

INTRODUCED: January 11, 2021

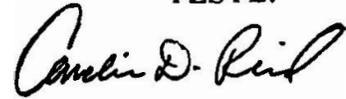
AN ORDINANCE No. 2021-007

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a License Agreement between the City of Richmond and Virginia Commonwealth University, for the purpose of leasing up to 400 parking spaces within a City-owned parking facility located at 501 North 7th Street.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

**A TRUE COPY:
TESTE:**


City Clerk

PUBLIC HEARING: JAN 25 2021 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a License Agreement for the purpose of leasing up to 400 parking spaces within a City-owned parking facility located at 501 North 7th Street. The License Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JAN 25 2021 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: November 23, 2020 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: Levar M. Stoney, Mayor *JMS*

THROUGH: J.E. Lincoln Saunders, Acting Chief Administrative Officer *JELS*

THROUGH: John Wack, Director of Finance *JW*

THROUGH: Jay Brown, Director of Budget and Strategic Planning *JAB*

THROUGH: Robert Steidel, Deputy Chief Administrative Officer- Operations *ACS*

FROM: Bobby Vincent, Director of Public Work *BV*

RE: TO AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE A PARKING LICENSE AGREEMENT FOR 501 NORTH 7TH STREET

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer (CAO) to execute a parking lease agreement, on behalf of the City, which the City will lease three hundred (300) parking spaces, increasing to as many as four hundred (400) parking spaces at 501 North 7th Street from 5:30 a.m. to 7:00 p.m., Monday through Friday, during the term of the attached lease to Virginia Commonwealth University (VCU).

REASON: To enable the CAO to execute a parking license agreement.

RECOMMENDATION: The Administration recommends approval.

BACKGROUND: VCU has parked vehicles in the Coliseum Garage located at 501 North 7th Street since the construction of the parking garage in 1992. VCU is requesting parking for three hundred (300) parking spaces, increasing to as many as four hundred (400) parking spaces from 5:30 a.m. to 7:00 p.m., Monday through Friday, for one year with up to four consecutive one

O&R Request

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year renewals. Not to exceed five years. VCU contract has expired and the rate they are requesting is different than the City Code.

FISCAL IMPACT / COST: No additional cost to the City.

FISCAL IMPLICATIONS: None. Contract Renewal

BUDGET AMENDMENT NECESSARY: None.

REVENUE TO CITY: No change in revenue

DESIRED EFFECTIVE DATE: Upon Adoption

REQUESTED INTRODUCTION DATE: January 11, 2020

CITY COUNCIL PUBLIC HEARING DATE: January 25, 2020

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development (January 21, 2020)

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Budget and Strategic Planning

AFFECTED AGENCIES: N/A

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: VCU License Agreement

STAFF:

Lynne Lancaster, DPW (646-6006)

Steven Bergin, DPW (646-3724)

LICENSE AGREEMENT

Section I Parties

This License Agreement ("*License*") is made between the *City of Richmond, Virginia*, a municipal corporation and political subdivision of the Commonwealth of Virginia, as "*Licensor*," and *Virginia Commonwealth University*, a corporation and an institution of higher education of the Commonwealth of Virginia, as "*Licensee*," collectively the "parties."

Licensor owns the the real property located at 501 North 7th Street known as the Coliseum Garage (the "Premises"), and Licensee desires permission to use parking spaces on the Premises for use by its students, agents, faculty, employees and invitees, together collectively referred to herein as its "*Invitees*."

Section II Licensed Space

Licensor hereby licenses to Licensee and Licensee hereby accepts from Licensor permission to use three hundred (300) parking spaces, increasing to as many as four hundred (400) parking spaces (the "Licensed Space") at the Premises, from 5:30 a.m. to 7:00 p.m., Monday through Friday, during the Term (as defined hereinafter). Licensor reserves the right to reduce the number of parking spaces available to Licensee as part of the Licensed Space at any time upon 30 days written notice to Licensee. If the number of parking spaces available to Licensee is reduced, the License Fee defined herein shall be reduced on a pro-rated basis. No bailment shall be created by this License.

Section III Term; Termination For Convenience

The term of this License shall commence upon execution of this License and shall be for one (1) year (the "*Term*"), unless earlier terminated or otherwise extended. Unless earlier terminated or revoked as provided herein, Licensee may renew this License, by providing three (3) months written notice, for a maximum of four consecutive one-year terms (each a "*Renewal Term*"). Under no circumstances shall this License be in effect for more than five (5) years.

Licensor shall have the right to revoke this License at will upon written notice sent to Licensee. Licensee shall have the right to terminate this License at will upon 60 days written notice sent to Licensor.

Section IV License Fee

The initial license fee for the Term is Sixty-five-and 00/100 Dollars (\$65.00) per parking space per month (the "*License Fee*"), which amount shall be due and payable in advance on the fifteenth

day of each month during the Term. The initial monthly License Fee shall be Nineteen Thousand and Five Hundred Dollars (\$19,500) for 300 spaces, increasing to Twenty Six Thousand Dollars (\$26,000) for all 400 spaces. The License Fee is subject to change by the Licensor upon 30 days written notice sent to the Licensee. Any change in the License Fee shall be effective the first day of the second month following the date of the notice.

Section V Use of Licensed Space

The Licensed Space shall be used solely for parking by Licensee's Invitees (the "*Permitted Use*") and for no other purposes without Licensor's consent in its sole discretion. The Permitted Use shall not include parking made available to the general public, but may include the following additional uses incidental to the use of the Licensed Space:

- (1) Licensee may access and operate the existing parking booths on the Premises.
- (2) Licensee and its Invitees may access and maintain the bus shelters on the Premises.

Section VI Prohibition Against Waste, Nuisance, Damage, or Unlawful Use

Licensee and its Invitees shall not commit or allow to be committed by its Invitees any waste on the Licensed Space, create or allow its Invitees to create any nuisance to exist on the Licensed Space, impede or interfere with Licensor's title, possession, or operation of the Licensed Space, or use the Licensed Space for any unlawful purpose.

Licensee and its Invitees shall not damage the Licensed Space and during the hours of its Permitted Use shall not negligently or intentionally allow the Licensed Space to be damaged. Licensee shall be responsible for all negligent acts and omissions of its employees and agents causing damage to the Licensed Space.

Should Licensee fail to comply with the provisions of this License, and Licensor incurs costs, expense or charges due to such failure to comply, Licensee agrees to be responsible for same to the extent permitted by law. Nothing herein constitutes a waiver of the sovereign immunity of the Commonwealth of Virginia.

This Section VI shall survive the termination or revocation of this License.

Section VII Operating Covenants of Licensee

A. Licensee shall immediately notify Licensor of any damage caused to the Licensed Space and provide Licensor any information in its possession indicating whether the damage was caused by Licensee's Invitees or another party.

- B. Licensee shall be responsible for handling all matters pertaining to any Invitee, including questions and complaints.
- C. Licensee shall be responsible for security in or about the Licensed Space (it being understood that Licensor shall not have any responsibility for same) as well as replacement of any signs that are stolen, defaced or damaged, whether by vandalism or otherwise.
- D. During the hours of Permitted Use, Licensee shall provide Licensor with operating procedures that set forth how it will conduct its operations at the Licensed Space, including scheduling, emergencies, security, responsibility and process for unclaimed, lost, damaged, and stolen personal property, and such other matters as the Licensor may require.
- E. Licensee shall manage the Licensed Space in a way to encourage its Invitees to abide by the laws of the City of Richmond, the Commonwealth of Virginia and the United States Government in its use of the Licensed Space including but not limited to traffic laws and laws governing the use and parking of vehicles including buses, and any rules or regulations promulgated by the Virginia Department of Transportation or the Federal Department of Transportation.
- F. Should Licensee become aware that Invitees are parking illegally or otherwise utilizing parking on Licensor's property outside the boundaries of the Licensed Space, it shall inform the Licensor or its designated agent. Upon the reasonable request of the Licensor, Licensee shall take all such reasonable steps within its control to control to prevent any such illegal parking.
- G. Subject to the privacy rights of its Invitees, and such laws and regulations addressing such rights, upon request of Licensor, Licensee shall deliver to the requesting party any information in its possession related to the use of the Licensed Space and any information related this License Agreement, including but not limited to any information related to its Invitees and any information related to payments of the License Fee.
- H. Upon the request of Licensor, Licensee's Invitees shall vacate the Licensed Space and ensure that its Invitees vacate the Licensed Space so that Licensor may use the Licensed Space for special events parking or any other use in its sole discretion. Licensee shall not be reimbursed for this time and will receive a 48 hour notice of it needing to be vacant.
- I. Licensee shall install, maintain and operate an emergency phone system to serve the Licensed Space. Licensee shall maintain the emergency phone system so it is fully operational during the entirety of the Term.

Section VIII Delivery, Acceptance, and Surrender of Licensed Space

The Licensed Space is hereby made available to and accepted by the Licensee in "AS IS" condition. Licensee agrees to surrender the Licensed Space to Licensor at the end of the Term, if the License is not renewed, or upon revocation, in the same condition as when Licensee took possession at its sole cost and expense, allowing for reasonable use and wear, and damage by acts

of God, including fire and storms. Licensee agrees to remove, at its sole cost and expense, all signs or symbols placed on the Licensed Space by Licensee before redelivery of the Licensed Space to Licensor upon termination of this License, and, at that time, to restore, at its sole cost and expense, the portion of the Licensed Space on which they were placed in the same condition as before their placement including the repair of any damages caused by said removal. This Section VIII shall survive the termination or revocation of this License.

