

**TEMPORARY HOUSING AGREEMENT
BETWEEN
VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA
AND
THE CITY OF COSTA MESA**

THIS TEMPORARY HOUSING AGREEMENT (with all exhibits, collectively the “Agreement”) is made and entered into this 21st day of April, 2020 (“Effective Date”), by and between the VANGUARD UNIVERSITY OF SOUTHERN CALIFORNIA, a California nonprofit corporation (“Vanguard”) and the CITY OF COSTA MESA, a municipal corporation (“City”). Vanguard and City are individually referred to as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS, Vanguard is the owner of the real property located at 55 Fair Drive, Costa Mesa, CA, including the residence hall referred to as Balboa Hall. As used herein, Balboa Hall shall be referred to as the “Property”; and

WHEREAS, the Property is a residential housing facility that Vanguard ordinarily uses for student housing; and

WHEREAS, there is currently a local emergency, state of emergency, and national emergency as a result of the global novel coronavirus (COVID-19) outbreak; and

WHEREAS, the Property is not currently being utilized for student housing due to the COVID-19 emergency; and

WHEREAS, City has requested the use of certain Vanguard facilities at the Property for use by City’s employees and personnel, including but not limited to, Police Department personnel, Fire Department personnel, and members of the City’s leadership team, or any entity subcontracted by the City (collectively, “Personnel”) on an as-needed basis during the COVID-19 emergency; and

WHEREAS, Vanguard understands that City intends to use the Facilities to house some Personnel that have been exposed to, or suspect they have been exposed to, COVID-19 in the course of their duties, and therefore may be infected with the virus; and

WHEREAS, Vanguard desires to permit City to utilize its Property for the requested purpose; and

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

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

1.0. RESERVED ROOMS

Each day during the term of this Agreement, Vanguard agrees to hold available a minimum of twenty-four (24) rooms, of the type and with the amenities described in Exhibit “A,” attached hereto and incorporated herein, at the Property for purposes of the City exercising its right under this Agreement to secure immediate individual occupancy for its Personnel. The procedures for City exercising said right are set forth in Exhibit “A.”

2.0. USE OF FACILITIES

Vanguard agrees to permit the use of Vanguard’s facilities as described in Exhibit “A” (the “Facilities”) on an as-needed basis. Vanguard grants to City a license to use the Facilities for the limited purposes set forth in this Agreement.

3.0. LIMITED USE OF PROPERTY

City’s use of the Property shall be limited to the use of the Facilities for temporary housing purposes for City’s Personnel only in accordance with the terms and conditions set forth in this Agreement. City shall not use the Facilities to house anyone that tests positive for COVID-19 or is experiencing symptoms of COVID-19 as defined by the Centers for Disease Control and Prevention (CDC). Notwithstanding the foregoing, Vanguard acknowledges agrees the Facilities may be used to temporarily house City Personnel that have been exposed to, or suspect they have been exposed to, an individual or individuals that have COVID-19, and therefore may be infected with the virus.

City shall not use the Facilities for any other purpose or to house any other individuals without Vanguard’s express written consent.

4.0. COMPENSATION

City agrees to pay Vanguard for its use of Facilities in accordance with the Fee Schedule set forth in Exhibit A.

5.0. TERM

The term of this Agreement shall commence on the Effective Date and continue through the termination of the City’s local emergency or when Vanguard needs the Facilities to house students and provides City with written notification of same, whichever occurs sooner, unless terminated sooner upon mutual written agreement of the Parties.

6.0. VANGUARD’S DUTIES AND RESPONSIBILITIES

Vanguard agrees to:

- (a) Make the Facilities available to City and provide any necessary keys or access information to City.
- (b) Provide the Facilities to City with all necessary furnishings.
- (c) Permit City to utilize the associated amenities as described in this Agreement and provide to City any keys or access information necessary to access such amenities.

7.0. CITY’S DUTIES AND RESPONSIBILITIES

City agrees to:

- (a) Remove all garbage and debris from the Facilities upon termination of this Agreement and return the Facilities to their prior condition. City shall be responsible for any unreasonable wear and tear caused to the Facilities, including reasonable costs incurred to repair same as deemed necessary by Vanguard’s final inspection, which City’s Representative may attend.

- (b) Comply with all regulations and rules of conduct for Vanguard, attached hereto as Exhibit "B", and all applicable laws, ordinances and regulations in the use of Vanguard's Property.

City's failure to abide by such rules, regulations, and laws or any term of this Agreement may result in the immediate termination of this Agreement in the sole discretion of Vanguard.

8.0. REPRESENTATIVES

City and Vanguard have designated the following representatives to act on their behalf in the administration of this Agreement. Each Party's representative may issue all consents, approvals, and directives on behalf of that Party. City's Representative and Vanguard's Representative shall coordinate with one another in the administration of this Agreement.

City's Representative: Jerry Hildeman, Lieutenant
(714) 754-5354
jhildeman@costamesaca.gov

Vanguard's Representative: David Vazquez, Senior Director of External Relations
(714) 966-5467
david.vazquez@vanguard.edu

Either Party may change their designated representative by providing written notice to the other Party.

9.0. ACCEPTANCE OF FACILITIES

City acknowledges that it has examined the Facilities and knows the condition thereof, and agrees that the Facilities are suitable for the intended use. City agrees that it shall make no changes in the structure of the Facilities or Property, including furniture placement, without Vanguard's prior written consent.

10.0. NO INTEREST IN PROPERTY

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

11.0. INSURANCE

11.1. Minimum Scope and Limits of Insurance. City, at City's expense, shall obtain, maintain, and keep in full force and effect during the life of this Agreement insurance or a program of self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the City's use of the Facilities.

Coverage shall be at least as broad as:

- (a) **Commercial General Liability (CGL):** Commercial General Liability Insurance which includes coverages for bodily injury, property damage, loss of life, independent contractors, and contractual liability, with a minimum combined single limit of not less than \$1,000,000 each occurrence and \$3,000,000 aggregate for bodily injury and property damage.

- (b) **Business Auto Liability Insurance:** Business Auto Liability Insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property

damage, including all owned, non-owned and hire autos.

- (c) **Workers' Compensation:** Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000.00 per accident for bodily injury or disease.
- (d) **Excess Liability:** Excess liability coverage up to \$10,000,000.00 per occurrence.

Said insurance shall be issued by a company authorized to do business in the State of California with a Best's rating of A- or better. All insurance policies shall name Vanguard as additional insured and shall be primary and non-contributory to Vanguard's policies.

11.2. Certificates of Insurance and Additional Insured Endorsements. City agrees to submit certificates of insurance for all policies and original additional insured endorsements for liability policies, in a form satisfactory to Vanguard, upon execution of this Agreement. All certificates of insurance and original additional insured endorsements shall provide that they may not be canceled without thirty (30) days advance written notice to Vanguard. No defect in any certificate of insurance shall be deemed a waiver by Vanguard for any of the requirements of this agreement.

12.0. INDEMNIFICATION

To the fullest extent permitted by law, City agrees to defend, indemnify, protect, save and hold harmless Vanguard, its officers, trustees, employees, faculty, staff, students, agents, insurers and guarantors from and against any and all claims, actions, damages, liability and expense allegations, loss, cost, and any judgment or settlement paid, arising from the negligent use of the Facilities by City, its officers, agents, employees, volunteers, visitors, or guests. The indemnity obligations of City include, without limitation, City's obligation to indemnify Vanguard for all attorneys' fees, other professional fees, and costs incurred by Vanguard in connection with the enforcement of the provisions contained in this Paragraph. Vanguard may, at its option, require City to assume Vanguard's defense in any action covered by this Paragraph.

13.0. GENERAL PROVISIONS

13.1. 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. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

13.2. No Charge to Vanguard. Under no circumstances are City-related expenses to be paid for or absorbed by any Vanguard budget account, including, but not limited to, such items as personnel, telephone and fax calls, office supplies, voice-mail and e-mail, training room equipment, secretarial and maintenance services, and Vanguard Mailing and Word Processing Office charges. Those Vanguard services are available to City for a fee.

13.3. Use of Name and Likeness. City shall make no use of the name or likeness (including, but not limited to, photos, service and trademarks, logos, mailing address, non-profit mailing permit, telephone and fax numbers, voice mail and e-mail) of Vanguard unless prior written authorization is received from Vanguard, specifically describing the proposed use of such name or likeness. Under no circumstances may Vanguard's name or likeness, or those of any of its operating units, affiliates or supporting organizations, names be incorporated within the City's business. The fact that Vanguard agrees to allow any particular group to stay at the University shall not be deemed to imply that Vanguard endorses any such group or any particular belief or practice of same.

13.4. Notices. Except as set forth herein, any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery, mail, or email 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, (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, and (c) at the time of transmission if such communication is sent by email. Either Party may change its address by giving notice in writing to the other Party.

IF TO VANGUARD:

Vanguard University of Southern California
55 Fair Drive
Costa Mesa, CA 92626
Attn: David Vazquez
david.vazquez@vanguard.edu

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Jerry Hildeman
jhildeman@costamesaca.gov

13.5. Assignment and Subletting. City shall not assign this Agreement or license or sublet the Facilities or any part thereof without the prior written consent of Vanguard.

13.6. Independent Contractor Relationship. City is an independent contractor and will have sole authority to control and direct the details of its performance and activities. Neither Party will be an employee of the other Party under the meaning or application of any federal or state law, including but not limited to unemployment insurance or workers' compensation laws, and will not be entitled to any of the benefits of an employee of the other Party. Further, neither Party has the authority to act as an agent of the other Party and will not hold themselves out as such.

13.7. 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.

13.8. 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.

13.9. Public Records Act Disclosure. Vanguard has been advised and is aware that this Agreement and all reports, documents, information and data furnished or prepared by Vanguard 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 Vanguard 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.

13.10. Force Majeure. In the event of damage or destruction of the Facilities 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 Vanguard shall be released of all responsibility hereunder and shall not be held responsible by City for any resulting damage. In the event of any such occurrence or threat thereof, Vanguard shall have the right in its discretion to suspend or terminate any use by City of the Facilities, to cause the Facilities to be vacated, or to take such action for such duration as Vanguard in its sole discretion deems necessary or appropriate. In such event, the time table for vacating of premises will be set by Vanguard.

13.11. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Vanguard and City 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.

13.12. 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.

13.13. 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.

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

13.15. 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.

13.16. 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.

13.17. Counterparts and Electronic Signatures. 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. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

13.18. 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.

[Signature page follows.]

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

Jeremy Moser
Jeremy Moser
Chief Financial Officer

Date: 4/21/2020

CITY OF COSTA MESA

Lori Ann Farrell Harrison
Lori Ann Farrell Harrison
City Manager

Date: 4/27/20

ATTEST:

Brenda Green
Brenda Green
City Clerk



Date: 4/28/2020

APPROVED AS TO FORM:

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

Date: 4/27/2020

APPROVED AS TO CONTENT:

Jason Dempsey
Jason Dempsey
Emergency Services Administrator

Date: APRIL 24, 2020

APPROVED AS TO PURCHASING:

Jennifer King
Jennifer King
Assistant Finance Director

Date: 4/27/2020

EXHIBIT A

FACILITIES, PROCEDURES, AND COMPENSATION

A. Facilities

1. Rooms

Vanguard agrees to reserve for City's use, on an as-needed basis, a minimum of twenty-four (24) rooms at the Property, each of which will be used for single occupancy. At least two (2) rooms shall have a kitchenette, if available. Each room shall have its own private bathroom with a shower. Upon request by City, Vanguard shall provide rooms that include a kitchenette. All rooms provided for City's use shall include, at minimum, the following furnishings: one bed, one desk, one chair, one dresser, and lighting. Linens shall be provided for each room.

2. Amenities

Vanguard shall provide City's Personnel utilizing the Property with access to shared laundry facilities at the Property

3. Parking

Parking shall be made available to City's personnel at no additional charge. Vanguard shall provide to City any necessary permits for parking at the Property.

4. Housekeeping

Vanguard shall not perform any housekeeping services during each individual Personnel's actual occupancy of any room, until that individual Personnel vacates the respective room and City's Representative provides notice to Vanguard's Representative of same. Upon an individual Personnel's departure from a room, Vanguard will perform standard cleaning and housekeeping services in the room, including but not limited to providing fresh linens and cleaning and sanitizing all surfaces on a weekly basis and prior to guest arrival. Provided that the room is vacated by 2:00 p.m., Vanguard will take any necessary steps to prepare the room for a new occupancy to begin on the same day.

Notwithstanding the foregoing, if an individual Personnel tests positive for COVID-19 prior to vacating a room occupied pursuant to this Agreement, then the City will pay for and provide all laundering, room cleaning, and sanitizing services through a third-party provider mutually agreed upon by City and Vanguard at no cost to Vanguard.

B. Procedures

1. Use of Rooms

Each day that City desires to utilize one or more of the rooms reserved for City pursuant to this Agreement, City's Representative will advise Vanguard's Representative in writing of:

- a. The number of rooms City desires to utilize.
- b. The estimated number of days City desires to use each room.

- c. The following information regarding each person that will occupy a room:
 - i. Name
 - ii. Department
 - iii. Contact number

Upon notification from City of the desired number of rooms, Vanguard's Representative will coordinate with City's Representative to provide all keys and access information to enable City to access the Property and Facilities.

2. Vacating Rooms.

Once a room is vacated, City's Representative, or a designee, will inspect the room to ensure it is returned in good condition. Vanguard's Representative will be notified, allowing them to have the room cleaned and linens changed.

