

**FIFTH AMENDMENT TO LEASE
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT
AND THE CITY OF MORGAN HILL**

CORPORATION YARD LEASE

This Fifth Amendment ("Amendment") to the Lease between Morgan Hill Unified School District ("District" or "Tenant") and the City of Morgan Hill ("City" or "Landlord"), dated May 22, 2000 ("Lease") is entered into as of _____, 2021. Landlord and Tenant may be referred to collectively as the "Parties" in this Agreement.

RECITALS

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the "Property") described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to Tenant.
3. The Parties entered into that certain First Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. The Parties entered into that certain Second Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Second Amendment") as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. The Parties entered into that certain Third Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Third Amendment") as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section.
6. The Parties entered into that certain Fourth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Fourth Amendment") as of July 1, 2016 extending the term of the Lease to June 30, 2021, amending the payment schedule and adding a maintenance section. The Lease and the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment thereto are attached to this Amendment collectively as Exhibit 1.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another three (3) years.

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AGREEMENT

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provisions:

“The term of this Lease shall expire June 30, 2024. On or before January 1, 2024, Tenant may notify Landlord that it wishes to extend the Lease for up to another two years. If Landlord consents to such extension, this Lease will be extended for up to a two-year period upon the same terms and conditions in this Lease as amended, except as jointly modified by the Parties in writing. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days’ advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period.”

2. Except as amended by this Amendment, the Lease shall remain in full force and effect.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth in the first paragraph.

CITY OF MORGAN HILL

**MORGAN HILL UNIFIED SCHOOL
DISTRICT**

By: _____

By: _____

CHRISTINA J. TURNER
City Manager
City of Morgan Hill

STEVE BETANDO
Superintendent
Morgan Hill Unified School District

APPROVED AS TO FORM:

By: _____

DONALD A. LARKIN
City Attorney
City of Morgan Hill

ATTEST:

By: _____

MICHELLE BIGELOW
Deputy City Clerk
City of Morgan Hill

**FOURTH AMENDMENT TO LEASE
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT
AND THE CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This Fourth Amendment ("Amendment") to the Lease between Morgan Hill Unified School District ("District" or "Tenant") and the City of Morgan Hill ("City" or "Landlord"), dated May 22, 2000 ("Lease") is entered into as of July 1, 2016. Landlord and Tenant may be referred to collectively as the "Parties" in this Amendment.

RECITALS

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the "Property") described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to Tenant.
3. Landlord and Tenant entered into that certain First Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. Landlord and Tenant entered into that certain Second Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Second Amendment") as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. Landlord and Tenant entered into that certain Third Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Third Amendment") as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section. The Lease and the First Amendment, Second Amendment, and Third Amendments thereto are attached to this Amendment collectively as Exhibit A.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another five (5) years and to make certain further amendments to the Lease.

AGREEMENT

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2021. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days' advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."

2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows

Period	Annual Payment	Quarterly Payment
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50
7/10 – 6/11	\$155,000.00	\$38,750.50
7/11 – 6/16	\$72,000.00	\$18,000.00
7/16 – 6/17	\$81,900.00	\$20,475.00
7/17 – 6/21	Rate determined by Implicit Price Deflator for State and Local Government Purchases of Goods and Services.	

Beginning in the fiscal year starting in July 2017, Annual Payment shall be increased annually. The amount of increase shall be the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 1 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 1 of the second preceding fiscal year, as reported by the State Department of Finance. The Parties' intention is to align the annual increases to the cost of living adjustment provided to schools as defined in California Education Code Section 42238.1.

The rent shall be due to Landlord on the first day of the following months: January, April, July, and October. A onetime ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date."

3. Section 5.02 shall be added to the Lease to include the following provision:

"Section 5.02. Maintenance

The ongoing and routine operations and maintenance (including landscaping, grounds maintenance, and custodial services) of the Premises' facilities, furnishings, and equipment are the responsibility of Tenant. Routine maintenance is that recurring maintenance to properly maintain a system or asset during its useful life, generally of a less costly nature, and not involving a replacement of an entire system due to an age-related failure. Examples of routine maintenance include replacing of filters on HVAC units, replacing light bulbs or ballasts, trimming of trees, maintaining of grass and grounds, replacing irrigation components, and replacing windows, door locks, breakers, or individual parts of any systems not involving a major component which needs to be replaced due to age-related or impending failure.

