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EXHIBIT # EXHIBIT
  23-1 Why Rowan University Cannot Indemnify
23.01 OVERVIEW

This chapter sets forth policies and procedures associated with legal issues as they pertain to the University.

The University is provided legal representation from the New Jersey State Attorney General's office and also utilizes the services of a legal firm of record.

All requests for legal counsel are to be made to the Office of the Vice President for Administration and Finance.

23.01.1 CURRENT POLICY

In accordance with the State of New Jersey, Department of Law and Public Safety, Division of Law, Rowan University is an institution of higher education created and operated pursuant to the laws of the State of New Jersey, N.J.S.A. 18A:64-1 et seq. In its role as a State agency, the University is free to act solely within the scope of those duties, which have been delegated to it by the Legislature. Although the University has been delegated the power to contract within the scope of the provisions of the State Contracts Law, N.J.S.A. 18A:64-52 et seq., the University cannot indemnify (see Exhibit 23-1).

Furthermore, the State of New Jersey itself is immune from suit except in those limited instances provided for in the New Jersey Tort Claims and Contractual Liability Acts, N.J.S.A., 59:1-1 et seq., 59:31-1 et seq.

Any agreement signed on behalf of the State of New Jersey by a State official shall be subject to all of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:1-1 et seq. and the availability of appropriations.

The State of New Jersey does not carry public liability insurance, but the liability of the State and the obligations of the State to be responsible for tort claims against its employees is covered under the terms and provisions of the New Jersey Tort claims Act N.J.S.A. 59:1-1 et seq.

The Act also creates a special self-insurance fund and provides for payment of claims under the Act against the State of New Jersey or against its employees for which the State is obligated to indemnify against tort claims which arise out of the performance of their official duties.
23.01.2 LEGAL COUNSEL AND REPRESENTATION

The Attorney General will generally provide representation to University employees who are sued for acts arising out of the performance of their official duties. The employee must make a specific written request to be represented by the Attorney General and must cooperate fully with counsel during the pendency of the matter. For additional information about legal counsel and representation, contact the Office of the Vice President for Administration and Finance.

23.01.3 LIABILITY PROTECTION

All State of New Jersey employees have legal protection for tort claims brought against them as employees during the course of their official duties. A tort is a civil, not criminal, wrong which results in injury to another, e.g., negligence, for which the injured party may be entitled to compensation. The Tort Claims Act of 1972 removed the blanket immunity from tort claims which the State previously enjoyed by reason of its sovereign position. At the same time, it defined the position of the State and its employees insofar as tort liability is concerned, set forth procedures for the submission of such claims and the administrative handling thereof, furnished guidelines effective in the event of litigation and established a tort claims fund out of which these claims are to be paid. To prevent jeopardizing the defense of claims of this nature, any tort claim which is submitted should be referred immediately to the Office of the President or Vice President for Administration and Finance.

Any verbal or written report or any request for information concerning an injury, which appears to be of such a nature that it may later involve a tort claim against the State or any of its employees, should also be referred to the Office of the President or Vice President for Administration and Finance for handling. No employee should furnish any response to such inquiries unless specifically authorized to do so by the President's Office.

Any written communications or papers of any kind received by the employee in connection with these matters should be referred to as "correspondence." The terms "claim" and "notice of claim" should be avoided since they have special significance under the Act and their improper use may prejudice later defense if and when a claim is submitted.
23.02 LEGAL DOCUMENTS

Most lawsuits are initiated by the service of a summons and complaint by a process server upon the named defendants. If the suit is against a state college/university in a state court, court rules require that service be made on the Attorney General or his/her designee. Papers initiating a lawsuit in a Federal court may be served on the Attorney General, or his/her designee. No employee is permitted to accept service for another employee.

There are a number of other legal documents which may be served directly on individuals whose appearance or response is requested. Typical of these documents are: subpoenas, court orders and miscellaneous notices for depositions. The Vice President for Administration and Finance must be informed immediately and all such documents and papers forwarded to that office.

In order to insure the efficient and expeditious handling of legal documents which may be served upon the University or its employees, the following procedures should be followed:

1. Only the President (or his/her designee) or Vice President for Administration and Finance shall accept services of process, subpoenas, or other legal documents which are served on and addressed to the University.

2. All other personnel shall refuse receipt of any legal papers attempted to be served on the University and direct the process server to one of the officers listed in paragraph 1 above.

3. The Vice President for Administration and Finance shall keep a record of legal documents received and will be responsible for forwarding all such documents to the appropriate personnel. The forwarding of the documents to the Attorney General by the President or Vice President does not satisfy the requirement that the Attorney General be served directly.

