

REQUEST TO APPROVE LEASE AGREEMENT WITH ROUND VALLEY UNIFIED SCHOOL DISTRICT

Recommendation:

Staff recommends approval of the 5-year lease agreement with Round Valley Unified School District at an annual rate of \$15,000 and authorizing Dr. Swarthout to sign.

Summary:

The Apache County Higher Education Committee has recommended the Springville-Eagar Center be relocated to a larger facility, which is owned by the Round Valley Unified School District. Apache County Higher Education Committee has budgeted \$20,000 for the relocation. Approval has been received from the Department of Education in order to award Pell Grants to students attending at the new facility. The relocation is scheduled to be completed on or before January 10th, 2013. Spring semester begins January 14th, 2013.

The annual cost for the Springerville-Eagar Center will remain at \$15,000 annually and utility expenses are also expected to remain unchanged.

The current lease agreement for the Center is with the Town of Springerville and the Town of Eagar. Both towns have agreed to terminate the current lease with consideration of retaining two modular units on the property owned by the College.



LEASE AGREEMENT

This Lease ("LEASE") is made between ROUND VALLEY UNIFIED SCHOOL DISTRICT #10 (hereinafter "RVUSD"), and NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT (hereinafter "NCCCD"), who agree as follows:

1. **PREMISES.** RVUSD leases to NCCCD and NCCCD leases from RVUSD the certain portion of real property and improvements comprising 25,670 square feet in the RVUSD Primary School and District Office, located at 940 East Maricopa Street, Springerville, AZ 85938, as depicted in the attached Exhibit "A," and hereinafter referred to as "Premises," which includes the equipment, furniture and fixtures referred to in Paragraph 5 of the LEASE, upon all the conditions set forth herein.

2. **TERM.** The initial term of this LEASE ("Term") will be from January 1, 2013 until June 30, 2013, and shall automatically renew for the period from July 1, 2013 until June 30, 2018. The LEASE shall be renewable for subsequent five (5) year periods upon mutual written consent of the Parties, to be provided no later than 365 days prior to the termination date of the LEASE TERM. If the LEASE will not be renewed, a written Notice of Non-Renewal must be provided no later than 180 days prior to the termination date of the LEASE.

3. **RENT.**

3.1 **BASE RENT.** NCCCD shall pay the amount of One Thousand Two Hundred Fifty Dollars and 00/100 (\$1,250.00) per month, or Fifteen Thousand Dollars and 00/100 (\$15,000.00) annually.

3.2 **UTILITIES.** Propane, water, sewage, electricity and waste removal

charges will be billed to RVUSD's accounts. NCCCD will be billed on a prorated square footage basis. The total square footage is 61,975 square feet. NCCCD will use 25,670 square feet. NCCCD's portion is 41.5% of the total. RVUSD billing statements to NCCCD will include copies of RVUSD utility bill statements.

3.3 **CUSTODIAL SERVICES.** NCCCD shall be responsible for the payment and procurement of custodial services for the Premises.

4. **PERMITTED USE.** NCCCD's sole permitted use of the Premises is as offices and classrooms, including activities related to higher education, community education, and business and industry training.

5. **EQUIPMENT AND FIXTURES.** As part of the LEASE, RVUSD will lease to NCCCD and NCCCD will have the use of certain equipment, furniture and fixtures, as set forth in a separate document, as amended from time to time as needed. This document, Attachment 1, will be completed within thirty (30) days of the execution of the LEASE. All equipment, furniture and fixtures included herein are and will remain the property of RVUSD. NCCCD agrees that in the event of any damage to or destruction, excepting normal wear and tear, of such equipment, furniture or fixtures during the Term, NCCCD will pay promptly on demand all costs of repair or replacement of such equipment, furniture and fixtures. At the end of the Term, NCCCD will surrender the items listed in Attachment 1 in the same condition as when received, excepting normal wear and tear.

6. **ACCEPTANCE OF PREMISES.** NCCCD has thoroughly examined the Premises and agrees to accept it in the condition in which it exists as of the date the LEASE is signed, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises. NCCCD

agrees that RVUSD has not agreed and will not agree to warrant the suitability or safety of the Premises. NCCCD acknowledges that RVUSD has not made any representation or warranty with respect to the Premises other than is expressly set forth in the LEASE.

7. **MAINTENANCE AND REPAIRS.** NCCCD will, at its expense, maintain the Premises in good condition. This includes repairs and maintenance to those areas as required as a result of NCCCD's negligent acts or omissions. No changes to the Premises, whether structural or cosmetic, shall be made without RVUSD's prior written approval, and at NCCCD's sole expense.