Landlord is responsible for major maintenance, which includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, underground tanks, wall systems, floor systems, paving, and exterior and interior painting. Characteristically, these projects represent a significant investment with an expenditure criteria not unlike that required for capitalizing an expenditure as a capital asset, normally more than \$5,000.

Where a difference of opinion exists as to the nature of the proposed maintenance work (routine v. major), both Parties will use best efforts to come to an agreement. Absent an agreement, both Parties will agree upon an independent expert to determine the proper expense allocation. The cost of this independent expert will be split equally by the Parties."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

The individuals executing this Amendment represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the effective date set forth above.

CITY OF MORGAN HILL

By: 


STEVE RYMER
City Manager
City of Morgan Hill

MORGAN HILL UNIFIED SCHOOL DISTRICT

By: 

STEVE BETANDO
Superintendent
Morgan Hill Unified School District

APPROVED AS TO FORM:

for By: 
GARY BAUM
Interim City Attorney
City of Morgan Hill

Resolution No. 16-048

ATTEST:


By: 
MICHELLE WILSON
Deputy City Clerk
City of Morgan Hill

Exhibit A

126-04-de-005

**THIRD AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This third amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2011.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. The City and the District entered into a Second Amendment to the Lease ("Second Amendment") as of July 1, 2010, extending the term of the Lease to June 30, 2011, on the same terms and conditions as the Lease.
- E. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 (erroneously referred to as Section 1102 in the lease dated May 22, 2000) of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2016. This Agreement may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Agreement with at least three hundred sixty-five (365) days advance written notice to either party. Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50
7/10 – 6/11	\$155,000.00	\$38,750.50
7/11 – 6/16	\$72,000.00	\$18,000.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date."

3. Section 3.04 of the Lease shall be amended in its entirety and replaced with the following provision:

"Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to the Tenant. Furthermore, the Landlord retains the right to access the portion of the Property north of the Premises at all times without notice to the Tenant."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

TENANT:

City of Morgan Hill

Morgan Hill Unified School District

By: 

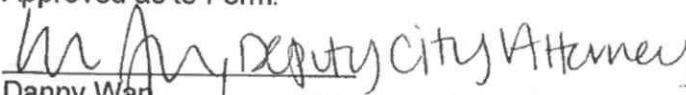
By:  8/23/12

J. Edward Tewes
City Manager

STEVE Rymer

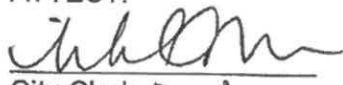
Dr. Wesley Smith
Superintendent

Approved as to Form:


for Danny Wan
City Attorney

02/19/13

ATTEST:


City Clerk, Deputy

**SECOND AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This second amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2010.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2011."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50
7/10 - 6/11	\$155,000.00	\$38,750.50

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

3. Section 2.02 is deleted in its entirety.
4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

City of Morgan Hill

By: J. Edward Tewes
J. Edward Tewes
City Manager

TENANT:

Morgan Hill Unified School District

By: Dr. Wesley Smith
Dr. Wesley Smith
Superintendent

Approved as to Form:

Danny Wan
Danny Wan
City Attorney

2/17/10 - Council Approved

Approved as to Risk:

Kevin Riper
Kevin Riper
Risk Manager

ATTEST:

City Clerk
City Clerk (IRMA TORRES)

**FIRST AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This first amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2006.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The Lease provides that on or before July 1, 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. Tenant has so notified Landlord.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2010."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 - 6/07	\$151,800.00	\$37,950.00
7/07 - 6/10	\$155,000.00	\$38,750.50

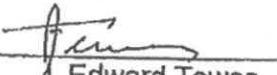
The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

3. Section 2.02 is deleted in its entirety.
4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

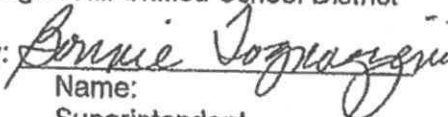
LANDLORD:

