

RESEARCH USE AGREEMENT

THIS RESEARCH USE AGREEMENT (“RUA”) is made and entered into by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, on behalf of its Davis campus (“University”) and CITY OF CHULA VISTA, a chartered municipal corporation (“Owner”). Owner and University may be hereinafter referred to individually as a “Party” or collectively as the “Parties”.

WHEREAS, University seeks to acquire the right to enter upon Owner’s property located at 1450 Hilltop Drive, Chula Vista, California (“Premises”), as shown on the attached Exhibit “A”, which is incorporated by reference, to conduct a research project as specified in Paragraph 1, below.

WHEREAS, Owner desires to grant University access to the Premises in accordance with the terms and conditions in this Agreement.

NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

1. Use. Owner hereby grants to University and its authorized agents, representatives, and contractors (each a “University Party”; collectively, the “University Parties”) a non-exclusive right to enter upon and use the Premises to conduct, at University’s sole cost, a research study to install, maintain, demonstrate, and test new lighting technology (“Project”). As a part of its performance of the Project, University will, at its sole cost, retrofit the Premises with new lighting technology (“Lighting”) and metering equipment (the “Equipment”) from which data will be monitored and collected at the locations identified in Exhibit “A”. In order to complete the Project, University and/or the University Parties will need access to the Premises for installation and removal of the Lighting and the Equipment as well as twice annual site visits, estimated to be ten total visits over the Term. The Parties agree to cooperate in good faith to grant University access to the Premises for such annual visits. University may need additional visits for Lighting and Equipment troubleshooting and monitoring and the Parties agree to cooperate in good faith to grant University access to the Premises as needed in furtherance of the Project.
2. Term. This RUA shall commence on August 1, 2022 and shall continue until March 31, 2025 (“Term”).
3. Decommissioning. At the end of the Term, University will, at its sole cost, remove the Equipment and will, at its sole cost, transfer ownership of the Lighting to Owner. Following the expiration of the Term, Owner waives and releases University from any and all claims related to or arising from Owner’s ownership, use, or removal of the Lighting; provided that such waiver or release shall solely apply to Claims (as defined below) that accrued after the expiration of the Term.

4. Standard of Care. University expressly warrants and agrees that its performance, and the performance of any University Parties, under this RUA shall be performed in accordance with the professional standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.
5. Conditions Applicable to RUA. This RUA is subject to all existing covenants, conditions, reservations, contracts, leases, RUAs, easements, encumbrances, restrictions, and rights of way of record and to such other matters concerning use of the Premises.
6. No Transfer or Assignment. This RUA is personal to University and Owner, respectively. Any attempt by a Party to transfer or assign this RUA shall allow the non-transferring or non-assigning Party to terminate this Agreement.
7. Permits. University shall be responsible for securing any and all required approvals, permits and authorizations from any and all federal, state, or local agencies.
8. No Interference. University shall not unreasonably interfere with the normal operation and activities of Owner or any of Owner's representatives, and University shall use ordinary care in its activities on the Premises to minimize damage to the Premises and inconvenience to Owner or its tenants, agents, employees and invitees.
9. Repair and Restoration. If University or any University Party cause any damage to the Premises in connection with this RUA, University shall repair and restore the Premises to its original condition (as it was prior to University's use under this RUA.) University shall perform the repair and restoration required hereunder prior to the expiration of this RUA, or within ten (10) days of its earlier termination.
10. Breach and Cure. In the event that University breaches any of its obligations under this RUA, Owner may, but is not obligated to, send University a written notice specifying the nature of such breach. University shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for University's performance, then University shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If University fails to cure or to commence cure within such ten (10) day period, then Owner shall have the right to terminate this RUA immediately by serving University with written notice of termination. Owner shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of University's obligations hereunder.
11. Indemnification.

11.1 Owner's Obligation. Owner shall indemnify, defend, and hold harmless University, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this RUA including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims

arise from the negligent or intentional acts or omissions of Owner, its officers, agents, partners or employees.