4. In the event that an employee directly receives a subpoena or court order requiring prompt action on his or her part, he or she shall immediately contact the Office of the Vice President for Administration and Finance who will refer the matter to the Attorney General or designee.

5. Should any employee accept service of process in which he or she is an individually named defendant, the document and a written request for representation by the Attorney General should immediately be forwarded to the Vice President for Administration and Finance for transmittal to the Attorney General, together with the Vice President's
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Approved by President: 9/3/03

recommendation as to whether representation is appropriate.

6. An employee may accept services of legal documents naming the employee individually, and not in any official capacity.

7. Subpoenas and official requests for information pertaining to students will be governed by the Family Educational Rights and Privacy Act of 1974 (FERPA).

FERPA is a federal law designed to protect the privacy of a student's education records. This law applies to all schools which receive funds under programs sponsored by the U.S. Department of Education. Rowan University complies fully with the requirements of this legislation. Copies of FERPA provisions may be obtained from the Dean of Students' office or the Registrar's office.

23.03 CONTRACTS

All contracts entered into by the University are to be approved and completed by the contracting officer pursuant to the New Jersey State Contracts Law N.J.S.A. 18A:64-52 et seq. and the guidelines established by the Rowan University Board of Trustees.

The autonomy legislation of 1986 establishes the authority of the University to negotiate and make contracts with a second party. This authority is through the Board of Trustees.

The Board has delegated authority to act as the University's contracting officer to the Vice President for Administration and Finance. The duties of the contracting officer include: preparing advertisements, advertising for and receiving bids, and making awards for the University in connection with purchases, contracts or agreements as delegated and/or approved by the Board of Trustees. (For procurement contracts, see Chapter 13, Purchasing.)

All contracts with vendors or other non-university parties must be negotiated and approved through the Vice President for Administration and Finance. The University will not honor any contract unless it is signed by the Vice President for Administration and Finance.

23.03.1 CAMPUS EVENTS

A standard University contract is to be completed whenever an event involves an outside performer, speaker, program, and/or outside organization. The initiating department should allow adequate time for proper preparation and processing. Fully executed, signed copies of these contracts must be returned to the Vice President for Administration and Finance by the
sponsoring organization in advance of the proposed event.

All contracts submitted to the contracting officer for University approval must have a completed contract sign-off form attached. This form indicates that the originating department and respective division head have reviewed the contract, understand its contents, can meet the specific requirements and all necessary arrangements have been made prior to forwarding it to the contracting officer for signature. Vendors will not receive payment unless all requirements for the campus event contract have been met. Payments are issued after completion of the event.

Copies of the Event Contract and the Contract Sign-Off form can be downloaded from the Administration and Finance web site. Contact the Student Center Scheduling Office for contracts requiring the use of University facilities.

23.03.2 INSURANCE REQUIREMENTS

All outside organizations coming to the campus are required to provide a Certificate of Insurance. The organization must agree at the outset to provide the University an original Certificate of Insurance prior to the date of the event: a) that meets certain explicit minimum liability requirements as determined by the University; b) that designates the University and the State of New Jersey as "Additionally Named Insureds"; and c) that explicitly includes certain required language regarding participants and spectators. Specific questions on the University's insurance requirements can be directed to the Risk Management Office at 256-4119.

23.04 INVESTIGATIONS

23.04.1 PRE-EMPLOYMENT INVESTIGATIONS

23.04.1.1 BACKGROUND CHECKS - PRE-SCREENING OF POTENTIAL ROWAN EMPLOYEES

It is the policy of Rowan University to perform background checks on all final candidate(s) for employment opportunities prior to employment. This policy does not apply to students.

When the final candidate(s) for a vacancy have been identified, the candidate(s) will be required to complete a Rowan University Application for Employment if they have not already done so. They will also be asked to
sign a Release and Authorization form to authorize a background check. The form will specify the type of checks to be performed. Any candidate refusing to sign the Release and Authorization form will be removed from consideration. Employment at Rowan is contingent upon successful completion of background checks.

Contracted service hired by the University, with the exception of construction contracts, will be required to perform similar background checks on their employees who work on Rowan University campuses.

An authorized vendor or Public Safety Department may conduct the background check. The check may include one or all of the following, depending on particular job relatedness: Motor vehicle records, criminal background, verification of education and social security. Additional checks may be made on applicants if considered to be job related.

Reference checks and verification of educational attainment are conducted during the screening process. It will be the responsibility of the hiring department or search committee to check a candidate's previous employment history and personal references. Forms to assist in this process may be obtained from the Office of Human Resources.