City of Morgan Hill

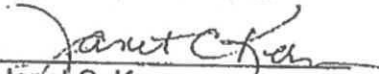
By: 
Edward Tewes
City Manager

TENANT:


Morgan Hill Unified School District

By: 
Name:
Superintendent

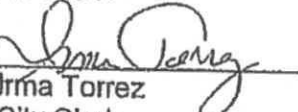
Approved as to Form:


Janet C. Kern
City Attorney

Approved as to Risk:


Jack Dilles
Risk Manager

ATTEST:


Irma Torres
City Clerk

00220

LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
THE CITY OF MORGAN HILL

PREAMBLE AND RECITALS

THIS LEASE ("Lease") is entered into on this 22nd day of May 2000, by and between the City of Morgan Hill ("Landlord") and the Morgan Hill Unified School District ("Tenant").

- A. Whereas, Landlord is the owner of certain real property ("Property") in the county of Santa Clara, State of California, described on Exhibit "A" which is attached and made a part of this lease. Landlord desires to lease a portion of that Property to Tenant, which portion of the Property shall be referred to in this lease as "the Premises." The Premises consist of approximately 3.42 acres with a 9,900 square foot building, a parking lot and underground storage tanks located at the Transportation Services Building, 105 Edes Court, Morgan Hill, California. The Premises are shown on Exhibit "B", attached hereto and incorporated herein.
- B. Whereas, the City and District formed the Corporation Yard Commission, a joint powers authority, in 1975. In addition, in May 1975, the City and District entered into a lease agreement whereby the City leased a portion of the Corporation Yard to the District. That lease has been extended on at least one occasion.
- C. Whereas, Tenant desires to enter into a successor lease to lease the Premises for use as a bus barn for fueling of gasoline and diesel fuel, bus and vehicle maintenance, parking and washing.

ARTICLE 1
LEASE OF PREMISES AND TERM OF LEASE

Section 1.01. Agreement to Lease.

Landlord hereby agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease

Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property. The City has no knowledge of any hazardous condition on or under the property other than that which is the subject of Morgan Hill Unified School District v. Minter & Fahy Construction Company, Inc., Santa Clara County Superior Court, Case No. CV 772368.

Section 1102.

Term of Lease

The term of this Lease shall be for a period of seven years commencing on the effective date set forth above. However, by July 1 of any year Tenant may serve notice of its intent to terminate the lease effective January 1 of the next year. On or before July 1 in the year 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. If Landlord consents to such extension, this Lease will be extended for a one-year period upon the same terms and conditions in this document, except as jointly modified by the parties in writing. The rent for any additional year lease period shall be the fair market rental value at the beginning of the extension as determined by Landlord and Tenant. Should Landlord not consent to such extension, and desire to rent the Premises to a third party, Landlord must offer Tenant a first right of refusal to rent the Premises on the same terms and conditions as Landlord is willing to rent the Premises to a third party. Tenant shall have thirty (30) days from the date of notification by Landlord of its intention to rent to a third party and of the acceptable terms and conditions to exercise the right of first refusal by notifying Landlord in writing of its intent to accept the terms and conditions set forth by Landlord.

Section 1.03.

No Partnership or Joint Venture.

For the purpose of this Lease, nothing in this Lease shall be construed to render the Landlord and Tenant in any way or for any purpose a partner, joint venturer, or associate in any relationship with the other, other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

ARTICLE 2
RENT

Section 2.01.

Payments

Within ten (10) days from execution of the Lease by all Parties, Tenant shall pay Landlord a pro-rated amount from the date of execution to December 31, 2000, based upon \$45,000 per year rent, for the first year's rent. Thereafter, rent shall be paid quarterly as follows:

<u>Year</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
2001	\$ 62,800.00	\$15,700.00
2002	\$ 80,600.00	\$20,150.00
2003	\$ 98,400.00	\$24,600.00
2004	\$116,200.00	\$29,050.00
2005	\$134,000.00	\$33,550.00
2006	\$151,800.00	\$37,950.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten-percent (10%) penalty shall apply on any amounts which remain unpaid sixty (60) days from the due date.

Section 2.02. Rent Establishment upon Extension.

Should this lease be extended pursuant to Section 1.02 above, the rental shall be set at the fair market value rental ("FMV"). If the parties cannot mutually agree upon the FMV, it shall be established by an independent appraisal by an appraiser mutually agreed upon by the parties.

**ARTICLE 3
USE OF PREMISES**

Section 3.01. Permitted Use.

Tenant shall use the Property and Premises solely for the purpose of a bus barn, including fueling of gasoline and diesel fuel only, bus and vehicle maintenance, parking and washing. Tenant shall not use or permit the Property and Premises to be used for any other purpose(s) without Landlord's written prior consent. Any use by or for the benefit of a private third party must have the Landlord's prior written consent, and Tenant shall indemnify, defend, and hold harmless Landlord from any damages arising out of such use. Landlord acknowledges that Tenant has, from time to time, allowed other governmental entities to use the fueling stations and maintenance operations. Landlord agrees that such use may continue, however, Tenant shall timely notify the Landlord of the identify of such entities, and shall indemnify, defend and hold harmless Landlord from any damages arising out of such use.

Section 3.02. Compliance with Laws and Payment of Fees.

Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, the Tenant shall procure and maintain it throughout the term of this lease.

Section 3.03. Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous material, as defined below, to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Property by the Tenant or its agents, employees, contractors, or invitees, except for such substances that are required in the ordinary course of Tenant's use as defined in Section 3.01 above, or as otherwise approved by Landlord, which consent shall not be reasonably withheld. Tenant shall use, store and dispose of all such Hazardous material in strict compliance with all applicable statutes, ordinances, and regulations that relate to public health, safety and protection of the environment. Tenant shall comply with all environmental laws in effect during the term of this Lease. Landlord acknowledges the pre-existing hazardous materials condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this lease.

Section 3.03.02. Notice of Release or Investigation.

If, during the Lease term (including any extensions), Tenant becomes aware of (a) any actual or threatened release of any hazardous material on, under, or about the Premises or Property which may result in administrative or court action, or (b) any inquiry, investigation, proceeding, or claim by any governmental agency or other person regarding the presence of hazardous material on, under, or about the Premises or the Property, Tenant shall give landlord written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to Landlord copies of any claims, notice of violation, reports, or other writings received by Tenant that concern the release or investigation. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release meets the criteria for reporting such release to Landlord, and agrees to assume all liability in connection with making such determination.

Section 3.03.02. Remediation Obligations.

If the presence of any hazardous material brought onto the Premises or the Property by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination, Tenant shall promptly take all necessary actions to remove or remediate such hazardous materials, at Tenant's sole expense, and shall return the Premises or Property to the condition that existed before the introduction of such hazardous materials. Tenant shall first obtain Landlord's approval of the proposed removal or remedial action, which approval shall not be unreasonably withheld. This provision does not limit the indemnification agreement set forth above. Landlord acknowledges the pre-existing hazardous material condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this Lease. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release results in "contamination," and agrees to assume all liability in connection with making such determination.

Section 3.03.03. Definition of "Hazardous Material(s)."

"Hazardous material(s)" means any hazardous or toxic substance, material, or waste of any concentration that exceeds state or federal maximum concentrations or action levels as determined by the appropriate oversight committee, or that is or becomes regulated by the federal, state or any local government authority, including as the term is defined in CERCLA, RCRA, any federal, state or local governmental definition, petroleum products, radioactive materials, asbestos in any form or condition, MTBEs, PCBs and substances or compounds containing PCBs.

Section 3.04. Right to Enter and Inspect.

Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to Tenant.

**ARTICLE 4
IMPROVEMENTS**

Section 4.01. Improvements.

Exhibit "C" contains a list of existing improvements to the Property that shall be considered Tenant's at the end of the Lease and a list of improvements that shall be considered Landlord's at the end of the Lease. Tenant may make improvements only with the prior written consent of the Landlord, and only those improvements, which are consistent with the uses, stated in Section 3.01 above. Any improvements Tenant makes to the Property after the effective date of this Lease that are fixtures (e.g., those items affixed to the land by roots, or imbedded in the land, such as a building or permanently attached to such items by means of cement, plaster, nails, bolts or screws) shall be considered Landlord's, unless Landlord and Tenant agree otherwise in writing. Any improvements that Tenant makes to the Property after the effective date of this Lease that are not fixtures shall at Tenant's option prior to the end of the Lease, be considered Tenant's and may be removed by Tenant within sixty (60) days of the end of the Lease at Tenant's cost; provided however, that if Tenant does not remove these improvements within sixty (60) days of the end of the lease, the improvements shall become the property of Landlord.

ARTICLE 5
UTILITIES, SAFE AND CLEAN CONDITIONS
AND APPLICATION OF INSURANCE PROCEEDS

Section 5.01. Utilities, Safe and Clean Conditions and Application of Insurance Proceeds

Tenant shall pay or cause to be paid, and hold Landlord and the property of Landlord including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities, including garbage and trash collection and custodial services and any other such services to the Premises during the term of this Lease. Payment for utilities used by Tenant at the Premises shall be the responsibility of Tenant.

Tenant shall control the utilities for the Premises. At all times during the term of this Lease Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and all improvements to the Premises in a safe and clean condition. Landlord shall have reasonable access to the Premises during business hours and emergencies for inspection of the Property. Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to Tenant and to Landlord, and applied by Landlord, toward the cost of repairing and restoring the damaged or destroyed improvements.

ARTICLE 6
INDEMNITY AND INSURANCE

Section 6.01. Indemnity Agreement.

Tenant agrees to indemnify, defend, and hold harmless Landlord for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like arising out of the negligent acts of omission or commission or willful act of Tenant, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;
- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or
- d. Tenant's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

Tenant shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Landlord, its agents, representatives, employees or assigns during the term of this Lease. However, any such liability shall be assessed on a proportionate fault basis between Landlord and Tenant.

Landlord agrees to indemnify, defend, and hold harmless Tenant for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like solely arising out of the negligent acts of omission or commission or willful act of Landlord, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord or by reason of the damage to or destruction of any property, including property owned by Landlord or by any person who is an employee or agent of Landlord, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;
- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord, or by reason of the damage to or destruction of any property, including property owned by Landlord or any person who is an employee or agent of Landlord, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises or (2) some act or omission on the Premises of Landlord or any or any person in, on, or about the Premises with the permission and consent of Landlord;

- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Landlord or any person or entity acting for or on behalf of Landlord; or
- d. Landlord's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Landlord or the Premises by any duly authorized governmental agency or political subdivision, except as otherwise stated in this Lease.

Landlord shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Tenant, its agents, representatives, employees or assigns during the term of this Lease.

Section 6.02. Liability Insurance.

Tenant shall obtain a separate policy of insurance, subject to Landlord's reasonable approval, for the diesel and underground storage tanks, regardless of location, including, but not limited to, above and below ground tanks, product delivery systems, pumps, lines, dispensers, and all apparatus and appurtenant thereto, which shall operate prospectively only and which Tenant shall maintain for the duration of the Lease. Tenant shall pay all premiums; Landlord shall pay nothing for such policy or premiums or make any payments pursuant thereto.

- a. \$2,000,000 for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than \$1,000,000 for injury to or death of two or more persons as a result of any one accident or incident; and
- b. \$2,000,000 for damages to or destruction of any property.

This insurance shall operate prospectively only. It shall not cover any events occurring prior to the effective date of this Lease, nor shall it affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease. This Lease cannot be used for the purpose of exonerating or establishing liability for either Landlord or Tenant for events occurring prior to the effective date of this Lease.

Section 6.03. Deposit of Insurance with Landlord.

Tenant shall, within 10 days after the execution of this Lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Landlord a true and correct copy of each insurance policy required by this Article or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.

Section 6.04. Notice of Cancellation of Insurance.

Each insurance policy required under this Article shall contain a provision that it cannot be canceled for any reason unless at least 30 days prior written notice of the cancellation is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant. Landlord, its officers, employees, agents and representatives, shall be listed as co-insureds on all insurance Tenant is required to maintain pursuant to this Lease.

Section 6.05. No Effect on Events, Obligations, Rights, Duties or Litigation Existing Prior to Effective Date of this Lease.

Nothing in this Lease shall affect the rights, duties and obligations of Landlord and Tenant regarding any events that occurred prior to the effective date of this Lease. No provision of this Lease shall affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease or be used for the purpose of exonerating or establishing liability for either Landlord or Tenant.

**ARTICLE 7
ASSIGNMENT AND SUBLEASING**

Section 7.01. No Assignment without Landlord's Consent.

Tenant may not assign this Lease or any interest in this Lease without the prior written consent of Landlord.

**ARTICLE 8
DEFAULT AND REMEDIES**

Section 8.01. Termination.

In the event of a Tenant default under this Lease, Landlord may terminate this Lease by sixty (60) days written notice to Tenant. All covenants and terms contained in this Lease are declared to be conditions to this Lease. Should Tenant fail to perform any covenant, condition, or term contained in this Lease and the default not be cured within sixty (60) business days after written notice of the default is served on Tenant by Landlord or Landlord's representative or assignee of Landlord, then Tenant shall be in default under this Lease.

ARTICLE 9 RECORDS

Section 9.01. Records.

Tenant shall maintain accurate, timely, and complete records sufficient to demonstrate it has complied with all its obligations under this Lease. The parties agree that the standards set forth in the audit report prepared by Dames & Moore, as modified by operation of statute or other regulation, regarding record maintenance on the fueling operations shall be sufficient to meet the requirements of this paragraph regarding the fueling operations. Tenant shall allow Landlord access to such records upon reasonable notice. Landlord shall have the right to perform an audit on such records.

ARTICLE 10 MISCELLANEOUS

Section 10.01. Notices to Landlord.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Landlord shall be in writing and shall be deemed duly served and given when personally delivered or sent via certified mail to the City Clerk of the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037.

Section 10.02. Notices to Tenant.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Tenant at Morgan Hill Unified School District, 15600 Concord Circle, Morgan Hill, California 95037, Attn: Director of Fiscal Services.

Section 10.03. Governing Law and Interpretation.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises. Unless the context otherwise requires, the term "day" shall refer to calendar days. Subtitles are for convenience only and shall not be words of limitation regarding any provision of this Lease. This Lease shall be deemed jointly drafted and reviewed by the parties. There shall be no presumption against the drafter of this Lease. Both parties shall be deemed to have participated in the drafting of this Lease.

Section 10.04. Binding on Heirs and Successors.

Subject to the restriction of assignment, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this Lease or any interest in the Lease by Tenant.

Section 10.05. Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 10.06. Sole and Only Agreement.

This Lease, together with exhibits hereto, constitutes the sole and only agreement between Landlord and Tenant respecting the Premises and the leasing of the Premises to Tenant and the Lease terms set forth in this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its effective date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

EXECUTION

This Agreement is executed on this 22nd day of May, 2000, at Morgan Hill, California.

LANDLORD:

City of Morgan Hill

By: [Signature]

Its: City Manager

TENANT:

