

**AGREEMENT  
BETWEEN THE CITY OF CHULA VISTA  
AND  
THE CHULA VISTA ELEMENTARY SCHOOL DISTRICT  
FOR USE OF THE CIVIC CENTER LIBRARY MULTIPURPOSE ROOM**

This AGREEMENT (“Agreement”) is made and entered into effective as of January 23, 2018 (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation of the State of California (“City”), and the Chula Vista Elementary School District, a school district organized and existing under the laws of the State of California (“District”). Individually, the City and the District each may be referred to in this Agreement as a “Party” and, collectively, as the “Parties.” This Agreement is made with reference to the following facts:

**RECITALS**

A. The Civic Center Library (“Library”), a branch of Chula Vista Public Library, is a City library located at 365 F Street, in Chula Vista, California.

B. In the interest of workforce investment, and paving the way for school success and high-paying jobs for Chula Vista residents, the City and the District wish to cooperate to provide a versatile neighborhood access point for Science, Technology, Engineering and Math (“STEM”) activities, as well as other community purposes.

C. The District desires to use a portion of the Library to operate a science lab commonly known as the Qualcomm Thinkabit STEM science lab (“Thinkabit Lab”).

D. The City constructed a multipurpose room in the lower level of the Library which the District would like to continue to utilize for the Thinkabit Lab (“Multipurpose Room”).

E. The District is willing to provide the City with certified teachers to provide community classes for the City residence in the Multipurpose Room.

F. The Parties desire to enter into this Agreement to set forth the terms and conditions by which the District may utilize the Multipurpose Room for operating the Thinkabit Lab.

**NOW, THEREFORE**, in consideration for the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I.  
GENERAL TERMS**

1. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date, and shall expire on June 30, 2020 (the “Term”).
  - 1.1. **Extensions.** The Term may be extended with up to two (2) one-year renewal options, upon mutual written consent of the Parties. Such extension shall only be effective if in writing signed by both Parties. Any such extension shall be subject to the terms and conditions of this Agreement.
  - 1.2. **Early Termination.** This Agreement may be terminated earlier by: (i) mutual agreement of the Parties: such early termination must be memorialized in a writing signed by both Parties and shall be effective on the date agreed to by the Parties: or (ii) the City providing the District with 30 days’ written notice: such termination shall be effective on the date specified

by the City, but not earlier than 30 days prior to the date such notice is delivered to the District. In the event that the District ceases to operate the Thinkabit Lab for any reason prior to the expiration of the Term, or any Term extension, this Agreement shall terminate and the District shall immediately cease use of the Facilities.

2. **FACILITIES.** The “Facilities” consists of the following:

2.1. **Multipurpose Room.** The District shall be entitled to exclusive use of the Multipurpose Room, as depicted on Exhibit A, attached and incorporated into this Agreement by this reference (“Exhibit A”), during the agreed-upon Schedule of School Classes, as further explained below.

2.2. **Shared Use Areas.** The District shall be entitled to shared use of the restrooms and staff lounge, as depicted on Exhibit A, and the parking spaces depicted on Exhibit B, attached and incorporated by this reference, during the Schedule of School Classes.

3. **USE.**

3.1. **District Use.** The District shall use the Facilities for the sole purpose of operating the Thinkabit Lab, and for no other purpose absent written consent of the City. Use and access to the Facilities under this Agreement shall be limited to District administrators, teachers, chaperones, students and parents/guardians of students utilizing the Thinkabit Lab (collectively, the “Program Participants”). The District and Program Participants shall comply with all applicable laws and all City policies and practices regarding the use, operation and maintenance of the Facilities, while using the Facilities. District’s use shall be subject to such additional rules and regulations imposed by City from time-to-time to assure continued safe operations of the Facilities. The District shall not be entitled to make any alterations or improvements to the Facilities absent written consent of the City. District shall notify the City within 24 hours of their knowledge of any accident causing property damage or injury to persons at the Facilities during District’s use of the Facilities. The report shall include the names and addresses of the persons involved, a statement of the circumstances, the date and hour the incident occurred, the names and addresses of any witnesses, and other pertinent information.

3.2. **City Use.** The City shall have full use of the Facilities outside of the Scheduled School Class Hours. The City’s use will include, but not be restricted to, holding community classes in the Multipurpose Room.

4. **SCHEDULE.**

4.1. **Approval Required.** The District shall provide the City with its proposed schedule for each month during which it intends to use the Facilities. The proposed schedule shall be submitted to the Library Director for review and approval by the 1<sup>st</sup> of the month which is three months prior to the month of use (*e.g.* submittal by January 1 for the month of April). The Library Director shall, within 5 days of receipt of the proposed schedule, notify the District of any necessary changes to the proposed schedule.

4.2. **Classes to be Provided.**

The District agrees to provide community programs for the general population, consisting of one after-school program, one evening program, and one weekend program per month, to be presented by a certified teacher. The Library Director will provide the District with a proposed quarterly schedule for community programs 90 days in advance of the beginning of the quarter, to be finalized in cooperation with the District. The school and community class schedule, as approved by the Library Director and District, shall constitute the final schedule

for the quarter (the "Schedule of School Classes"). City shall retain the right to alter the Schedule of School Classes as may be necessary for conducting emergency maintenance or for other City purposes.

**5. STAFFING AND SUPPLIES.**

5.1. **District Staff.** District shall provide, at its own cost and expense, all appropriate staff including certified teachers necessary for on-site instruction and supervision of all classes and programs if requested by District. District will provide, at its own cost and expense, custodial services necessary for keeping the Facilities clean, safe and sanitary condition during its school class use of the Facilities. District shall be responsible for providing all equipment and materials it deems necessary for any supplies, materials or other property left or stored at the Lab Space and shall not be responsible for loss or damage thereto.