**Section IX
Posting of Signs, Awnings, or Marquees by Licensee**

Licensee agrees that Licensee shall not construct or place, or permit to be constructed or placed, signs, symbols, displays, advertisements, decorations, awnings, marquees, or structures on the Licensed Space unless approved by Licensor in its sole discretion. Any signs, symbols, displays, advertisements, decorations, awnings, marquees, or structures placed on the Licensed Space shall comply with all federal, state and City laws rules and regulations governing the same, including but not limited to City zoning laws. Licensee agrees to remove, before surrender of the Licensed Space for any reason or upon request of Licensor, all signs, symbols, displays, advertisements, decorations, awnings, marquees, or structures placed on the Licensed Space, and to restore the portion of the Licensed Space on which they were placed to the same condition as before their placement, including the repair of any damages caused by said removal, all at its sole cost and expense. This Section IX shall survive the termination or revocation of this License.

**Section X
Insurance**

A. General Insurance Requirements

Licensee shall maintain, at its own cost and expense, during the entire Term and for any other period it benefits under this License, the following types of self-insurance.

- (1) **Worker's Compensation** - A policy complying with the requirements of the statutes of Commonwealth of Virginia (Virginia Code §§ 65.2 *et. seq.*) provided through the Commonwealth of Virginia's self-insurance program.

If use of the Licensed Space by Licensee calls for any exposure or work to be performed which comes under the jurisdiction of the Federal Employers Liability Act, contractors shall be required to provide coverage for these requirements.

- (2) **Commercial General Liability** - Licensee shall provide a valid Certificate of Insurance or Self-Insurance demonstrating additional insurance coverage maintained providing the following limits:
- \$6,000,000 General Aggregate
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 Each Occurrence
 - \$ 100,000 Damage to Premises.

- (3) **Self-Insurance** – Virginia Commonwealth University (VCU) and its officials, officers, employees and agents are protected from liability through a program of self-insurance administered by the Commonwealth of Virginia Department of the Treasury, Division of Risk Management. This program is authorized in Sections 2.2-1837, 2.2-1838, 2.2-1839, 8.01-195.4, 8.01-195.5, and 8.01-195.6 of the *Code of Virginia* and approved by the Governor of Virginia through the Virginia Risk Management Program, which coverage shall be in the maximum amount provided by law in the event of liability for injury, loss or damage of the Licensed Spaces during the Term. Licensee shall provide a valid Certificate of Insurance listing the insurance coverage maintained under its self-insurance program.

Coverage is for all claims, demands, damages, judgments or liabilities of any nature under state or federal law resulting from bodily injury, death, personal injury or property damage. Legal defense is provided by the Virginia Office of the Attorney General. The statutory limit of liability for claims against VCU is \$100,000. The statutory limit of liability for claims against individuals is \$2,000,000. This coverage is on an occurrence basis without an annual aggregate.

Nothing contained in this Agreement shall be construed to impose liability upon Licensee based on torts except as permitted by the Virginia Tort Claims Act.

Section XI Liability

A. Licensee's Liability

Licensee shall be liable, to the extent permitted by law, for all damages to persons, including its Invitees, and property of any type, arising out of the use of the Licensed Space and the negligent acts or omissions of Licensee and its Invitees.

B. Licensor's Liability

Licensor shall be liable, to the extent permitted by law, for all damages to persons, including Licensee's Invitees, and property of any type, arising out of the negligent acts or omissions of Licensor and its agents.

C. Limitation

Nothing in this Section XI or elsewhere in this License shall be construed as a waiver of either sovereign immunity by either party or as agreement by either party to indemnify the other.

Section XII Assignment or Sublease

Licensee agrees not to assign or sublicense the Licensed Space or any part thereof, or any right or privilege connected therewith, or allow any other person except Licensee's Invitees to occupy the Licensed Space or any part of the Licensed Space, without Licensor's prior written consent, which

consent may be withheld in its sole discretion. Any consent by Licensor shall not be consent to a subsequent assignment, sublicense, or occupation by other persons. Licensee's unauthorized assignment or sublicense shall be void, and further it shall terminate this License, at Licensor's option.

Section XIII Effect of Licensor's Waiver of Covenants

One party's waiver of breach of one covenant or condition of this License is not a waiver of a breach of other covenants or conditions, nor is it a waiver of a subsequent breach of the covenant or condition waived.

Section XIV Special Licensor Provisions

A. Agreement in Entirety

This License represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This License may be amended only by written instrument signed by both parties.

B. Breach of Contract

If either party shall fail, refuse or neglect to comply with the terms of this License, such failure shall be deemed a total breach of contract and the other party shall, in addition to all its rights set out herein, be entitled to all legal recourse and remedies by to the extent permitted by law.