Morgan Hill Unified School District

By: Carolyn McKennan

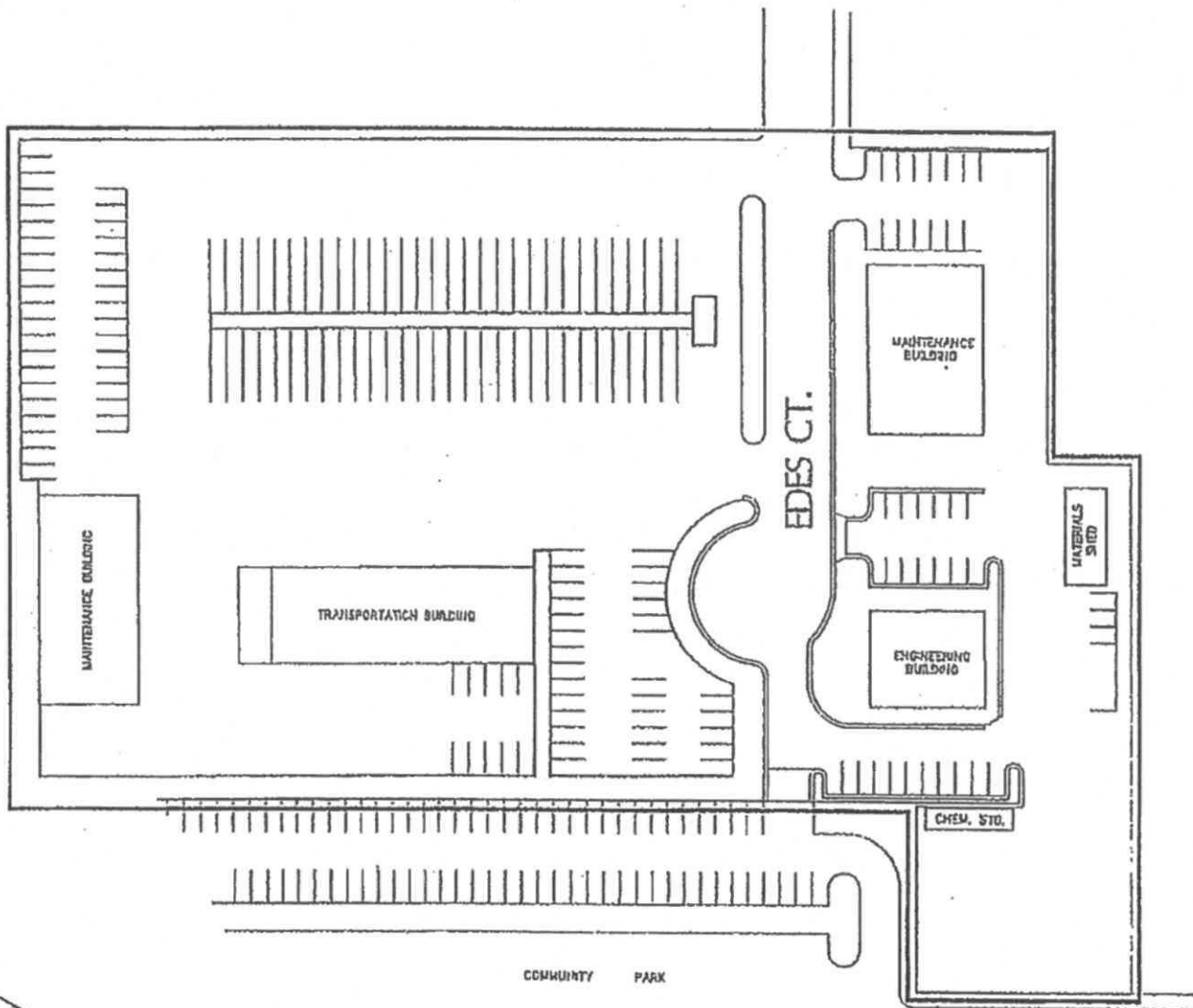
Its: Superintendent

APPROVED AS TO FORM:

Helene L. Leichter
Helene L. Leichter, Interim City Attorney

ATTEST:

[Signature]
Irma Torrez, City Clerk



Ex. "A"



City of Morgan Hill

Public Works Department

C:\R-14\PROJ\H\DWG\BUSPLAT3.DWG

CITY CORP. YARD PROPERTY

Date: 3/15/00

Drwn by: J.A.H.

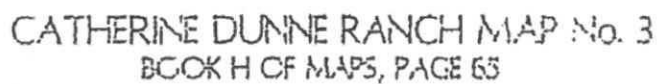
Chkd by: J.A.

Exhibit "B"

Boundary Description to Accompany Lease Agreement

Being a portion of lots 8 and 9, as delineated upon that certain map entitled "Catherine Dunne Ranch Map No. 3", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, Book H of Maps at page 65, and more particularly described as follows:

BEGINNING at a point of common intersection of lots 8, 9, 14, and 15 of said Catherine Dunne Ranch Map No. 3; thence along the southwesterly line of said lot 8, North 24° 29' 00" West 121.00 feet; thence North 65° 31' 00" East 420.00 feet; thence South 24° 29' 00" East 352.00 feet; thence South 65° 31' 00" West 240.82 feet; thence southeasterly along the arc of a circular curve to the right but not tangent thereto, with a radius of 50.00 feet, through a central angle of 180° 00' 00" for an arc length of 157.08 feet; thence leaving said curve but not tangent thereto South 65° 31' 00" West 79.10 feet; thence North 24° 29' 00" West 231.00 feet returning to said point of beginning, and containing 3.30 acres of land, more or less.



R-14\PROJ\JH\DWG\BUSPLAT.DWG

EXHIBIT "B"

PLAT TO ACCOMPANY BOUNDARY DESCRIPTION

Date: 10/28/99

Drwn by: J.A.H.

Chkd by: B.W.

REMOVAL OF MORGAN HILL UNIFIED SCHOOL DISTRICT
TRANSPORTATION PROPERTY

June 16, 1999

The following preliminary list highlights equipment that would be removed from the Corporation Yard Maintenance Facility (CYMF) prior to the facility reverting to the City of Morgan Hill:

- Bus wash rack
- Tire racks and shelves
- Tire changer, bus coats hit 5000
- Tire changer auto FMC 76000
- Tire safety rack
- Wheel balance FMC 5800
- Tire spreader Branic (bus)
- Snap on wheel balance (bus)
- Stock tires
- All bus and automotive parts and supplies, belts, filters, etc.
- Bulk oil tank and barrels
- Upholstery and shelving
- Benches and tables
- Part washer
- Fork lift
- Hydraulic 30 ton jack
- Shop tool box
- Drill press
- Mohawk lift LMF-12 12,000 LB lift
- Sun Computer MCS4000 (scope)
- Sun Smog Inspector
- Bolts and nuts crib and shelves
- Sun Alt Tester #1600
- OTC 10 ton hydraulic shop press
- Rockwell lathe
- Hunter electronic balance
- Baldor grinder #f170 serial
- Baldor grinder #f1577
- Sioux Valve grinder #580
- Ammco auto brake lathe #7900
- Ammco bus brake lathe #5000
- J&T Ble drum lift
- Refrigerator, Signature frostless 22
- Water cooler Elkay
- Microwave ovens
- Book shelves
- Exhaust system
- Steam cleaner
- Four ship containers
- Security cameras
- Exhaust blowers

**BOARD OF EDUCATION
MORGAN HILL UNIFIED SCHOOL DISTRICT**

May 22, 2000

Topic:	Approve corporation yard lease for the transportation yard
Prepared by:	Bonnie Branco, Assistant Superintendent of Business Services
Presented by:	Bonnie Branco, Assistant Superintendent of Business Services
Type of Item:	Action

Over the course of the last several months, the Corporation Yard Commission has met to prepare and review a draft lease for the proposal of maintaining the transportation yard on the 3.42 acres where the yard currently resides. Although the District took action to extend the lease on March 31, 1990, the current lease has been extended by the District until the year May 7, 2002, the details of any extension were not enumerated.

The new draft lease specifies that the transportation department will remain on this property for an additional seven years commencing on the effective date this contract is approved by the Board. This seven-year lease may be extended annually on a year-to-year basis with the City and the District in agreement on the same terms and conditions stated in this lease agreement, or as jointly modified by both parties in writing. If the District chooses to terminate this agreement, notification must be given to the City of Morgan Hill by July 1 of its intent to terminate the lease effective January 1 of the following year.

The City of Morgan Hill City Council approved this lease on April 5, 2000. The final draft was presented for Board discussion at the Board meeting of May 8, 2000 and is returning for approval at the Board meeting of May 22, 2000. The contract will be dated to coincide with the Board adoption date.

RECOMMENDED ACTION:

Approve corporation yard lease for the transportation yard

ADDITIONAL INFORMATION:

Attached: Draft of corporation yard lease with exhibits

Available: Yes

BB:sr
000522 Corporation Yard lease action

Item Number 414