The background check must be successfully completed before a candidate can begin employment at Rowan University. However, since full criminal background checks require fingerprint checks in the states where the candidate has lived during the past five years, a shorter form criminal background check may be conducted while the fingerprint check is taking place. Social security information, name(s) used and addresses will be sent for a background check. If this preliminary check indicates that the employee is deemed eligible for hire, then the candidate may begin employment contingent upon the full background check results. If a conviction is discovered a determination will be made as to whether the conviction has implications related to the position for which the candidate is applying, or would present safety or security risks before a final employment decision is made. The candidate will have an opportunity to explain information uncovered or to correct the information within five working days. The Provost or Vice President will be the official responsible for making eligibility determinations based on information received.

If an applicant is denied employment because of the information obtained in
a background check conducted by the University or its vendor, the applicant will be informed of this and given a name, address and phone number to contact if he or she has specific questions about the result of the check or wants to dispute its accuracy.

Any applicant who provides misleading, erroneous or willfully deceptive information to Rowan University in the Application for Employment, resume, or interview will be immediately eliminated from further consideration for employment with Rowan University.

Any costs incurred for the screening shall be borne by the hiring division.

Presidential Approval 6/8/04

23.04.2 INTERNAL INVESTIGATIONS

The University has established guidelines, along with State mandated policies, for conduct by those acting on behalf of the University including executive officers, faculty, staff and other individuals employed by the University using University resources or facilities. University employees at all levels are responsible for exercising due diligence and have a general duty to conduct themselves in a professional manner and in accordance with the University’s published code of ethics.

In the course of their education, employment or use of University services, individuals may have complaints alleging violations of University policies and procedures or indicating concerns over safety and security.

It is the policy of the University to identify and promptly investigate reports of suspected irregularities and inappropriate activities which may include, but are not limited to, embezzlement, theft, falsification of documents, financial or other conflicts of interest, conduct unbecoming a State employee, and misuse of University property.

All vice presidents, deans, department heads and managers are required to support and work with appropriate University officials in detecting and reporting these inappropriate activities. Any suspected irregularity or inappropriate activity should be reported immediately to the immediate supervisor/manager/director, in coordination with the respective division head. The existing University policies and procedures should be followed to investigate and correct
irregular/inappropriate activities (see appropriate employment handbooks and contracts).

In rare instances, it may be determined by the respective division head that the suspected irregular activity is significant and of such magnitude to warrant further investigation. In such cases, the respective vice presidents are the University officials responsible for determining the appropriate course of action when there is a report of suspected irregularities to University policies and procedures. If the respective vice president feels the irregularity or inappropriate activity requires an investigation by means of surveillance of a particular area and/or activity, it shall be brought to the attention of the President. The President, Vice President for Administration and Finance, and the Director of Public Safety, after consultation with legal counsel, will then approve the appropriate course of action in the investigation.

Upon completion of the investigation, the Vice President for Administration and Finance reports the results of the investigation to the President with a recommendation for resolution based on University policies and procedures.

Consistent with law, every effort should be made to protect the confidentiality of any person reporting suspected irregularities and/or inappropriate activities. Retaliation of any kind against a person making a report in good faith will not be tolerated.
Exhibit 23-1 Why Rowan University Cannot Indemnify

In accordance with the State of New Jersey, Department of Law and Public Safety, Division of Law, Rowan University is an institution of higher education created and operated pursuant to the laws of the State of New Jersey N.J.S.A. 18A:64-1 et seq. In its role as a State agency, the University is free to act solely within the scope of those duties, which have been delegated to it by the Legislature. Although the University has been delegated the power to contract within the scope of the provisions of the State College Contracts Law, N.J.S.A. 18A:64-52 et seq., the University has only been delegated the power to indemnify in one specific instance. N.J.S.A. 18A:64-82 specifically grants State colleges the power to enter into an agreement indemnifying the United States of America...from any liability for loss or damage to the person or property of others resulting from any project undertaken by the federal government for the benefit of the State college or any project the cost of which or any part thereof is to be paid out of federal funds.

Furthermore, the State of New Jersey itself is immune from suit except in those limited instances provided for in the New Jersey Tort Claims and Contractual Liability Acts, N.J.S.A. 59:1-1 et seq., 59:13-1 et seq. Prior to enactment of these statutes by the Legislature, the State was not even free to indemnify its own employees. Title 59 now permits the State to indemnify its employees specifically for acts committed within the scope of their duties. Accordingly, only in those limited instances in which the Legislature has delegated the power to indemnify, can the State or its agencies commit the State to be responsible for the acts of third parties.

Finally, as indemnification is a commitment to be responsible for an undefined loss, State agencies, which are funded with legislative appropriations, cannot agree to such an open-ended promise. Agencies cannot simply by virtue of contracting commit future legislatures to make future appropriations. Accordingly, the University cannot agree to indemnify.

If you have any questions, please call Kathy Holloway at (856) 256-4143.