8. **QUIET ENJOYMENT.** RVUSD covenants that upon NCCCD's keeping and performing all of the terms and conditions of this LEASE, subject to any cure periods, RVUSD will do nothing which will prevent NCCCD from peaceably and quietly enjoying, holding and occupying the Premises during the Term. The LEASE is subject to any easements, covenants and restrictions of record.

9. **INDEMNIFICATION.** Each party shall be responsible for its own negligence, actions or omissions. Any other provision of this Agreement to the contrary notwithstanding, the parties acknowledge that both parties are public institutions and any indemnification or hold harmless provision shall be limited as required by State law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and §§ 35-154 and 41-621 of the Arizona Revised Statutes ("A.R.S.").

10. **INSURANCE.** NCCCD shall procure and maintain insurance against claims for injury to persons and damage to property which may arise from, or in connection with, use of the Premises by NCCCD, its officers, directors, employees or agents, and any negligence, actions or omissions arising therefrom, in addition to all additional forms of insurance necessary for its own employees and independent

contractors. NCCCD shall be responsible for insuring any equipment and building contents not furnished by RVUSD.

11. ENTRY AND INSPECTION. RVUSD and its agents shall have the right to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same.

12. DISPUTES AND DEFAULT.

- a. Event of Default. Any party's failure to comply with or perform any covenant or obligation set forth in this Agreement shall constitute an event of default ("Event of Default") under this Agreement.
- b. Notice of Default. A nondefaulting party shall give written notice of default to the party in default specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.
- c. Remedies. Upon the occurrence of any Event of Default not cured within thirty (30) days of notice, in addition to, and not in lieu of, any right or remedy available at law, in equity, by statute or under this Agreement, the nondefaulting party may, if it so elects following mediation as provided below, terminate this Agreement by giving written notice of termination to the defaulting party.
- d. Mediation. Should a dispute arise between the parties under this Agreement that they cannot resolve between themselves, or should there be a claim of default by one party against the other, such unresolved

Lessee: NCCCD c/o
Northland Pioneer College
Vice President for Administrative Services
P.O. Box 610
Holbrook, AZ 86025

or to such other address designated, in writing, by either party.

- 14.2 **INTEGRATION & AMENDMENT.** The LEASE and its exhibits, riders and/or addenda, if any, attached hereto, set forth the parties' entire agreement. All exhibits, riders and/or addenda mentioned in the LEASE are expressly incorporated herein by this reference. No subsequent amendment of the LEASE will be binding upon RVUSD or NCCCD unless reduced to writing and signed by both parties. If any provision contained in an exhibit, rider or addenda is inconsistent with a provision in the body of the LEASE, the provision contained in said exhibit, rider, or addenda shall control.
- 14.3 **ARIZONA LAW.** The LEASE shall be interpreted and enforced under the laws of the State of Arizona. The Parties agree that jurisdiction and venue shall be appropriate in the Courts of Apache County, Arizona.
- 14.4 **SEVERABILITY.** If any provision of the LEASE is held to be invalid, illegal or unenforceable in any respect, the LEASE will be construed as not containing that provision and all other provisions of the LEASE

will remain in effect.

- 14.5 **NONDISCRIMINATION.** The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act.
- 14.6 **CONFLICT OF INTEREST.** This Agreement is subject to A.R.S. § 38-511 which provides that agreements may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating an agreement on behalf of the state, its political subdivisions, or any departments or agencies of either is, at any time while the agreement is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party with respect to the subject matter of the agreement.
- 14.7 **NOTICE OF ARBITRATION STATUTES.** Pursuant to A.R.S. § 12-1518, the parties acknowledge and agree to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this LEASE, if required by A.R.S. § 12-133.
- 14.8 **ENTIRE AGREEMENT.** This LEASE embodies the entire understanding of the parties and supersedes any other agreement or understanding between the parties relating to the subject matter.

14.9 **COUNTERPARTS.** This LEASE may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14.10 **NO STRICT CONSTRUCTION.** The language used in this LEASE will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied.

14.11 **SECTION HEADINGS.** The headings of sections contained in this LEASE are provided for convenience only. They form no part of this LEASE and shall not affect its construction or interpretation.

SIGNATURES

IN WITNESS WHEREOF, the parties executed this agreement.

Lessor:

Lessee:

RVUSD

NCCCD

By: _____

By: Jeanne Swarhout, Ph.D.

Title: _____

Title: President

Date: _____

Date: _____

Primary School

EXHIBIT A

NPC within blue line, including classrooms 129 - 144

