

**CITY OF COSTA MESA
LICENSE AGREEMENT
FOR
USE OF CITY HALL PARKING LOT**

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into this 27th day of February, 2020 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City” or “Licensor”), and VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA, a California nonprofit corporation (“Licensee”).

WITNESSETH:

WHEREAS, City is the owner of real property located at 77 Fair Drive, Costa Mesa, California and all appurtenances thereon known as Costa Mesa City Hall (“Property”); and

WHEREAS, the Property includes a parking lot (“Parking Lot”); and

WHEREAS, Licensee owns the property adjacent to City’s Property, at 55 Fair Drive, Costa Mesa, California; and

WHEREAS, Licensee is hosting a 100 year anniversary celebration and the Grand Opening of its Student Center on February 28, 2020 (“Event”); and

WHEREAS, Licensee’s property does not have sufficient parking to accommodate the Event; and

WHEREAS, Licensee desires to use parking spaces in City’s Parking Lot during the Event; and

WHEREAS, City is willing to permit use of the Parking Lot for such purpose, subject to the terms and conditions of this Agreement; and

WHEREAS, City and Licensee desire to execute this Agreement to set forth their rights, obligations, and liabilities relating to Licensee’s use of the Property; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. GRANT OF LICENSE

City grants to Licensee a non-exclusive license (the “License”) to use up to 150 parking spaces in the Parking Lot on February 28, 2020, from 5:00 p.m. until 10:00 p.m., for vehicular parking purposes for Licensee, its agents, employees, guests, and invitees.

2.0. LIMITED USE OF PARKING LOT

Licensee shall use the Parking Lot for the exclusive purpose of vehicular parking for Licensee and its agents, employees, guests, and invitees.

3.0. LICENSE FEE

In consideration for entering into this Agreement, City grants the License to Licensee for no fee.

4.0. LICENSEE'S DUTIES AND RESPONSIBILITIES

Licensee shall:

- (a) Leave the Parking Lot in the condition it was provided to Licensee.
- (b) Comply with, and require its agents, employees, guests, and invitees to comply with, any and all City rules, regulations, and guidelines applicable to use of the Parking Lot.
- (c) Comply with all reasonable requests made by City.

5.0. CITY'S DUTIES AND RESPONSIBILITIES

City agrees to permit Licensee to use the Parking Lot in accordance with this Agreement.

6.0. ENTRY BY CITY AND PUBLIC

The Parking Lot shall be open to Licensee's employees, guests, invitees, and the public at no charge. City and the general public shall have unrestricted access to the Parking Lot at all times during Licensee's use.

7.0. ACCEPTANCE OF PARKING LOT

City makes no warranty or representation of any kind whatsoever regarding the condition of the Parking Lot or its fitness for Licensee's use, or any use. Licensee accepts and agrees to use the Parking Lot in its current "as-is" condition, without any obligation of Licensor to perform or pay for any improvement thereto.

8.0. ALTERATIONS, ADDITIONS, IMPROVEMENTS

Licensee shall not make any alterations, additions, or improvements to the Parking Lot or Property.

9.0. NO INTEREST IN PROPERTY

Licensee understands and agrees that this is a license agreement, not a lease agreement. No tenancy is established by this Agreement and Licensee shall have no interest in the Property as a result of this Agreement or Licensee's use of the Parking Lot.

10.0. INSURANCE

10.1. Minimum Scope and Limits of Insurance. Licensee shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this

Agreement or shall be twice the required occurrence limit.

10.2. Endorsements. The commercial general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of Vanguard University of Southern California pursuant to its contract with the City; products and completed operations of Vanguard University of Southern California; premises owned, occupied or used by Vanguard University of Southern California.”
- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “Vanguard University of Southern California’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Licensee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

10.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

10.4. Certificates of Insurance. Licensee shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to using the Property.

11.0. INDEMNIFICATION AND RELEASE

11.1. Licensee agrees to defend, with legal counsel approved by City, indemnify, and hold free and harmless City, its elected officials, officers, agents, volunteers and employees (“Indemnitees”), at Licensee’s sole expense, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature arising out of this Agreement or the use or occupancy of the Parking Lot or Property by, or the acts, errors or omissions of, Licensee, its officers, agents, members volunteers, employees, occupants, invitees, visitors, guests, or other users, and/or authorized subcontractors. Notwithstanding the foregoing, Licensee shall not be responsible for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of the Indemnitees.

11.2. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Licensee, its officers, agents, volunteers, employees, occupants, invitees, visitors, guests, or other users and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions, or misconduct of Licensee, its officers, agents, volunteers, employees, invitees, visitors, guests, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the Indemnitees based upon Licensee's use or occupancy of the Property pursuant to this Agreement, whether or not Licensee, its officers, agents, volunteers, employees, invitees, visitors, guests, and/or authorized subcontractors are asserted to be liable.