3. Recordkeeping.

Weekly, when rooms are in use, Vanguard's Representative and the City's Representative will reconcile the number of rooms used per day.

C. Compensation

City shall pay Vanguard Fifty Dollars (\$50.00) per night for each room that Personnel occupies, whether or not such room includes a kitchenette. Such rate is inclusive of all fees for use of the room and facilities at the Property. The City is not obligated to pay Vanguard for any unoccupied rooms for which City has not exercised its right to secure actual occupancy, including any rooms that are required to be made available for Personnel occupancy by Vanguard under this Agreement.

Vanguard may invoice City once per calendar month for charges incurred under this Agreement. City will pay invoices within thirty (30) days of receipt.

EXHIBIT B
REGULATIONS AND RULES OF CONDUCT

Rules, Restraints, and Responsibilities

- OPERATOR will be issued keys for each room. In the exception that keys are missing from prior group's stay, OPERATOR's agreed amount of keys will be provided as soon as possible. Additional keys may be provided upon request (subject to availability). OPERATOR will be billed for lost or damaged keys at a cost of \$100.00 per key.
- OPERATOR will be billed for any unauthorized use of residence hall rooms. Furniture/mattresses in the residence halls may not be moved out of their assigned areas or altered by OPERATOR in any way during stay. OPERATOR may be assessed a financial charge of \$100.00 per occurrence if their participants move the furniture/mattresses out of the room.
- If any items are not present and/or damaged at time of check in that are agreed to be provided by the University, OPERATOR agrees to notify Conferencing Office within twelve (12) hours of arrival so that the University can correct the problem in a timely manner. Failure to do so may result in the University's assumption that OPERATOR is responsible and may be billed for missing or damaged items.
- University personnel reserve the right to enter and inspect Residence Halls in the event of emergency, maintenance, welfare and security checks. University personnel will be uniformed and will properly identify themselves. When reasonable a 24-hour notice will be given to allow coordination with OPERATOR.
- A list of all occupant names (staff and guests) and their locations must be provided to VANGUARD at check-in and must be updated with any changes as they occur. This is for emergency purposes. On the list a lead staff must be highlighted with cellular number so that VANGUARD Campus Safety knows who to communicate with in case of emergency.
- For late-night outdoor activities, music and microphones may not be used. If out on campus past 10:00 p.m., please return to your residence hall very quietly so that other guests will not be disturbed. Campus quiet hours are enforced between the hours of 10:00 PM and 8:00 AM
- It is further agreed that NO candles or will be used by Operator inside any meeting facility.
- Carts, scooters, electric vehicles are not permitted on Vanguard's Campus. Unless they form part of this agreement and appropriate liability insurance is provided.
- No drones, hovering helicopters, fireworks, are permitted on campus.
- No firearms, knives/blades, batons, or weapons of any sort are allowed on campus at any time unless legally authorized to do so.
- OPERATOR shall hold VANGUARD harmless for lost, stolen or damaged articles or for any personal effects left by a participant or staff member.

- VANGUARD staff will compile a list of damages in the Residence Hall prior to check-in of each session. After check-out of the same session, a second damage report will be compiled. OPERATOR shall be responsible for all damages not shown on first damage report.
- VANGUARD may, in its sole discretion, revoke any participant's or staff member's right to enter or remain upon VANGUARD'S premises if such participant or staff member is deemed by VANGUARD in its sole discretion to have engaged in misconduct, unsafe behavior, or any action which is inconsistent with VANGUARD'S Christian mission.
- No alcoholic beverages or non-prescription drugs, or illegal drugs or substances are permitted on VANGUARD'S premises. Anyone under the influence of alcohol or narcotics will be reported to the proper authorities and removed from the premises.
- Smoking is forbidden on campus.
- Foul, abusive or tasteless language is not permitted on VANGUARD'S premises. Examples of inappropriate language includes, but is not limited to, language that demeans or exploits anyone on the basis of gender, race, or national origin, excessive references to sex, alcohol, or drugs.
- Loud music or noisy activities are prohibited before 9:00 a.m. and after 9:00 p.m. in the residence halls.
- OPERATOR is prohibited from assigning or subletting the above facilities, without obtaining prior written approval from the Conferencing and University Scheduling Office.
- OPERATOR shall pay VANGUARD \$100.00 for any replacement key. Therefore, it is the sole responsibility of the OPERATOR to ensure they have all the keys they need and all the keys they signed for at check in. OPERATOR will be asked to sign a Key Sheet for all rooms they have assigned.