5.2. **City Staff.** City shall provide custodial services for the Multipurpose Room, restrooms and staff lounge. Ten hours of services will be provided per week. The scope of services provided will be at the direction and discretion of the Library Director, or designee. District shall pay City for these services at the rate of \$37.00/hour. This rate shall be for the first Term. The hourly rate to be paid for services to be provided during any Term extension shall be determined by the Library Director, with written notice to District prior to commencement of the Term extension.

**6. INDEMNITY.**

6.1. **Indemnity.** To the maximum extent allowed by law, District agrees to defend, indemnify, and hold the City, its directors, officers, employees, and agents, harmless from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatever character, nature and kind, directly arising from or connected with, or related to this Agreement or an act or omission of District, or any employee, agent, invitee, contractor of District, and/or Program Participants, or other person acting by or on behalf of District on or about the Facilities, including, but not limited to, liability, expense, and claims for bodily injury, death, personal injury, or property damage, and related attorneys' fees or court costs.

City agrees to defend, indemnify, and hold the District, its directors, officers, employees, and agents, harmless from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatever character, nature and kind, directly arising from or connected with, or related to this Agreement or an act or omission of City, or any employee, agent, invitee, contractor of City, and/or Program Participants, or other person acting by or on behalf of City on or about the Facilities, including, but not limited to, liability, expense, and claims for bodily injury, or property damage, and related attorneys' fees or court costs.

6.2. **Insurance Proceeds.** District's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.

7. **INSURANCE.** District shall take out and maintain at all times during the term of this Agreement the following insurance, and shall maintain the minimum limits set forth below, at its sole expense:

7.1. **General Liability Insurance.** Commercial General Liability covering liability of the District with respect to all operations to be performed and all obligations assumed by the District under the terms of this Agreement. Coverage for commercial general liability shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (Occurrence

Form CG 0001). Limits shall be no less than **one million dollars (\$1,000,000)** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to the Facility (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to City) or the general aggregate limit shall be twice the required occurrence limit.

- 7.2. **Additional Insureds.** All insurance companies affording coverage to the District shall be required to add the City, its officials, officers, employees, and agents as "additional insured(s)" under the insurance policy(s) required in accordance with this Agreement. District shall furnish (or cause to be furnished) a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate (and separate endorsement page) shall name the City, their officers, agents, employees, and authorized volunteers as additional insureds under the policy. Coverage provided hereunder to the City and City as additional insured by District shall be primary insurance and other insurance maintained by City, its officials, officers, agents, and/or employees, shall be excess only and not contributing with insurance provided pursuant to this section, and shall contain such provision in the policy(ies), certificate(s) and/or endorsement(s). This insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City, its officials, officers, employees, and agents.
- 7.3. **Insurance Company Requirements.** All insurance companies affording coverage to the District shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the state Department of Insurance to transact business of insurance in the State of California. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-, VII or equivalent or as otherwise approved by City.
- 7.4. **Notices.** All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 7.5. **Evidence of Insurance.** District shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 7.6. **Substitute Certificate.** District shall provide a substitute certificate of insurance no later than **thirty days** prior to the policy expiration date. Failure by the District to provide such a substitution and extend the policy expiration date shall be considered a default by District and my subject District to a termination of this Agreement.
- 7.7. **District Responsibility.** Maintenance of insurance by the District as specified in this Agreement shall in no way be interpreted as relieving the District of any responsibility whatever and the District may carry, at its own expense, such additional insurance as it deems necessary.
- 7.8. **Failure to Insure.** If District fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. District shall reimburse City for the premium paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums with **thirty**

**days** of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by District on the first day of the month following the notice of payment by City.

7.9. **Revised Requirements.** City, at its discretion, may require the revision of amounts and coverage at any time during the Term of this Agreement by giving District **sixty days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Facilities. District also agrees to obtain any additional insurance required by City for new improvements in order to meet the requirements of this Agreement.

7.10 **Default.** Notwithstanding the preceding provisions of this section, any failure or refusal by District to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement and in such event, City may terminate this Agreement upon three days written notice to District.

8. **ASSIGNMENT.** District may not assign any of its rights or responsibilities under this Agreement without the prior written consent of the City.

9. **ADMINISTRATIVE CLAIMS REQUIREMENTS AND PROCEDURES.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, District shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

10. **ADMINISTRATION OF CONTRACT.** The individuals listed below shall be the designated contract administrators, each of whom is authorized by his or her respective Party to represent the Party in the routine administration of this Agreement:

Joy Whatley  
Interim Library Director  
Chula Vista Public Library  
365 F Street  
Chula Vista, CA 91910

Matthew R. Tessier  
Assistant Superintendent  
Innovation and Instruction  
Chula Vista Elementary School District  
84 East J Street  
Chula Vista, CA 91910

11. **NOTICES.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personal served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated Parties.

12. **INTEGRATION.** This Agreement together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
13. **CAPACITY OF PARTIES.** Each signatory and Party to this Agreement warrants and represents to the other Party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.
14. **GOVERNING LAW/VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California. Venue for this Agreement, and performance under it, shall be the County of San Diego.

**(End of page. Next page is signature page.)**

**Signature Page**  
**to**  
**AGREEMENT**  
**BETWEEN THE CITY OF CHULA VISTA**  
**AND**  
**THE CHULA VISTA ELEMENTARY SCHOOL DISTRICT**  
**FOR USE OF THE CIVIC CENTER LIBRARY MULTIPURPOSE ROOM**

IN WITNESS WHEREOF, City and District have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

City of Chula Vista

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

Attest:

\_\_\_\_\_  
Kerry Bigelow, City Clerk

Approved as to form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

Chula Vista Elementary School District

By: \_\_\_\_\_  
Francisco Escobedo, Superintendent