11.3. Licensee hereby releases Indemnitees from any claims, demands, obligations, liabilities, damages, injuries, breaches of duty, causes of action, losses, costs and expenses, including, without limitation, attorneys' fees, whether known or unknown, which arise out of or are incurred in connection with the use of the Parking Lot or Property by Licensee, including, without limitation, any damage or injury to Licensee or to its property arising out of or in connection with this Agreement.

12.0. GENERAL PROVISIONS

12.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

12.2. Notices. Except as set forth herein, any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail. Either party may change its address by giving notice in writing to the other party.

IF TO LICENSEE:

Vanguard University of Southern California
55 Fair Drive
Costa Mesa, CA 92626
Attn: David Vasquez

IF TO CITY:

City of Costa Mesa
Development Services Department
77 Fair Drive
Costa Mesa, CA 92626
Attn: Barry Curtis

12.3. Assignment and Subletting. Licensee shall not assign this Agreement or license or sublet the Property or any part thereof without the prior written consent of City.

12.4. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

12.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

12.6. Public Records Act Disclosure. Licensee has been advised and is aware that this Agreement and all reports, documents, information and data furnished or prepared by Licensee pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in California Government Code section 6254.7, and of which Licensee informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

12.7. Force Majeure. In the event of damage or destruction of the Property by any act of God, fire, national or local calamity, strike, labor dispute, civil disturbance, accident, epidemic, act or regulation of any public authority, interruption in or delay of transportation services, or any event of any other kind or character whatsoever, whether similar or dissimilar to the foregoing events, which shall render the practicable fulfillment by City of its obligations under this Agreement impossible, this Agreement shall be null and void and City shall be released of all responsibility hereunder and shall not be held responsible by Licensee for any resulting damage. In the event of any such occurrence or threat thereof, City shall have the right in its discretion to suspend or terminate any use by Licensee of the Property, to cause the Property to be vacated, or to take such action for such duration as City in its sole discretion deems necessary or appropriate.

12.8. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

12.9. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Licensee and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

12.10. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

12.11. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

12.12. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

12.13. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

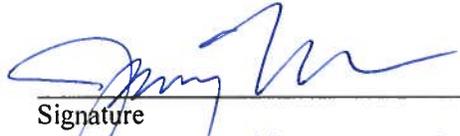
12.14. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

12.15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

12.16. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA



Signature

Date: 2/27/20

Jeremy Moser VP for Finance / CFO
Name and Title

CITY OF COSTA MESA


for Lori Ann Farrell Harrison
City Manager

Date: 2/28/20

ATTEST:



Brenda Green
City Clerk

Date: 2/28/2020

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 2/28/2020

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

are amended as follows:

1. The limit for the cost of bail bonds is changed from \$250 to \$2,500; and
2. The limit for loss of earnings is changed from \$250 a day to \$500 a day.

E. Medical Payments - Limit Increased to \$15,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

- a. \$15,000; or
- b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. **SECTION I – COVERAGE, COVERAGE C MEDICAL PAYMENTS, Subsection 1. Insuring Agreement**, the second part of Paragraph a. is amended to read:

provided that:

- (2) The expenses are incurred and reported to us within three years of the date of the accident;

F. Employee Indemnification Defense Coverage

Under the **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** provision, the following is added:

3. We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of "employees", claims or "suits" brought or persons or organizations making claims or bringing "suits".

G. SECTION II - WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this Coverage Part, Paragraph 3.a. is changed to read:

- a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

- a. **Medical Directors and Administrators** - Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such.

- b. **Managers and Supervisors** - If you are an organization other than a partnership or joint venture, your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors.

- c. **Broadened Named Insured** - Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

- d. **Funding Source** - Any person or organization with respect to their liability arising out of:

- (1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- e. **Managers or Lessors of Premises** - Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased to you subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

- f. **By Contract, Agreement or Permit** - Any person or organization with whom you agreed, because of a written contract or agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your operations, "your work" or facilities owned or used by you.

(1) This provision does not apply:

- (a) Unless the written contract or agreement has been executed or permit has been issued prior to the "bodily injury," "property damage," "personal and advertising injury":
- (b) To any person or organization included as an insured under g. Broad Form Vendors below; or
- (c) To any person or organization included as an insured by an endorsement issued by us and made a part of this Coverage Part.

(2) When an engineer, architect or surveyor becomes an insured under this Coverage Part, the following additional exclusion applies:

- (a) "Bodily injury", "property damage", "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (i) The preparing, approving, or failing to approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
 - (ii) Supervisory, inspection, or engineering services.

(3) When a lessor of leased equipment becomes an insured under this Coverage Part, the following additional exclusions apply:

- (a) To any "occurrence" which takes place after the equipment lease expires; or
- (b) To "bodily injury" or "property damage" arising out of the sole negligence of the lessor.

(4) When owners or other interests from whom land has been leased become an insured under this Coverage Part, the following additional exclusions apply:

- (a) Any "occurrence" which takes place after you cease to lease that land; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the owners or other interests from whom land has been leased.

- g. **Broad Form Vendors** - Any person or organization with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions.

(1) The insurance afforded the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing or substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;