The duties and obligations imposed by this License and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by either party shall constitute a waiver of any right or duty afforded under this License, nor shall any such action or failure to act constitute an approval of or acquiescence to any breach hereunder, except as may be specifically agreed in writing.

C. Governing Law

This License shall be deemed to have been made in, and be construed in accordance with, the laws of the Commonwealth of Virginia. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this License, respecting its alleged breach, shall be instituted only in the Circuit Court of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, as applicable.

D. Non-Discrimination

- (1) **Civil Rights**. Licensee agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; 49 U.S.C. § 5332; and 49 C.F.R. Part 21, and any

other implementing requirements which the United States Department of Transportation (USDOT) and/or the Federal Transportation Administration ("FTA") have issued or may issue. These federal laws provide in part that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity included in or resulting from this License.

- (2) Americans With Disabilities Act (ADA). Licensee agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990(ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any other implementing requirements which the USDOT and/or the FTA have issued or may issue. These federal laws provide in part that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity included in or resulting from this License.
- (3) Equal Employment Opportunity. Licensee agrees to comply with all equal employment opportunity (EEO) provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e; 49 U.S.C. §5332; and any other implementing requirements which the USDOT and/or the FTA have issued or may issue. Licensee agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Licensee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

E. Environmental and Hazardous Materials; Firearms

The parties shall not cause or permit the escape, disposal or release of any chemical, biologically active or other hazardous substances or materials. The parties shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or in compliance with the prevailing standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into or onto the Licensed Space any such materials or substances except to use in the ordinary course of activities permitted hereunder. The parties covenant and agree that the Licensed Space will at all times during Licensee's use or occupancy thereof be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all environmental, state, federal, City and other governmental and regulatory authorities, agencies and bodies applicable to the Licensed Space.

The parties shall comply with all federal, state, and local laws and regulations regarding the possession and use of firearms and weapons.

F. Severability

If any clause or provision of this License is declared to be invalid by any court of competent jurisdiction, then and in that event, the remaining provisions hereof shall remain in force. In lieu of each clause or provision of this License that is illegal, invalid, or unenforceable, there shall be added as a part of this License, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

G. No Recordation

Licensee acknowledges and agrees that this License may not be recorded in any land records of any City or County without the prior written consent of Licensor.

H. Subordination

Without the necessity of any additional document being executed by Licensee for the purpose of effecting a subordination, this License shall be subject and subordinate at all times to all applicable easements, underlying leases and to the lien of any mortgages or deed of trust now or hereafter placed on, against or affecting the Licensed Space, Licensor's interest in the Licensed Space or any underlying lease or easement.

**Section XV
Notices**

Notices given pursuant to the provisions of this License, or necessary to carry out its provisions, shall be in writing and delivered personally to, mailed by certified or registered mail return receipt requested to, or sent by nationally recognized commercial overnight delivery service to:

Licensor:

City of Richmond
Attention: Lynne Lancaster, Parking Administrator
900 East Broad Street City Hall, Room 707
Richmond, VA 23219

with a copy to:

City of Richmond
Attention: City Attorney
900 East Broad Street City Hall, Room 300
Richmond, VA 23219
Office: 804-646-7940
Fax: 804-646-5743

Licensee:

**Virginia Commonwealth University
Attention: Manager, Lease Administration
800 West Broad Street
Richmond, VA 23284-3040
Office: 804-828-0004**

with a copy to

**Virginia Commonwealth University
Attention: Director, Parking and Transportation
1108 West Broad Street, Box 843002
Richmond, VA 23284-3002
Office: 804-828-8249**

**Section XVI
Authority**

The parties hereby expressly agree, guarantee, and warranty that the signatory below is lawfully authorized to enter into this agreement on behalf of the respective party.

(Signature Pages to Follow)

IN WITNESS WHEREOF, each of Licensor and Licensee has caused this instrument to be executed on its behalf by officials duly authorized therefore.

**VIRGINIA COMMONWEALTH UNIVERSITY,
a corporation and an institution of higher
education of the COMMONWEALTH OF
VIRGINIA, as Licensee**

By: _____

Jeff Kidd

Title: **Assistant Vice President for Capital Assets
and Real Estate**

Date: _____

**OFFICE OF UNIVERSITY COUNSEL
APPROVED AS TO FORM:**

By: _____
Associate University Counsel/Assistant Attorney General

CITY OF RICHMOND, as Licensor

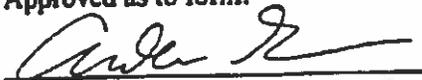
By: _____

J.E. Lincoln Saunders

Title: Acting Chief Administrative Officer

Date: _____

Approved as to form:



Andrew Gore
Assistant City Attorney

Approved as to terms:

Lynne Lancaster
Parking Administrator