, earthquake or similar catastrophic occurrence, this lease shall remain in effect, but the effected party's obligation shall, subject to the limitations set forth below, be suspended for the period during which the effected party is unable to perform because of the disabling circumstances.

16.2 The party claiming force majeure must give the other party prompt written notice describing the particulars of the force majeure, including without limitation, the reasons why it effects or prevents performance, the nature of the occurrence and its expected duration.

16.3 The suspension of performance as provided herein shall be of no greater scope and of no longer duration than is required by the force majeure.

16.4 The non-performing party uses its best efforts to remedy its inability to perform notwithstanding the occurrence of a force majeure event.

16.5 The obligations of either party that arose before the force majeure causing suspension of performance shall not be excused as a result of the force majeure.

16.6 Economic hardship shall not constitute force majeure.

16.7 If the force majeure continues for a period greater than sixty (60) then either party shall have the right to terminate this lease at any time thereafter without further obligation to the other.

ARTICLE XVII
NOTICES

17.1 Whenever, by the terms of this lease, a notice, approval, consent, or other communication ("notice") is permitted or required to be given by one party to the other then such notice shall be valid and effective if it is in writing and sent to the other party at the address set forth below, by certified or registered mail, postage prepaid, return receipt requested, or by in-hand delivery. Such notice may also be faxed to the other party which shall be deemed valid and effective if also mailed or delivered as provided herein. A postmarked postal receipt shall be deemed adequate evidence of such mailing.

To the Landlord: Office of the Vice President for Business Affairs
 Community College of Rhode Island
 Knight Campus
 400 East Avenue
 Warwick, R.I. 02886-1807

To the Tenant:

17.2 Either party may, from time to time, change the office, individual and/or address to receive notice on its behalf by giving notice of said change to the other party as provided herein.

ARTICLE XVIII
WAIVER

18.1 No waiver of any term or condition of this lease or its performance shall be valid unless expressed in writing and signed by the party who is claimed to have waived or released such term, condition or performance.

18.2 The failure to insist upon the strict performance of any provision of this lease or to exercise any right or remedy set forth herein shall not constitute a waiver or relinquishment of said right or remedy.

18.3 The waiver of any breach of any term or condition of this lease shall be limited to the particular instance and shall not operate as a waiver of any future breaches of the same or any other term or condition of this lease.

ARTICLE XIX
TAX COMPLIANCE CLAUSE

19.1 Notwithstanding any provision of this Lease to the contrary, if applicable, it shall be the responsibility of the Tenant to ensure that payment of all local taxes and assessments for the Premises are made in a prompt manner and the failure of Tenant to pay said local taxes and assessments promptly may, in the sole discretion of the Landlord, result in the unilateral termination of this Lease without penalty to the Landlord.

ARTICLE XX
MISCELLANEOUS

20.1 Landlord shall have the right to enter and inspect the Premises at reasonable times during normal business hours by providing Tenant with twenty-four (24) hour prior notice except that such notice shall not be required in the event of fire or other emergency.

20.2 No amendments or modifications to this lease shall be valid unless contained in a writing and signed by both parties.

20.3 If any provision of this lease shall be invalid or unenforceable, the remainder of this lease shall not be affected and each term and condition of this lease shall be valid and enforceable to the fullest extent permitted by law.

20.4 Each of the parties have had an opportunity to fully review the terms and conditions of this lease with counsel of their choosing and hereby agree that it shall not be construed against the party who drafted this lease.

20.5 This lease shall be binding upon the parties hereto, their respective successors and assigns and to the extent applicable, their heirs, beneficiaries, executors, administrators and representatives.

20.6 This Lease Agreement shall be governed by the laws of the state of Rhode Island, and without limiting the generality of the foregoing, is subject to approval by the State Properties Committee pursuant to Chapter 6 and Chapter 7, Title 37 of the General Laws of the State of Rhode Island.

20.7 This instrument contains the entire agreement of the parties and is not subject to any agreements, statements or representations not expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this lease to be executed on the day and year first above written.

Landlord:

COMMUNITY COLLEGE OF RHODE
ISLAND/RHODE ISLAND COUNCIL ON
POSTSECONDARY EDUCATION

Witness

By: _____
President, Community College of RI

Witness

By: _____
Chair, Council on Postsecondary Education

Tenant:

RHODE ISLAND DEPARTMENT OF
PUBLIC SAFETY

Witness

By: _____
Its _____

APPROVED this ____ day of _____, 2015 BY THE STATE PROPERTIES COMMITTEE:

APPROVED AS TO TERMS AND CONDITIONS:

Chairman, State Properties Committee

APPROVED AS TO FORM:

Attorney General

APPROVED AS TO SUBSTANCE:

Director, Department of Administration

APPROVED:

Public Member

APPROVED:

Public Member

EXHIBIT "A"

LEASE AGREEMENT BETWEEN RHODE ISLAND COUNCIL ON POST
SECONDARY EDUCATION/COMMUNITY COLLEGE OF RHODE ISLAND

AND

RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY

The undersigned parties to that Lease Agreement, dated _____, 2015, hereby agree that the Premises set forth in Article I therein, shall include the following space and facilities at the Lincoln Campus:

Classroom (Room 1308);

Staff Offices (Rooms 1310, 1309, and the main office to the rear of the cafeteria);

Use of the Field House (including varsity locker rooms, pool, outside fields for Physical Training), subject to the scheduling requirements of Article III. Tenant shall pay for Life Guard services for any use of the pool, as set forth in Article V;

A Storage Cage (Tenant's non-exclusive use) in the basement of the main building at the Lincoln Campus;

Various conference rooms- the schedule for and the assignment of specific rooms shall be coordinated with and approved in advance by the Registrar and/or Director of Administration of the Community College;

Cafeteria for recruit lunches (when available, the recruits may use the Rear Faculty Lounge for their lunches where they can sit as a group, and so as to not disturb the other students using the cafeteria); and

Bookstore- recruits may purchase their books, clothing and equipment through the College's bookstore. Tenant is responsible to order this material through bookstore staff. Clothing and Equipment, however, will not be purchased in the Bookstore after the existing stock is depleted by the Tennant.

Landlord:

COMMUNITY COLLEGE OF RHODE ISLAND/RHODE ISLAND COUNCIL ON POSTSECONDARY EDUCATION

By: _____
President, Community College of RI _

Witness

By: _____
Chair, Council on Postsecondary Education

Witness

Tenant:

RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY

By: _____

Its _____

Witness