11.2 University's Obligation. University shall indemnify, defend and hold harmless Owner, its officers, agents, partners and employees, from and against any Claims, arising out of or in any way connected with this RUA including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of University, its officers, contractors, agents, or employees.

11.3 Survival. The parties agree that the obligations under this Section 11 shall survive expiration and termination of this RUA.

12. Insurance.

12.1 Owner's Insurance. Owner, at its sole cost and expense, shall insure its activities in connection with this RUA and obtain, keep in force, and maintain insurance as follows:

A. Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

1. Each Occurrence \$1,000,000
2. Products/Completed Operations Aggregate \$2,000,000
3. Personal and Advertising Injury \$1,000,000
4. General Aggregate \$2,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this RUA. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this RUA.

B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single of not less than One Million Dollars (\$1,000,000) per occurrence.

C. Property Insurance, Fire and Extended Coverage Form in an amount equal to one hundred percent (100%) of the full replacement value of the building in which the Premises are located to conform with then current codes and the costs of demolition and debris removal, excluding land and the footings, foundations and installations below the basement level.

D. Workers' Compensation as required by California law.

The coverages required herein shall not limit the liability of Owner.

12.2 University's Insurance. University, at its sole cost and expense, shall insure its activities in connection with this RUA and obtain, keep in force and maintain insurance as follows:

- A. General Liability Self-Insurance Program (contractual liability included) with minimum limits as follows:
 - 1) Each Occurrence \$ 1,000,000
 - 2) Products/Completed Operations Aggregate \$2,000,000
 - 3) Personal and Advertising Injury \$1,000,000
 - 4) General Aggregate \$ 2,000,000
- B. Business Automobile Liability Self-Insurance Program for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
- C. Property, Fire and Extended Coverage Self-Insurance Program in an amount sufficient to reimburse University for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including improvements hereinafter constructed or installed.
- D. Workers' Compensation as required under California State law.

The coverages required under this Section 12.2.A, B and C shall not limit the liability of University.

The coverages referred to under this Section 12.2.A and B. shall include Owner as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of University, its officers, employees, and agents. University upon the execution of this RUA shall furnish Owner with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to Owner of any material modification, change or cancellation of the above insurance coverages.

12.3 Waiver of Subrogation. University and Owner hereby waive any right of recovery against the other as a result of loss or damage to the property of either University or Owner when such loss or damage arises out of an Act of God or any of the property perils insurable under extended coverage, whether or not such peril has been insured, self-insured, or non-insured.

- 13. Lien Free Condition. University shall not cause or permit any liens to be placed against the Premises or against Owner's other property as a result of University's exercise of rights under this RUA. In the event of the filing of any such liens, University shall promptly cause such liens to be removed.

14. Notice. Any notice required hereunder (“Notice”) shall be in writing and shall be addressed as follows:

OWNER:

City Manager
City of Chula Vista
276 4th Avenue
Chula Vista, CA 91910

UNIVERSITY:

Real Estate Services
255 Cousteau Place
Davis, CA 95618
Director, Transactions and Portfolio Management

with a copy to:

UC Davis California Lighting Technology Center
633 Pena Drive
Davis, CA 95618
Attention: Nicole Hathaway

15. Entire Agreement. This RUA supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this RUA. No alteration or variation of this RUA shall be valid unless made in writing and signed by Owner and University.
16. Independent Contractor Status. The Parties are independent contractors. In the performance of this agreement the Parties will not be agents or employees of the other Party.
17. Governing Law. This agreement shall be construed pursuant to California law.
18. Compliance with Laws. In its performance under this RUA, University shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.
19. No Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

AGREED:

CITY OF CHULA VISTA

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California corporation

By: _____
Maria V. Kachadoorian
City Manager

By: _____
Jim Carroll, AIA
Associate Vice Chancellor and
University Architect

Date: _____

Date: _____

EXHIBIT A

