

**COST SHARING AGREEMENT BETWEEN THE CITY OF MORGAN HILL,
CALIFORNIA AND THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR THE
JOINT CORPORATION YARD SPACE ASSESSMENT STUDY**

This Agreement is made and entered into on _____, by and between the City of Morgan Hill, California, a general law municipal corporation of the State of California ("City"), and the Morgan Hill Unified School District ("District"), collectively referred to herein as the "Parties" or individually as "Party."

RECITALS

WHEREAS, the City owns the Corporation Yard at 100 Edes Court;

WHEREAS, the District currently leases 3.42 acres of space at the Corporation Yard from the City for the purpose of transportation services;

WHEREAS, the City has conducted a request for proposals process with support from the District and selected a service provider for the space assessment;

WHEREAS, the Parties have determined that the space assessment will provide great benefit to both the District and the City;

WHEREAS, the Parties have agreed that for the purpose of this project, the responsibility of the cost has been determined to be 50% City and 50% District and each of the Parties has indicated its willingness to fund these percentage shares of the costs for the assessment; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

AGREEMENT

1. Scope of Work. The scope of the work consists of the space assessment of the entire Corporation Yard Facility identified in Exhibit B.
2. Costs. The City, as the lead agency on this Project, has prepared an agreement including scope of work, and itemized costs for the assessment and is attached hereto as Exhibit A.
3. Cost Sharing of Project. All consultant costs for the assessment are to be shared by the established cost share percentage of 50% by the City and 50% by the District. The cost shall include all consultant work authorized by the agreement, but exclude staff costs or overhead for either Party.
4. Payment of Costs. The City, as the lead agency, shall invoice the District for its portion of costs on a monthly basis based on payment of invoices to the consultant. The District shall pay all invoices within 30 days of receipt.

5. End Product. Both Parties shall have available to them all assessment information and consultant work product as outlined in the consultant agreement, Exhibit A. As the lead agency, the City, shall be responsible for ensuring all work product is delivered to the District.
6. Indemnification. Pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify, defend with counsel reasonably acceptable to the other Party and hold the other Party, its officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, contractors, subcontractors, material suppliers or agents, under or in connection with any work, authority or jurisdiction delegated to such Party under this Agreement. Neither Party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, employees, contractors, subcontractors, material suppliers or agents, under or in connection with any work, authority or jurisdiction delegated to such other Party under this Agreement.
7. Notices. Notice shall be effective five days after date of mailing, or upon date of hand delivery or facsimile transmission. Notices given under this Agreement may be hand delivered or delivered by facsimile, with an additional copy sent by first class mail, postage prepaid, and addressed to the appropriate party at the following addresses:

To District:	Morgan Hill Unified School District Attn: Assistant Superintendent, Business Services 15600 Concord Circle Morgan Hill, CA 95037
To City:	City of Morgan Hill Attn: Public Services Director 17555 Peak Avenue Morgan Hill, CA 95037
8. Term. The term of this Agreement shall run concurrently with the consultant agreement attached hereto as Exhibit A. This Agreement will be automatically extended if the agreement with the consultant is extended. Should the agreement with the consultant terminate, the Parties agree that this Agreement shall terminate as well. Any outstanding invoices shall be paid by the District within 30 days of termination.

9. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

10. Additional Provisions. The Parties further agree as follows:

- a. One or both Parties' waiver of any term, condition or covenant of this Agreement shall not be construed as a waiver of any other term, condition or covenant of this Agreement.
- b. This Agreement contains the entire Agreement between the Parties relating to the corporation yard space assessment. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
- c. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- d. This Agreement may be executed in counterparts and will be binding as executed.
- e. This Agreement shall become effective when executed by both parties and shall continue in force and effect so until final work product is delivered unless otherwise terminated pursuant to paragraph 9.
- f. All amendments to this Agreement must be approved in writing by both Parties to be effective. The Parties agree that any amendment to the consultant agreement shall be negotiated and agreed to by the Parties, unless such amendment solely affects only one Party. Any amendments to the consultant agreement shall be incorporated herein.
- g. The Parties agree that they shall endeavor to resolve any dispute about this Agreement in good faith. The Parties further agree that should such dispute remain unresolved, they shall engage in mediation and/or non-binding arbitration to resolve such disputes, prior to resorting to court action. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
- h. Severability. The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity of the remaining parts of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT
AS OF THE DATE FIRST ABOVE WRITTEN.

CITY OF MORGAN HILL

MORGAN HILL UNIFIED SCHOOL DISTRICT

City Manager

Date:

Superintendent

Date:

ATTEST:

City Clerk

Date:

Clerk of the Board

Date:

APPROVED AS TO FORM:

City Attorney

Date:

District Counsel

Date: