

**THIRD AMENDMENT TO  
AGREEMENT FOR THE OPERATION AND MAINTENANCE  
OF  
THE OUTDOOR SPORTS CENTER CONCESSION  
BETWEEN  
THE CITY OF MORGAN HILL  
AND  
MORGAN HILL YOUTH SPORTS ALLIANCE**

This THIRD AMENDMENT TO AGREEMENT ("THIRD AMENDMENT") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2016 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

**RECITALS**

The Parties intend that the following recitals are a substantive part of this THIRD AMENDMENT:

1. This THIRD AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on May 18, 2016.
2. A Second Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on December 3, 2014 ("SECOND AMENDMENT").
3. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 ("FIRST AMENDMENT").
4. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT, FIRST AMENDMENT, AND SECOND AMENDMENT are collectively attached as Exhibit "A" to this THIRD AMENDMENT and incorporated herein by this reference.

**AGREEMENT**

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

**SECTION 1. Amendments:** Pursuant to the provisions of Section 31 of the AGREEMENT, the Parties agree that all of the terms and conditions of the AGREEMENT as, as amended by the FIRST AMENDMENT AND SECOND AMENDMENT attached collectively hereto as Exhibit "A", shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 4 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 4. TERM OF AGREEMENT**

A. The term of the Concession AGREEMENT shall be nine (9) years subject to early termination as set forth below.

Sections B through D are unchanged and incorporated herein by this reference.

B. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 5. CONCESSION FEE AND PAYMENT**

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
10. For the FISCAL YEAR 2016-2017, equal quarterly payments totaling \$45,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.
11. For the FISCAL YEAR 2017-2018, equal quarterly payments totaling \$60,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.
12. For the FISCAL YEAR 2018-2019, equal quarterly payments totaling \$70,000 and an amount equal to 25% of total revenue generated through advertisement programs each quarter.

Sections B through D are unchanged and incorporated herein by this reference.

C. SECTION 6 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS**

For the purposes of this Section 6 and this AGREEMENT, the term "gross revenue" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services (whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. "Net income" shall mean the gross revenue less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during the first two FISCAL YEARS of the term of this AGREEMENT.

2. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net income of that FISCAL YEAR, **through FISCAL YEAR 2015-16.**

3. No later than the ninetieth (90<sup>th</sup>) day after the end of FISCAL YEAR 2016-17, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during FISCAL YEAR 2016-17.

4. No later than the ninetieth (90<sup>th</sup>) day after the end of FISCAL YEAR 2017-18, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds seventy thousand dollars (\$70,000) of net income during FISCAL YEAR 2017-18.

5. No later than the ninetieth (90<sup>th</sup>) day after the end of FISCAL YEAR 2018-19, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of that amount of CONCESSIONAIRE'S "net income" that exceeds fifty thousand dollars (\$50,000) of net income during FISCAL YEAR 2018-19.

6. CITY shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Income Share: Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net income of that FISCAL YEAR, **through FISCAL YEAR 2015-16.**

Sections C through E are unchanged and incorporated herein by this reference.

D. SECTION 9 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

#### **SECTION 9. OPERATING RESPONSIBILITIES**

Sections A through D are unchanged and incorporated herein by this reference.

E. Marketing and Promotion CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this

AGREEMENT. The CITY reserves the right to concurrently market and promote the use of the OSC. Status on marketing efforts shall be included in quarterly status report provided as outlined in Section 5D. The CITY shall commit to dedicate staff resources and funding to support regional sports tourism promotion on, including promotion of use of, the Outdoor Sports Center.

Sections F through L are unchanged and incorporated herein by this reference.

M. Special Event Permits: CONCESSIONAIRE shall submit a City special event application for any uses occurring outside the PREMISES, including, but not limited to, the closure of adjacent streets. All required traffic control responsibilities will be documented in the permit. The DEPARTMENT will issue permits at no charge as long as permit applications are submitted 30 days in advance.

N. Parking Plans: CONCESSIONAIRE shall be required to submit a written parking plan to the DEPARTMENT for all events that are anticipated to exceed 2,500 people in attendance.

O. Joint Advertising: CONCESSIONAIRE and the DEPARTMENT shall develop a joint advertising plan for the PREMISES and the adjacent Morgan Hill Aquatics Center. The CONCESSIONAIRE shall have the ability to sell joint advertising.

E. SECTION 10 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 10. MAINTENANCE AND REPAIR**

Sections A through J are unchanged and incorporated herein by this reference.

K. The CITY shall make good faith effort to include provisions within requests for proposals and contracts for citywide maintenance services that provide for City pricing to be extended to the CONCESSIONAIRE for work performed at the PREMISES.

F. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 35 CONFLICTING PROVISIONS**

Except as expressly set forth in this THIRD AMENDMENT, the AGREEMENT, as amended by the prior SECOND AMENDMENT and FIRST AMENDMENT, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this THIRD AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior FIRST AMENDMENT AND SECOND AMENDMENT , the terms and conditions of this

THIRD AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this THIRD AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

ATTEST:

CITY OF MORGAN HILL:

\_\_\_\_\_  
Michelle Wilson, Deputy City Clerk

\_\_\_\_\_  
Steve Rymer, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

MORGAN HILL YOUTH SPORTS ALLIANCE:

\_\_\_\_\_  
Gary Baum, Interim City Attorney

\_\_\_\_\_  
By:

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name and Title of Signer.  
If Corporate: Chairman, President or Vice President

Date: \_\_\_\_\_

\_\_\_\_\_  
By:

Title: \_\_\_\_\_

Print Name and Title of Signer.  
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: \_\_\_\_\_

**SECOND AMENDMENT TO**  
**AGREEMENT FOR THE OPERATION AND MAINTENANCE**  
**OF**  
**THE OUTDOOR SPORTS CENTER CONCESSION**  
**BETWEEN**  
**THE CITY OF MORGAN HILL**  
**AND**  
**MORGAN HILL YOUTH SPORTS ALLIANCE**

This SECOND AMENDMENT TO AGREEMENT ("AMENDMENT") is made and entered into as of this third day of December, 2014 (the "EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and the MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

**RECITALS**

The parties intend that the following recitals are a substantive part of this AMENDMENT:

1. This AMENDMENT is entered into based upon City of Morgan Hill City Council action taken on December 3, 2014.
2. A First Amendment to the AGREEMENT described below was entered into based upon City of Morgan Hill City Council action taken on October 2, 2012 and is attached hereto as Exhibit "B" and incorporated herein by this reference.
2. CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this AMENDMENT and incorporated herein by this reference.

**AGREEMENT**

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES HERETO, THE PARTIES FURTHER MUTUALLY AGREE AS FOLLOWS:

**SECTION 1. Amendments:** Pursuant to the provisions of Section 31 of the AGREEMENT, the parties agree that all of the terms and conditions of the AGREEMENT as attached as Exhibit "A" and as amended by the First Amendment to the AGREEMENT attached as Exhibit "B" shall remain in full force and effect except that the parties hereto agree that the following further amendments shall be made and incorporated into the AGREEMENT, as amended to date, as follows:

A. SECTION 4 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 4. TERM OF AGREEMENT**

A. The term of the Concession AGREEMENT shall be six (6) years subject to early termination as set forth below.

B. The CITY may terminate this Agreement upon an event of default and notice as set forth in Section 20.

C. The CITY may terminate this Agreement pursuant to Section 14C.

D. The CITY or CONCESSIONAIRE may terminate this Agreement without cause 180 days after the delivery of notice to the other party of its intent to terminate this Agreement.

B. SECTION 5 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

**SECTION 5. CONCESSION FEE AND PAYMENT**

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
9. For the FISCAL YEAR 2015-2016, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

B. Payment Due Date

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

C. Method of Payment

The quarterly concession payments shall be addressed to:

Community Services Department  
ATTN: Director of Community Services  
Outdoor Sports Center Concession Agreement  
17575 Peak Avenue  
Morgan Hill, CA 95037

D. Quarterly Concession Reports:

CONCESSIONAIRE shall transmit with each quarterly concession fee payment a quarterly Status Report, which includes quarterly statistical information on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, marketing and sponsorship revenue, gross revenue and net receipts, expenses and revenues.

C. SECTION 35 of the AGREEMENT, as amended to date, shall be further amended to read in its entirety as follows:

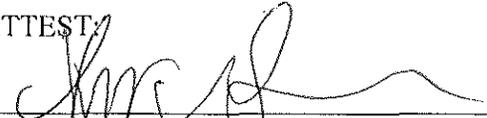
**SECTION 35 CONFLICTING PROVISIONS**

Except as expressly set forth in this AMENDMENT, the AGREEMENT, as amended by

the prior First Amendment, shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between the terms and conditions of this AMENDMENT and the terms and conditions of the AGREEMENT, as amended by the prior First Amendment, the terms and conditions of this AMENDMENT will control, govern, and prevail.

IN WITNESS WHEREOF, the parties to this AMENDMENT have executed this AMENDMENT to be effective as of the EFFECTIVE DATE first set forth hereinabove.

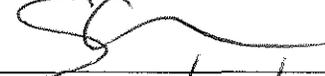
ATTEST:

  
for Michelle Wilson, Deputy City Clerk  
Date: 2/25/15

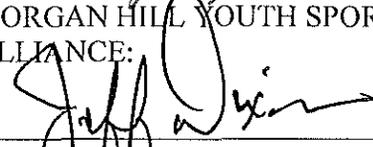
APPROVED AS TO FORM:

  
for Renee Gurza, City Attorney  
Date: 02/18/15

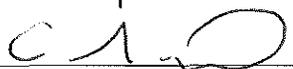
CITY OF MORGAN HILL:

  
Steve Rymer, City Manager  
Date: 2/20/15

MORGAN HILL YOUTH SPORTS ALLIANCE:

  
By: Jeff Dixon, President  
Title: Jeff Dixon, President  
Print Name and Title of Signer.  
If Corporate: Chairman, President or Vice President

Date: 11/25/14

  
By: Christopher Gernity, Treasurer  
Title: Christopher Gernity, Treasurer  
Print Name and Title of Signer.  
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 11/25/2014

**FIRST AMENDMENT TO  
AGREEMENT FOR THE OPERATION AND MAINTENANCE  
OF  
THE OUTDOOR SPORTS CENTER CONCESSION  
BETWEEN  
THE CITY OF MORGAN HILL  
AND  
MORGAN HILL YOUTH SPORTS ALLIANCE**

This FIRST AMENDMENT TO AGREEMENT is made and entered into this 8/14/13 day of ~~June~~, 2013, by the CITY OF MORGAN HILL, a municipal corporation ("CITY") and MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council action taken on October 2, 2012.
2. The CITY and CONCESSIONAIRE entered an Agreement for the Operation and Maintenance of the Outdoor Sports Center Concession made as of July 1, 2010, to provide a well-maintained and operated sports field and related facilities, services and advertising opportunities ("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this First Amendment to Agreement.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

**Amendments:** Pursuant to the provisions of Section 31, all terms and conditions of the AGREEMENT as attached as Exhibit "A" shall remain in full force and effect; except that the following amendments shall be made as follows:

## **SECTION 1. DEFINITIONS**

AGENCY: The City of Morgan Hill

All other Definitions included in this Section 1 are unchanged and incorporated herein by this reference.

## **SECTION 5. CONCESSION FEE AND PAYMENT**

### **A. Quarterly Concession Fee:**

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012, equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-2013, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
7. For the FISCAL YEAR 2013-2014, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.
8. For the FISCAL YEAR 2014-2015, equal quarterly payments totaling \$65,000 and an amount equal to 15% of total revenue generated through advertisement programs each quarter.

### **B. Payment Due Date**

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

### **C. Method of Payment**

The quarterly concession payments shall be addressed to:

Community Services Department  
ATTN: Director of Community Services  
Outdoor Sports Center Concession Agreement  
17575 Peak Avenue  
Morgan Hill, CA 95037

D. Quarterly Concession Reports:

CONCESSIONAIRE shall transmit with each quarterly concession fee payment a quarterly Status Report, which includes quarterly statistical information on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, marketing and sponsorship revenue, gross revenue and net receipts, expenses and revenues.

**SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS**

For the purposes of this Section 6 and this AGREEMENT, the term "gross revenue" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services (whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. "Net income" shall mean the gross revenue less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE'S "net income" that exceeds one hundred thousand dollars (\$100,000) of net income during the first two FISCAL YEARS of the term of this AGREEMENT.

2. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net income of that FISCAL YEAR.

3. CITY shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Income Share: Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net income of that FISCAL YEAR.

Sections C through E are unchanged and incorporated herein by this reference.

#### **SECTION 8. OSC USAGE**

F. Advertising. CONCESSIONAIRE shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the City's approved policy (restricts pornography, religious and political organizations, firearms, tobacco, alcohol). CONCESSIONAIRE may be allowed to have temporary advertising for alcohol products for exclusively adult only tournaments occurring at the OSC upon approval by the GENERAL MANAGER. As a part of Morgan Hill tourism efforts CONCESSIONAIRE may be allowed to have advertising for local wineries and winery events upon approval by the GENERAL MANAGER. 15% of revenues derived from such advertising and sponsorship agreements shall be paid to the City quarterly as described in Section 5. A.2 & 5B.

Sections A through E and G through J are unchanged and incorporated herein by this reference.

#### **SECTION 9. OPERATING RESPONSIBILITIES**

E. Marketing and Promotion. CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this AGREEMENT. The CITY reserves the right to concurrently market and promote the use of the OSC. Status on marketing efforts shall be included in quarterly status report provided as outlined in Section 5.D.

Sections A through D and F through L are unchanged and incorporated herein by this reference.

#### **SECTION 11. CAPITAL IMPROVEMENT PROGRAM**

The CITY and CONCESSIONAIRE shall negotiate in good faith to develop and agree by December 31, 2013 upon a 10-year capital improvement program for the PREMISES and

OSC. Such program shall set forth the needed capital IMPROVEMENTS to be made within the 10 year program and the respective responsibilities of the CITY and CONCESSIONAIRE to fund and complete such program. The respective share of responsibility of the program shall reasonable reflect the following factors: the term of this AGREEMENT and possible future extension of the AGREEMENT, the expected life of IMPROVEMENTS, the degree to which the activities of each party contributes to the wear and tear on the IMPROVEMENTS or the need for the Improvements, and the expertise of each respective party to make any such IMPROVEMENTS.

#### **SECTION 14. PERFORMANCE DEPOSIT AND ASSURANCES**

B. Annual Progress Report. CONCESSIONAIRE shall submit no later than sixty (60) days after the end of each FISCAL YEAR a progress report of an annual compilation of information contained in the quarterly reports required in Section 5.D., as well as gross revenue and net receipts for each FISCAL YEAR (as defined in Section 6). CONCESSIONAIRE will include a profit and loss statement and balance sheet with each annual report.

Sections A and C are unchanged and incorporated herein by this reference.

#### **SECTION 29. NOTICES**

A. To CITY:

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to Community Services Department, Attn: Director of Community Services, Outdoor Sports Center Concession Agreement, 17575 Peak Avenue, Morgan Hill, CA 95037.

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said address change.

B. To CONCESSIONAIRE:

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for

delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

Morgan Hill Youth Sports Alliance  
16755 Jackson Oaks Drive  
Morgan Hill, CA 95037

CONCESSIONAIRE shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

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**SECTION 34 CONFLICTING PROVISIONS**

Except as expressly set forth in this First Amendment, the AGREEMENT shall remain unchanged and continue in full force and effect in accordance with its terms. If there is conflict between this First Amendment and the AGREEMENT, the terms of this First Amendment will control and prevail.

ATTEST:

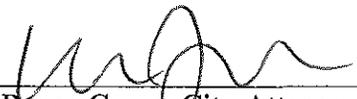
  
\_\_\_\_\_  
Michelle Wilson, Deputy City Clerk  
Date: 8/15/13

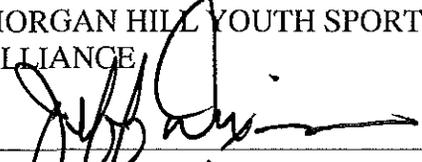
CITY OF MORGAN HILL

  
\_\_\_\_\_  
Steve Rymer, City Manager  
Date: 8/14/13

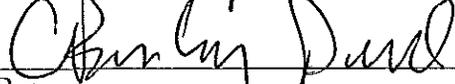
APPROVED AS TO FORM:

MORGAN HILL YOUTH SPORTS ALLIANCE

for   
\_\_\_\_\_  
Renee Gurza, City Attorney  
Date: 08/14/13  
COUNCIL APPROVAL:  
06/19/13

  
\_\_\_\_\_  
By: \_\_\_\_\_  
Title: President Jeff Dixon  
Print Name and Title of Signer.  
If Corporate: Chairman, President or Vice President

Date: 6/12/13

  
\_\_\_\_\_  
By: \_\_\_\_\_  
Title: C BRADLEY DANIEL (secretary)  
Print Name and Title of Signer: Treasurer  
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/12/13

**AGREEMENT FOR THE OPERATION AND MAINTENANCE**

**OF**

**THE OUTDOOR SPORTS CENTER CONCESSION**

**Between**

**THE CITY OF MORGAN HILL**

**And**

**MORGAN HILL YOUTH SPORTS ALLIANCE**

**Dated: July 1, 2010**

AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE  
OUTDOOR SPORTS CENTER CONCESSION

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AGREEMENT FOR THE OPERATION AND MAINTENANCE

OF

THE OUTDOOR SPORTS CENTER CONCESSION

Between

THE CITY OF MORGAN HILL

And

MORGAN HILL YOUTH SPORTS ALLIANCE

THIS AGREEMENT is made and entered into on this day of July 1, 2010 ("EFFECTIVE DATE"), by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and MORGAN HILL YOUTH SPORTS ALLIANCE ("CONCESSIONAIRE"), a California non-profit corporation.

WHEREAS, CITY advertised for proposals for the operation and maintenance of the fields and related improvements known as the Outdoor Sports Center ("OSC") and related concessions; and

WHEREAS, the City Council determined, pursuant to Section 3.04.150 of the Morgan Hill Municipal Code, that the use of competitive bidding upon notice would not be likely to result in a lower price to the City from a responsible bidder, or would cause unnecessary expense or delay under the circumstances because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the City for the improvement, operation and maintenance of the OSC or the Concessions. To select the best proposer for this Concession, the City Council found it is necessary to utilize a request for proposals process and to evaluate proposals received based upon the criteria included in the Request for Proposals ("RFP"); and

WHEREAS, the CITY'S Parks and Recreation Commission and Recreation and Community Services Department ("DEPARTMENT"), received and analyzed the proposals which were received on March 19, 2010; and

WHEREAS, the City Council determined that CONCESSIONAIRE was responsive to the RFP and was the best responsible proposer, and selected said proposer to operate the CONCESSION in accordance with the terms and conditions of this Concession Agreement (hereinafter "AGREEMENT"); and

WHEREAS, CONCESSIONAIRE desires to secure and enter into an agreement in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at the OSC; and

WHEREAS, the principal purpose of CITY entering into this AGREEMENT is to serve the public by providing a well-maintained and operated sports field and related facilities, services, and advertising opportunities (hereinafter "CONCESSIONS");

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

## **SECTION 1. DEFINITIONS**

For the purpose of this AGREEMENT, the following capitalized words and phrases not defined elsewhere in this AGREEMENT are defined and shall be construed as hereinafter set forth:

AGENCY: The Morgan Hill Redevelopment Agency.

AGREEMENT: This "AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE OUTDOOR SPORTS CENTER CONCESSION" and exhibits (A-E) attached hereto.

CODE: The Morgan Hill Municipal Code.

FISCAL YEAR: The period from July 1 to June 30 of the next calendar year.

GENERAL MANAGER: The Director of the DEPARTMENT.

IMPROVEMENTS: All buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY owned facilities (such as buildings, turf, fences, posts, signs, electrical hook-ups, irrigation systems, plumbing, tracks, tanks, etc.).

PREMISES: The geographical area, as defined in Exhibit A, which is the subject of this AGREEMENT and in which the CONCESSION may be operated.

## **SECTION 2. PERMISSION GRANTED**

A. For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of this AGREEMENT, CITY hereby grants the CONCESSIONAIRE, subject to all of the terms and conditions of this AGREEMENT, the exclusive right and obligation within the PREMISES to: offer the use of the OSC and CONCESSIONS approved by the GENERAL MANAGER; to operate and maintain the OSC and CONCESSIONS for the purpose of hosting, organizing or scheduling of the OSC for sporting events appropriate for the OSC, including, but not limited to football, soccer, lacrosse, field hockey, rugby and cheerleading; and not for any other purpose without the prior written

consent of GENERAL MANAGER. The CONCESSION rights herein granted shall be carried on solely within the limits and confines of said areas designated as PREMISES (Exhibit A).

B. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, and its successors and assigns, that it will not make use of the PREMISES in any manner which might interfere with the recreational uses of the OSC.

C. CITY reserves the right to further develop or improve the PREMISES as it sees fit, without interference or hindrance, however the CITY shall consider the desire and views of CONCESSIONAIRE. No other activity, service or amenity shall be provided by CONCESSIONAIRE unless related to CONCESSION and without the express written approval of DEPARTMENT.

### **SECTION 3. PREMISES**

A. The PREMISES (Exhibit A) subject to this AGREEMENT is located at:

16500 Condit Road

Morgan Hill, CA 95037

B. The OSC includes, but is not limited to, two (2) synthetic turf fields, nine (9) grass soccer fields, bleachers, field lights, an improved parking lot, overflow parking lot, concession/restroom building, corporation yard, well with booster pump, exterior fencing, public address system, and scoreboards.

C. CONCESSIONAIRE shall not use or allow the OSC or the PREMISES to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY. These ordinances, rules, and regulations include those which relate to sanitation, public health, and safety.

D. At any time during the term of this AGREEMENT, CITY may, by resolution of the City Council fully setting forth the reasons therefor, require the CONCESSIONAIRE to surrender any portion of the PREMISES for a public necessity. Should CITY impose such a requirement on CONCESSIONAIRE, DEPARTMENT shall attempt to provide CONCESSIONAIRE with equivalent, substitute space.

### **SECTION 4. TERM OF AGREEMENT**

A. The term of the Concession AGREEMENT shall be five (5) years subject to early termination as set forth below.

B. The CITY may terminate this Agreement upon an event of default and notice as set forth in Section 20.

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C. The CITY may terminate this Agreement pursuant to Section 14D.

D. Either the CITY or CONCESSIONAIRE may terminate this Agreement without cause 180 days after the delivery of notice to the other party of its intent to terminate this Agreement.

**SECTION 5. CONCESSION FEE AND PAYMENT**

A. Quarterly Concession Fee:

As part of the consideration for CITY'S granting the concession rights set forth in this AGREEMENT, CONCESSIONAIRE shall pay the CITY a quarterly concession fee as follows:

1. \$10,000 due on October 10, 2010 for the quarter ending September 30, 2010.
2. \$20,000 due on January 10, 2011 for the quarter ending December 31, 2010.
3. \$20,000 due on April 10, 2011 for the quarter ending March 31, 2011.
4. \$15,000 due on July 10, 2011 for the quarter ending June 30, 2011.
5. For the FISCAL YEAR 2011-2012: equal quarterly payments totaling \$65,000.
6. For the FISCAL YEAR 2012-13: equal quarterly payments totaling the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.
7. For the FISCAL YEAR 2013-2014: equal quarterly payments equal to the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.
8. For the FISCAL YEAR 2014-2015: equal quarterly payments equal to the greater of (a) \$130,000 or (b) fifteen percent (15%) of the gross receipts.

B. Payment Due Date.

Payments of quarterly concession fees every FISCAL YEAR to the City shall be made for each quarter ending March 31, June 30, September 30 and December 31 of each FISCAL YEAR and shall be due and payable by the tenth day after the quarters ending March 31, September 30 and December 31 (April 10, October 10 and January 10 respectively) and the thirtieth day after the quarter ending June 30 (July 30) ("Payment Due Dates") during the term of the AGREEMENT.

C. Method of Payment.

The quarterly concession payments shall be addressed to:

Recreation and Community Services Department  
ATTENTION: Director of Recreation and Community Services  
Outdoor Sports Center Concession Agreement  
17555 Peak Avenue  
Morgan Hill, CA 95037

D. Gross Receipts Defined:

For the purposes of this Section 5 and this AGREEMENT, the term "gross receipts" shall mean the total amount charged for the use of the PREMISES or OSC, or sale of any goods, services

(whether or not such services are performed as a part of or in connection with the sale of goods) or advertising provided in connection with this AGREEMENT. Gross receipts shall not include:

1. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by CONCESSIONAIRE;
2. California Redemption Value (CRV);
3. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE which would otherwise be made from or at the PREMISES;
4. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
5. Receipts from the sale at cost of uniforms, clothing, or supplies to CONCESSIONAIRE'S employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
6. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by CONCESSIONAIRE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
7. Fair market trade-in allowance, in the event merchandise is taken in trade;
8. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

CONCESSIONAIRE shall not reduce or increase the amount of gross receipts, as herein defined, as a result of any of the following:

1. Any discount or reduced-price programs (such as the "Home Field Program") so that the full price that would have been charged absent any such discount or reduced-price program shall constitute the amount of gross receipts. (For example, if a regularly established rate is \$100, but the customer only pays \$75 through a discount or reduced-price program, the \$100 market rate will be used to calculate gross revenue.) Free usage by the CITY pursuant to Section 8D shall not be a discount or reduced-price program and shall not be counted as gross receipts;
2. Any error in cash handling by CONCESSIONAIRE or CONCESSIONAIRE'S employees or agents;
3. Any losses resulting from bad checks received from the consumers or dishonored payment to CONCESSIONAIRE by customer or purchaser; or
4. Any arrangement for a rebate, kickback, or hidden credit given or allowed to customer.

E. Quarterly Concession Reports:

1. CONCESSIONAIRE shall transmit with each concession fee payment a Quarterly Gross Receipts, also referred to as a Quarterly Remittance Advice Form, for the quarter for which concession fee is submitted.

2. Additionally, CONCESSIONAIRE shall maintain and submit to the CITY quarterly statistical information and reports on the following: ongoing programs, field reservations, participant levels, use by sports type, community and regional use levels, hours of use, gross receipts and net receipts, expenses and revenues.

**SECTION 6. ADDITIONAL PAYMENT OBLIGATIONS**

For the purposes of this Section 6 and this AGREEMENT, “net receipts” shall mean the gross receipts (as defined in Section 5) less operation and interest expenses.

A. Capital Improvement Fund: CONCESSIONAIRE shall deposit the following into an OSC Capital Improvement Fund to be established and held by the CITY:

1. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2011-2012, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to that amount of CONCESSIONAIRE’S net receipts that exceeds one hundred thousand dollars (\$100,000) of net receipts during the first two FISCAL YEARS of the term of this AGREEMENT.

2. Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY for deposit in the Capital Improvement Fund an amount equal to fifty percent (50%) of the net receipts of that FISCAL YEAR.

3. City shall use amounts deposited in the Capital Improvement Fund only for the purpose of constructing or improving IMPROVEMENTS according to the Capital Improvement Program referenced in Section 10.

B. Net Receipts Share: Not later than the thirtieth (30<sup>th</sup>) day after the end of FISCAL YEAR 2012-2013 and of each FISCAL YEAR thereafter, CONCESSIONAIRE shall pay to the CITY the amount equal to ten percent (10%) of the net receipts of that FISCAL YEAR.

C. Reimbursements: If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of CONCESSIONAIRE to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of CONCESSIONAIRE contrary to said conditions, covenants, and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs (including CITY'S 15% administrative overhead cost), damages, and penalties. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations, and to charge CONCESSIONAIRE with the cost of same,

receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by CONCESSIONAIRE.

D. Impermissible Use. Use of the PREMISES for purposes not expressly permitted herein may result in additional charges; however, any such use without the prior written approval of the GENERAL MANAGER shall also constitute a material breach of this AGREEMENT and is prohibited.

E. Additional Concession Fees: Any amount due in subsection B, C and D shall be added to the concession fee payment thereafter due hereunder, and each and every part of the same shall be and become additional concession fee payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic concession fee payment set forth in Section 6 hereof.

## **SECTION 7. LATE PAYMENT**

A. Failure of CONCESSIONAIRE to pay any of the concession fee payments pursuant to Section 5 on Payment Due Date or any payments, charges, or fees required pursuant to Section 6 when due is a breach of the AGREEMENT for which CITY may terminate same pursuant to Section 20 or take such other legal action as it deems necessary.

B. Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments, CONCESSIONAIRE recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, CONCESSIONAIRE agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and or damages and loss resulting from said late or delinquent payments.

C. The charges for late or delinquent payments shall be \$50.00 for each month late plus interest calculated at the rate of eighteen percent (18%) per annum or one and one-half percent (1.5%) each month, assessed daily, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the tenth (10th) day of the month in which payment is due.

## **SECTION 8. OSC USAGE**

Subject to the conditions set forth below, CITY agrees that CONCESSIONAIRE, upon payment of the concession fees, and all other charges and payments to be paid by CONCESSIONAIRE under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, and provided that CONCESSIONAIRE is not in breach or default of this AGREEMENT, shall lawfully and quietly hold, use and enjoy the concession PREMISES during the term of and for purposes specified in this AGREEMENT. In the case of disputes, during the life of the AGREEMENT, over any conditions which may impede upon the CONCESSIONAIRE'S quiet enjoyment of the concession PREMISES, the GENERAL MANAGER shall have final determination of any solution to such dispute; the GENERAL MANAGER'S final determination shall be binding upon all parties in such dispute.

A. Charges and Pricing. CONCESSIONAIRE shall have the right to charge and establish prices for the usage of the OSC, parking, advertising, and any other usage of the PREMISES permitted under this AGREEMENT; subject, however, to disapproval by GENERAL MANAGER if he or she determines that any of said prices are discriminatory or excessively high or low. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE. CONCESSIONAIRE shall provide the GENERAL MANAGER with a list of prices for all services and goods offered pursuant to this AGREEMENT. This list shall be updated whenever prices are changed.

B. Scheduling. CONCESSIONAIRE shall establish and implement a field reservation system and shall schedule OSC field usage for Community Use and other regional uses.

C. Morgan Hill Community Use and Sports Mix. CONCESSIONAIRE shall make available the turf fields and grass fields in a manner that maximizes use of the OSC while maintaining the OSC at standards specified in this AGREEMENT. CONCESSIONAIRE shall use reasonable efforts to assure that (1) approximately sixty percent (60%) of the field usage shall be usage by Morgan Hill residents and community groups ("Community Use") and (2) field usage comprises a variety of permitted sports .

D. City Use. CITY shall have the right to four hundred (400) field hours of scheduled use at the OSC at no charge to the CITY. CONCESSIONAIRE shall use reasonable efforts to schedule the CITY's request. Charges forgone for the CITY's scheduled use shall not be counted as a gross receipt for the purpose of Section 5D.

E. Parking Use. The improved and overflow parking lots are part of the Premises under this AGREEMENT. However, CITY shall have the right to utilize fifty (50%) the overflow parking lot during the Aquatics Center's ("AC") summer recreation swim season and during days when regional swim meets or other large events are held at the AC. The City shall provide sufficient notice to CONCESSIONAIRE when the lot is needed. CONCESSIONAIRE and the City shall provide each other with monthly calendars in advance to ensure clear communication when events are occurring at each location. During shared use, a parking fee can only be charged for the portion of the lot for OSC customers, unless prior approval is provided by the City. AC customers will be required to enter from the south gate and OSC customers will be required to enter from the paved parking lot gate. In the event that the City requires the use of both the improved parking lot and overflow parking lot for large community events and events at the AC, the City and CONCESSIONAIRE will work in a good faith effort to accommodate the City's request unless the parking is already needed for events occurring at the OSC. When the City utilizes any parking lot, parking fees shall not be allowed unless the parties mutually agree.

F. Advertising. CONCESSIONAIRE shall have the right to pursue advertising and sponsorship agreements and offer space and locations at the OSC for advertising that are consistent with the City's approved policy (restricts pornography, religious and political organizations, firearms, tobacco, alcohol, and gambling). CONCESSIONAIRE may be allowed to have temporary advertising for alcohol products for exclusively adult only tournaments occurring at the OSC

upon approval by the GENERAL MANAGER. Revenues derived from such advertising and sponsorship agreements shall be part of gross receipts.

G. Naming Rights: CONCESSIONAIRE shall have the right to pursue and have the authority to enter into agreements for advertising naming rights for the fields, scoreboards, and other OSC amenities, provided that the term of any such agreement shall not continue beyond the term of this AGREEMENT. CONCESSIONAIRE may also pursue naming rights agreements for the entire OSC; subject to approval by the City Council by resolution. CONCESSIONAIRE and the City shall work in good faith to negotiate the terms of any agreement.

H. Food and Beverage Concession Stand: CONCESSIONAIRE shall have the right to establish or permit food and beverage sales at the concession stand; provided that no such concession shall sell any alcohol or tobacco products without prior written consent from GENERAL MANAGER. Revenues derived from any sales from such concession shall be part of gross receipts.

I. Vending Machines: CONCESSIONAIRE shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of the GENERAL MANAGER. The GENERAL MANAGER shall have the right to order the immediate removal of any unauthorized machines.

J. Signage. CONCESSIONAIRE may design and construct a sign on the PREMISES to advertise the location and events at the OSC subject to the approval of the GENERAL MANGER. CONCESSIONAIRE shall provide an advertising sign plan to the GENERAL MANAGER for approval.

## **SECTION 9. OPERATING RESPONSIBILITIES**

CONCESSIONAIRE shall, at all times during the term of the AGREEMENT, comply with the following conditions:

A. Conduct: CONCESSIONAIRE shall at all times conduct its business in a professional, quiet, and orderly manner to the satisfaction of the GENERAL MANAGER. CONCESSIONAIRE shall use its best efforts to permit no intoxicated person(s), profane or indecent language, or boisterous or loud conduct in or about the PREMISES and shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES. CONCESSIONAIRE will call upon peace officers to assist in maintaining peaceful conditions.

B. Non-Discrimination: CONCESSIONAIRE, in its CONCESSION operations at the FACILITY, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from the PREMISES or OSC or activities thereon, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by this AGREEMENT; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on

the grounds of race, color, national origin, religion, ancestry, sex, age, physical disability, or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination. In addition, CONCESSIONAIRE, during the term of the AGREEMENT, agrees not to unjustly discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation. All subcontracts entered into by CONCESSIONAIRE shall contain a like provision.

C. Qualified Personnel: CONCESSIONAIRE will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, the CONCESSIONAIRE shall remove that person from the PREMISES.

D. Concession Manager: CONCESSIONAIRE shall appoint a Concession Manager of CONCESSIONAIRE'S operations at the FACILITY. If CONCESSIONAIRE elects to subcontract the management of any or all of the CONCESSION operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

E. Marketing and Promotion. CONCESSIONAIRE shall use its best efforts to market and promote the usage of the OSC and Premises for purposes permitted under this AGREEMENT. No later than thirty (30) days after the first day of each FISCAL YEAR, CONCESSIONAIRE shall provide the CITY with an annual marketing plan, which plan shall include goals to support local economic development activities. The CITY reserves the right to concurrently market and promote the use of the OSC.

F. Utilities: CONCESSIONAIRE shall be responsible for utility charges. Charges may include, but are not limited to, deposits, installation costs, meter deposits, and all service charges for gas, electricity, water, heat, air-conditioning, and other utility services to PREMISES, and shall be paid by CONCESSIONAIRE regardless of whether such utility services are furnished by CITY or by other utility service providers.

The DEPARTMENT will incur the cost of all refuse collection from the main dumpster during the term of this AGREEMENT; provided however, the CONCESSIONAIRE shall agree to pay the costs of such refuse collection if and when the CITY's agreement with its current refuse hauler terminates.

CONCESSIONAIRE hereby expressly waives all claims for compensation, or for any diminution or abatement of the concession fee payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from water, earthquake,

wind, civil commotion, or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, sub-contractors, suppliers, agents, or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.

G. Safety: CONCESSIONAIRE shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or GENERAL MANAGER notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall notify the CITY in writing describing the person(s) injured, and the time, place and nature of the injury. If CONCESSIONAIRE fails to correct hazardous conditions specified by the GENERAL MANAGER in a written notice, which have led, or in the opinion of CITY could lead, to injury, the GENERAL MANAGER may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

H. Security. CONCESSIONAIRE shall be responsible for the security of the PREMISES. CONCESSIONAIRE may install equipment approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

I. Environmental Sensitivity: The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies and ordinances regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

J. Fund Raising Activities: CONCESSIONAIRE will be expected to cooperate with CITY personnel on all matters relative to the conduct of fund-raising and/or special events.

K. Community Outreach: CONCESSIONAIRE shall coordinate and cooperate with DEPARTMENT to develop strategies to outreach to all members of the community, particularly those living in low-to-moderate income areas, fixed-income households, youth, the disabled, etc., to provide its services to these members of the community who may not otherwise have the opportunity to partake in the services provided by CONCESSIONAIRE.

L. Resources Supplied by Concessionaire: CONCESSIONAIRE shall supply resource items that are specifically listed in this section in order to ensure business operations are run effectively and efficiently.

## **SECTION 10. MAINTENANCE AND REPAIR**

A. "As Is": CONCESSIONAIRE acknowledges that it is agreeing to a concession of the Premises on an "as is" basis.

B. Maintenance and Operating Standards: During all periods that the PREMISES are used or are under the control of the CONCESSIONAIRE for the uses, purposes, and occupancy set forth in this AGREEMENT, CONCESSIONAIRE shall maintain and operate the PREMISES and the OSC at its own expense, in compliance with law and, unless otherwise more specifically set forth, to a standard equal to or better than standards in place as of the EFFECTIVE DATE of AGREEMENT.

C. General Maintenance and Repair: CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the satisfaction of the GENERAL MANAGER. The cause of said cleaning and repairs may result from normal wear and tear, as well as vandalism.

D. Fields: CONCESSIONAIRE shall, at its own expense, keep and maintain the turf fields and the grass fields to a standard equal or greater than the City's established Park Maintenance Numeric Standard's Rating Guideline 4 (good condition, no increased maintenance required). CONCESSIONAIRE shall maintain and operate all improvements, fixtures, irrigation system and utility systems which may now or hereafter exist on said fields, whether installed by CITY or CONCESSIONAIRE.

E. Improvements: CONCESSIONAIRE shall, at its own expense, keep and maintain IMPROVEMENTS. CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior and exterior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the GENERAL MANAGER to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

F. Correction of Conditions Leading to Damage: If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant waste or damage to CITY property, the GENERAL MANAGER may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

G. Property Damage and Theft Reporting: CONCESSIONAIRE shall report to the CITY in writing in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES.

## H. Damage or Destruction to Premises:

1. **Partial Damage.** If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by GENERAL MANAGER as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

2. **Complete Destruction:** In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, CONCESSIONAIRE may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. CONCESSIONAIRE shall continue paying CITY quarterly concession fees as determined above during the rebuilding of the facility.

3. **Limits of CITY'S Obligation Defined:** In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by CONCESSIONAIRE at the commencement of its operations hereunder.

4. **Use of Capital Improvement Fund.** CITY may use the funds in the Capital Improvement Fund for the purposes set forth in this Section.

I. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurnishing, equipping shall be equivalent in quality to that originally installed.

J. Pest Control: Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE shall be responsible for pest control in and around the PREMISES, including but not limited to, abatement of insects (including roaches, bees, etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on structures or areas used and maintained by CONCESSIONAIRE.

## **SECTION 11. CAPITAL IMPROVEMENT PROGRAM**

The CITY and CONCESSIONAIRE shall negotiate in good faith to develop and agree by December 31, 2010 upon a 10-year capital improvement program for the PREMISES and OSC. Such program shall set forth the needed capital IMPROVEMENTS to be made within the 10 year program and the respective responsibilities of the CITY and CONCESSIONAIRE to fund and complete such program. The respective share of responsibility of the program shall reasonable reflect the following factors: the term of this AGREEMENT and possible future extension of the AGREEMENT, the expected life of IMPROVEMENTS, the degree to which the activities of each party contribute to the wear and tear on the IMPROVEMENTS or the need for the Improvements, and the expertise of each respective party to make any such IMPROVEMENTS.

## **SECTION 12. LIABILITY**

A. Indemnification:

1. Except for the active negligence or willful misconduct of CITY OR AGENCY, CONCESSIONAIRE undertakes and agrees to defend, indemnify and hold harmless CITY, AGENCY and any and all of their officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CONCESSIONAIRE'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this AGREEMENT on the part of CONCESSIONAIRE, its officers, agents, employees, or sub-contractor of any tier.

2. The CONCESSIONAIRE or licensee, in consideration of the granting of this concession or license, agrees to hold the CITY and the AGENCY harmless for any and all claims or rights of action for damages which may or might arise or accrue to said CONCESSIONAIRE or licensee, his officers, agents, servants, employees, or others who may be on the licensed premises at his invitation or the invitation of any one of them, by reason of injury to the property, or the persons of any of them resulting from the entry upon or the use of the licensed premises, by the CITY or AGENCY at any time, for any purpose necessary or convenient in connection with public works.

B. Insurance Required. CONCESSIONAIRE shall, at its own cost and expense, purchase and maintain throughout the term of this Agreement the following insurance:

1. Automobile and Liability. CONCESSIONAIRE shall maintain business automobile liability insurance (any auto, including owned autos, non-autos and hired autos), comprehensive general liability insurance, and employer liability insurance protecting CONCESSIONAIRE, the CITY and AGENCY and their members (including, without limitation, members of the City Council), officers, agents and employees, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to CONCESSIONAIRE's use or occupancy of the PREMISES or the conduct of its operations under this AGREEMENT, in such form and with such companies as the CITY may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount set forth below, with a deductible reasonably acceptable to the CITY, with a waiver of any right of subrogation that the insurer may have against CITY or AGENCY; with contractual liability coverage for CONCESSIONAIRE's covenants to and indemnification of the CITY and AGENCY under this AGREEMENT. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance CITY or AGENCY may possess, including any self-insured retention or deductible CITY or AGENCY may have, and that CITY and AGENCY shall not be obligated to contribute to cover any loss, damage or liability. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance.

Business Automobile Liability	\$1,000,000
Comprehensive General Liability	\$2,000,000
Employer Liability	\$1,000,000

2. Workers' Compensation. CONCESSIONAIRE shall maintain workers compensation insurance as required by the laws of California; provided, however, that CONCESSIONAIRE may self-insure its workers compensation liability, subject to all applicable requirements of California law, together with employer liability insurance in the coverage amount of not less than \$1,000,000.

3. Insurance Certificates. At least three (3) business days prior to the commencement of the term of this AGREEMENT and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided hereunder by CONCESSIONAIRE, CONCESSIONAIRE shall cause a certificate or certificates of insurance to be furnished to the CITY evidencing all such coverage, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder materially changed without first providing at least thirty (30) days' written notice thereof to CITY. At the CITY's request, copies of all required insurance policies will be provided to CITY.

### **SECTION 13. PROHIBITED ACTS**

CONCESSIONAIRE shall not:

A. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the GENERAL MANAGER;

B. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of GENERAL MANAGER, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

C. Use, create, store or allow any hazardous materials as defined in California Health and Safety Code 25117, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;

D. Use the PREMISES in any manner that will constitute waste.

### **SECTION 14. PERFORMANCE DEPOSIT AND ASSURANCES**

A. Financial Assurances: CONCESSIONAIRE represents to the CITY that it has sufficient capital, credit and investment available to it for the purposes of meeting its obligations set forth in this AGREEMENT. In order to demonstrate the CONCESSIONAIRE's financial capacity to perform under this AGREEMENT, CONCESSIONAIRE shall provide to the CITY evidence of its source of capital and operational funding upon the CITY's request, including:

1. Written representation from a bona fide financial institution (bank, lending institution, etc.) evidencing the amount of loan or credit offered or extended to the CONCESSIONAIRE for the purposes set forth in this AGREEMENT.

2. Written representation from investors stating the amount of investment capital invested in, loaned to or offered to CONCESSIONAIRE for the purposes set forth in this AGREEMENT.

B. Annual Progress Report. CONCESSIONAIRE shall submit no later than sixty (60) days after the end of each FISCAL YEAR a progress report of an annual compilation of information contained in the monthly reports required under Section 5C, as well as gross receipts (as defined in Section 5D) and net receipts for each FISCAL YEAR (as defined in Section 6F).

*B FD MCO*  
C. Termination for Failure to Meet Performance Goals. Based on the annual progress reports submitted pursuant to Section 14C, CONCESSIONAIRE shall demonstrate that it has met the following performance goals by the end of FISCAL YEAR 2011-2012: (a) that the CONCESSIONAIRE has achieved net receipts of at least fifty thousand dollars (\$50,000) in FISCAL YEAR 2011-2012, (b) CONCESSIONAIRE has made all payments pursuant to Sections 5 and 6 of this Agreement when due and (c) CONCESSIONAIRE has reasonably complied with covenant and condition set forth in Section 8C. The City Council may determine by resolution within ninety (90) days of the CITY'S receipt of the FISCAL YEAR 2011-2012 annual progress report, that, based on the annual progress reports, CONCESSIONAIRE has not met the performance goals set forth in this paragraph. Upon such determination by the City Council, the CONCESSIONAIRE shall be deemed in default of this AGREEMENT and the CITY may terminate this AGREEMENT upon a 30-day notice (as provided for in Section 20A) to the CONCESSIONAIRE of the termination of this AGREEMENT.

## **SECTION 15. INDEPENDENT CONTRACTORS / CONSULTANTS**

The CONCESSIONAIRE is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The CONCESSIONAIRE shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY or AGENCY.

## **SECTION 16. TAXES, PERMITS, AND LICENSES**

A. CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

B. CONCESSIONAIRE shall pay all taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment, or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

C. During the entire term of the AGREEMENT, the CONCESSIONAIRE must hold a current Morgan Hill business license as required by the CODE Section 5.04.110 and pay applicable fees and taxes pursuant to Chapter 5.04 of the CODE.

## **SECTION 17. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

A. CONCESSIONAIRE shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the CONCESSION rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor or purchaser.

B. CONCESSIONAIRE may not, without prior written permission of the CITY:

1. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
2. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

## **SECTION 18. BUSINESS RECORDS**

A. Record Retention. CONCESSIONAIRE shall maintain during the term of the AGREEMENT and for three (3) years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by GENERAL MANAGER, or a duly authorized representative of the CITY, during ordinary business hours at any time during the term of this agreement and for at least three (3) years thereafter.

B. Employee Fidelity Bonds. At the GENERAL MANAGER'S discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

C. Cash and Record Handling Requirements. If requested by GENERAL MANAGER, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION which shall be submitted to GENERAL MANAGER for approval. CONCESSIONAIRE shall be required to maintain a method of accounting of the CONCESSION which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE from the operation of the CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be separate from the accounting systems used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE'S personal financial affairs.

D. Annual Statement of Gross Receipts and Expenses:

CONCESSIONAIRE shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations specified in this AGREEMENT in a form acceptable to the GENERAL MANAGER, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by CONCESSIONAIRE and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross receipts made by CONCESSIONAIRE to CITY shall be found to be less than the amount of gross receipts disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY within 30 days after billing any additional concession fees disclosed by such audit. If discrepancy exceeds 2% and no reasonable explanation is given for such discrepancy, CONCESSIONAIRE shall also pay the cost of the audit.

**SECTION 19. REGULATIONS, INSPECTION, AND DIRECTIVES**

A. The operations conducted by CONCESSIONAIRE pursuant to the AGREEMENT shall be subject to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;
2. Any and all orders, directions or conditions issued, given, or imposed by GENERAL MANAGER with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the CODE, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the CONCESSIONAIRE'S operations; and,
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act.

B. Permissions:

Any permission required by the AGREEMENT shall be secured in writing by CONCESSIONAIRE from CITY or the GENERAL MANAGER and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the GENERAL MANAGER.

C. Right of Inspection:

CITY and the GENERAL MANAGER, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of CONCESSIONAIRE'S operation.

D. Access to Premises:

CITY shall have absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

**SECTION 20. TERMINATION**

A. Termination by CITY:

CITY may, by 30-day written notice, terminate the AGREEMENT in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events of default occur:

1. CONCESSIONAIRE fails to pay concession fee pursuant to Section 5, or any other payment obligation pursuant to Sections 6 and 7 and CONCESSION fails to pay within five (5) days after date of a written notice of default for failure to pay from the CITY.
2. CONCESSIONAIRE fails to keep, perform and observe any promise, covenant and condition set forth in the AGREEMENT on its part to be kept, performed or observed and CONCESSIONAIRE fails to perform within ten (10) days after the receipt of written notice from the CITY, or, where fulfillment of CONCESSIONAIRE'S obligation requires activity over a period of time, CONCESSIONAIRE fails to commence to perform whatever may be required within ten (10) days after receipt of such notice and to continue such performance diligently and without interruption except for causes beyond its control;
3. CONCESSIONAIRE fails to meet performance goals pursuant to that procedure and process set forth in Section 14<sup>D</sup>; *GA MCD*
4. The interest of CONCESSIONAIRE under the AGREEMENT is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of GENERAL MANAGER;
5. CONCESSIONAIRE becomes, without the prior, written approval of GENERAL MANAGER a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;
6. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set

aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with CONCESSIONAIRE'S use of the PREMISES or with its operations under the AGREEMENT;

7. CONCESSIONAIRE becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the CONCESSION areas;

8. By order or decree of court, CONCESSIONAIRE is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of CONCESSIONAIRE seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

9. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against CONCESSIONAIRE which materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;

10. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONCESSIONAIRE;

11. Cessation or deterioration of service for any period which, in the opinion of GENERAL MANAGER, materially and adversely affects the operation or service required to be performed by CONCESSIONAIRE under the AGREEMENT;

12. Any lien is filed against the PREMISES because of any act or omission of CONCESSIONAIRE and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or

13. CONCESSIONAIRE voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

No acceptance by CITY of the concession fee payment or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by CONCESSIONAIRE, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of CITY including the right to terminate the AGREEMENT on account of such default.

B. CITY'S Right of Reentry:

CITY shall, as an additional remedy, upon an event of default as above provided, have the right to reenter the PREMISES and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons therefrom and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of CONCESSIONAIRE under the AGREEMENT.

C. Additional Rights of CITY:

CITY, upon termination of the AGREEMENT, or upon reentry, regaining, or resumption of possession of the PREMISES, may occupy said PREMISES and shall have the right to permit any person, firm or corporation to enter upon the PREMISES and use the same. Such occupation by others may be of only a part of the PREMISES, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in the AGREEMENT.

D. Survival of CONCESSIONAIRE'S Obligations:

In the event the AGREEMENT is terminated by CITY, or in the event CITY reenters, regains, or resumes possession of the PREMISES, CONCESSIONAIRE shall be responsible to pay the CITY the concession fee due up to and including the date of termination. In addition, CONCESSIONAIRE shall be responsible to pay CITY all deferred revenue, including but not limited to deposits, advances, cash, or checks received for services scheduled to be provided by CONCESSIONAIRE after the date of termination. CITY may maintain an action to recover any monies due.

E. Waiver of Redemption and Damages:

CONCESSIONAIRE hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner.

F. Termination by CONCESSIONAIRE:

The AGREEMENT may be terminated by CONCESSIONAIRE, via 30-day written notice, upon the happening of one or more of the following event of default:

1. The complete destruction of all or a substantial portion of the PREMISES from a cause other than the negligence or omission to act of CONCESSIONAIRE, its agents, officers, or employees, and the failure of CITY to repair or reconstruct said PREMISES;
2. Any exercise of authority under the AGREEMENT which so interferes with CONCESSIONAIRE'S use and enjoyment of the PREMISES as to constitute a termination, in

whole or in part, of the AGREEMENT by operation of law in accordance with the laws of the State of California; or

3. The default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default for a period of thirty (30) days after receipt from CONCESSIONAIRE of written notice to do so.

## **SECTION 21. SURRENDER OF POSSESSION**

CONCESSIONAIRE agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and CONCESSIONAIRE. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by CONCESSIONAIRE under the AGREEMENT.

CONCESSIONAIRE shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the AGREEMENT. If CONCESSIONAIRE fails to remove said property within that thirty (30) days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

## **SECTION 22. WAIVER**

A waiver of a default of any part, term, or provision of the AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **SECTION 23. FORCE MAJEURE**

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the AGREEMENT due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which such party is not responsible and which is not in its power to control.

**SECTION 24. REMEDIES ARE NON-EXCLUSIVE**

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

**SECTION 25. AGREEMENT BINDING UPON SUCCESSORS**

The AGREEMENT shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, and assigns of the parties hereto. The term "CONCESSIONAIRE" shall include any assignee of CONCESSIONAIRE under any assignment permitted and approved by GENERAL MANAGER.

**SECTION 26. LAW OF CALIFORNIA APPLIES**

The AGREEMENT shall be enforced and interpreted under the laws of the State of California.

**SECTION 27. AGENT FOR SERVICE OF PROCESS**

It is expressly agreed and understood that if CONCESSIONAIRE is not a resident of the State of California, or is a partnership or joint venture without a partner or member resident in said State, or is a foreign corporation, then in any such event CONCESSIONAIRE does designate the Secretary of State, State of California, its agent for the purpose of service of process in any court action between it and CITY arising out of or based upon the AGREEMENT, and the service shall be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, CONCESSIONAIRE may be personally served with such process out of this state by mailing, by registered or certified mail, the complaint and process to CONCESSIONAIRE at the address set out hereafter in the AGREEMENT, and that such service shall constitute valid service upon CONCESSIONAIRE as of the date of mailing, and CONCESSIONAIRE shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that CONCESSIONAIRE is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

**SECTION 28. VENUE**

Venue of any action brought under the AGREEMENT shall lie in Santa Clara County.

## **SECTION 29. NOTICES**

### **A. To CITY:**

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to the Department of Recreation and Community Services, Attn: Department Director, 17555 Peak Avenue Morgan Hill, California, 95037.

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said address change.

### **B. To CONCESSIONAIRE:**

All such notices may either be delivered personally to the CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to CONCESSIONAIRE shall be addressed to CONCESSIONAIRE as follows:

Morgan Hill Youth Sports Alliance  
17485 Monterey Road, Suite 200  
Morgan Hill, CA, 95037

CONCESSIONAIRE shall provide CITY with written notice of any address change within thirty (30) days of the occurrence of said address change.

## **SECTION 30. INTERPRETATION**

CONCESSIONAIRE and CITY agree that the AGREEMENT shall be deemed to have been jointly drafted and shall be construed according to its fair meaning and not strictly for or against either CITY or CONCESSIONAIRE. The section headings appearing herein are for the convenience of CITY and CONCESSIONAIRE, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT. If any provision of the AGREEMENT is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of the AGREEMENT, and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of the AGREEMENT is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The use of any

gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

**SECTION 31. AGREEMENT CONTAINS ENTIRE AGREEMENT**

The provisions of the AGREEMENT contain the entire Agreement between the parties hereto and said AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONCESSIONAIRE.

**SECTION 32. TIME OF THE ESSENCE**

Time is of the essence for all provisions of the AGREEMENT

**SECTION 33. INCORPORATION OF DOCUMENTS**

This AGREEMENT and incorporated documents represent the entire integrated agreement of the parties and supersedes all prior written or oral representations, discussions, and agreements. The following exhibits are to be attached to and made part of this AGREEMENT by reference:

EXHIBIT B – City Issued Request for Proposals

EXHIBIT C – Morgan Hill Youth Sports Alliance OSC Proposal

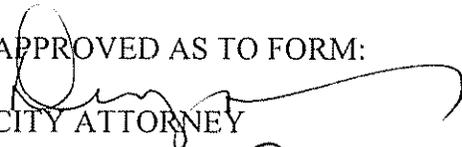
EXHIBIT D – Morgan Hill Youth Sports Alliance Parks and Recreation Commission Supplemental Questions Responses

EXHIBIT E – Morgan Hill Youth Sports Alliance City Council Questions Responses

IN WITNESS WHEREOF, THE CITY OF MORGAN HILL has caused this AGREEMENT to be executed on its behalf by its duly authorized representative and CONCESSIONAIRE has executed the same as of the day and year herein below written.

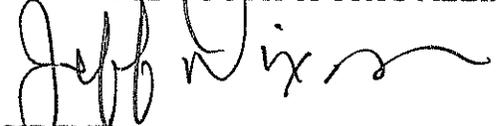
THE CITY OF MORGAN HILL, a municipal corporation

BY:   
CITY MANAGER

APPROVED AS TO FORM:  
  
CITY ATTORNEY

7/7/10 Council approval: 6/16/10

MORGAN HILL YOUTH SPORTS ALLIANCE, a California non-profit corporation

BY:   
PRESIDENT 6/14/10

# EXHIBIT A

## PARCEL ONE:

All of lots 69 and 70, as shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on April 5, 1897 in Book "I" of Maps, at page(s) 59.

## PARCEL TWO:

All of lots 10 and 11 as shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 7", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on March 5, 1906 in Book "L" of Maps, at page(s) 26.

Excepting from parcels 1 and 2, above described that certain Parcel of Land more particularly described as follows:

Commencing at the intersection of the Southwesterly line of Lot 11 and the Northwesterly line of Barrett Avenue as said Lot and Avenue are shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 7", filed March 5, 1906 in Book "L" of Maps, at page 26, in the office of the Recorder of Santa Clara County; thence along said Northwesterly line N. 65° 19' 50" E, 80.00 feet; thence from a tangent that bears S. 65° 15' 50" W., along a curve to the right with a radius of 20.00 feet through an angle of 90° 00' 00", an arc length of 31.42 feet; thence N. 24° 44' 10" W., 1550.06 feet; thence along a tangent curve to the right with a radius of 20.00 feet; through an angle of 90° 00' 00", an arc length of 31.42 feet to the Southwesterly line of San Pedro Avenue as said Avenue is shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", filed on April 5, 1897, in Book "I" of Maps, at page 59, in the Office of the Recorder of Santa Clara County; thence along last said line and along the Southwesterly line of said lots 11 and 69, S 65° 15' 50" W, 80.00 feet and S 24° 44' 10", E., 1590.06 feet to the Point of Commencement.

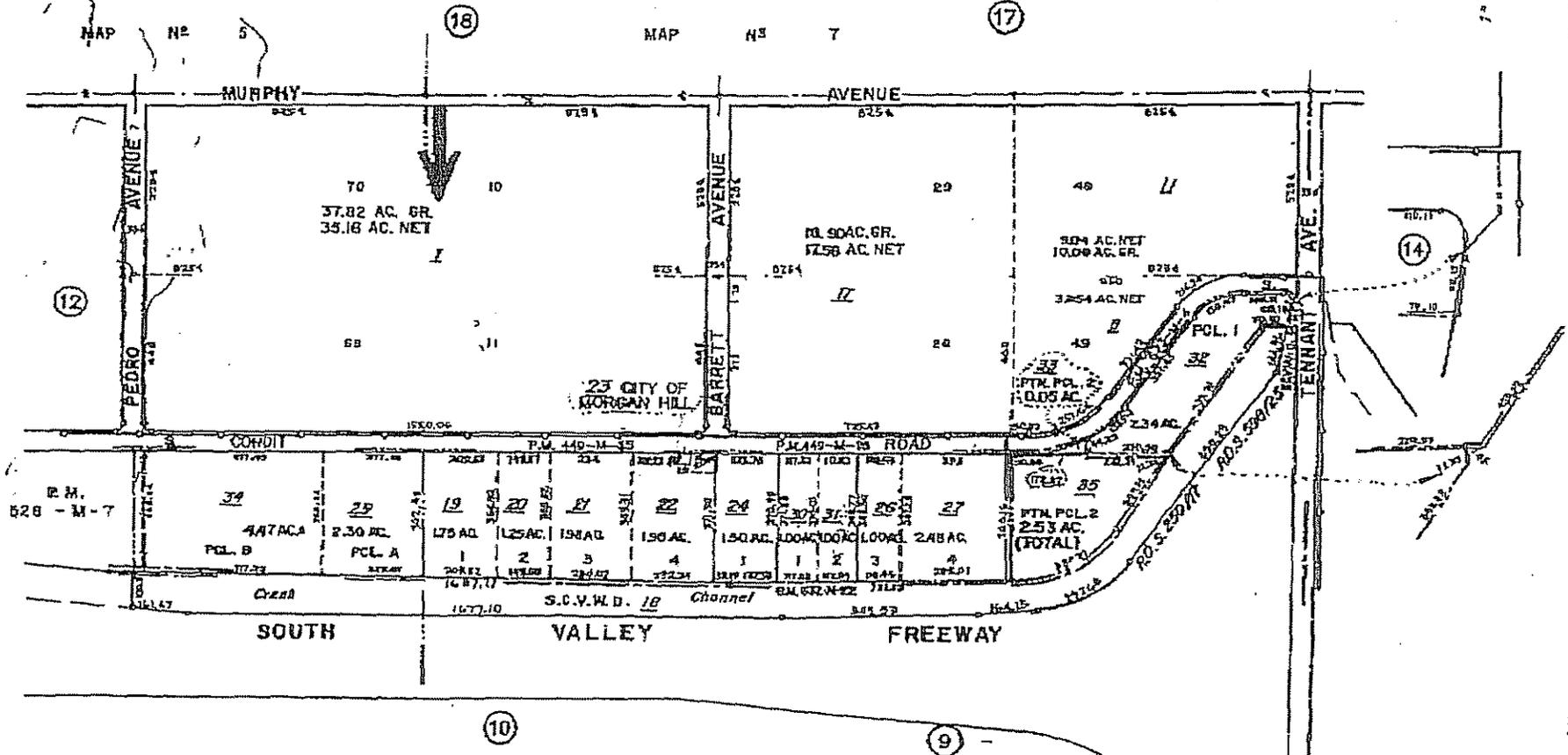
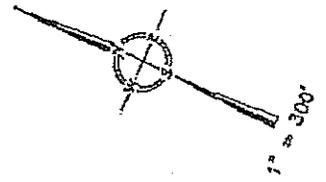
May 23, 2001 9:55AM

CATHERINE DUNNE RANCH

CATHERINE DUNNE RANCH

MAP NO 5

MAP NO 7



Computed & conference with sec. 307 of the  
S. & R. code. For assessment purposes only.  
Effective for Roll Year 1997-98  
Assessor T. S. (HP) - Assessor

No. 0235 P. 7/9



# EXHIBIT B

## REQUEST FOR PROPOSAL

### **Morgan Hill Outdoor Sports Center**

The City of Morgan Hill is seeking proposals to operate the 38 acre Outdoor Sports Center (OSC). The facility is located at 16500 Condit Road and is easily accessible from Highway 101.

It is the City's objective to enter into a mutually beneficial agreement with an organization that demonstrates the ability to:

1. Operate the OSC without city subsidy.
2. Balance community access and regional use.
3. Ensure a diverse mix of field use by sport type.

### **Background**

The City has invested approximately \$16 million in acquiring the property and constructing two synthetic turf fields with lights and bleachers, concession/restroom building, and improved parking for 325 vehicles. The OSC was developed to accommodate local youth non-profit athletic organizations (ie. soccer, football, lacrosse, field hockey, rugby), youth and adult regional tournaments, sports camps, high school games/practices, and other special events.

Presently, the city maintains and operates the two synthetic turf fields, concessions, parking lot and restrooms. The facility has "limited access" because paid reservations are required to use the facility. Through a lease with the City (currently month-to-month), the California Youth Soccer Association (CYSA) is responsible for scheduling and maintaining the nine grass fields. CYSA also has priority scheduling privileges for the synthetic turf fields on weekends, but the City is responsible for scheduling and maintaining these amenities. The 23 acres of grass fields **do not** have an in-ground irrigation system and are watered with large water cannons owned by CYSA.

To assist with your response, attached is an aerial photo of the facility with use statistics and current rates. The City recognizes that a wide array of revenue sources may be necessary to ensure financial viability and understands that on-site advertising, concessions, parking fees, among other strategies may be proposed.

### **Proposal Content and Submittal Requirements**

Applicants submitting a proposal should provide one master and five (5) unbound copies of the following information no later than **4:00 p.m. on Friday, March 19, 2010** to:

*City of Morgan Hill, Attention: Steve Rymer, 17555 Peak Avenue, Morgan Hill, CA 95037.*

In order to ensure that the City has a thorough understanding of your proposal, please include the following information in addition to other information you believe is pertinent.

#### **1) General Information**

- a. Cover letter including your name, your organization, and a description of your organizational or corporate structure.
- b. Information regarding your organization's qualifications, experience, and capacity to operate the OSC.



## 2) **Business Plan**

- a. Provide a detailed narrative description of your proposed plan.
- b. Provide a business plan with the following information:
  - i. Management structure
  - ii. Community access and regional use philosophy
  - iii. Market strategy
  - iv. Risk management plan
  - v. Revenue sources and pricing system
  - vi. Itemized expenses
  - vii. 3 year revenue/expense pro-forma

### **Proposal Selection Schedule**

Selected proposals may be invited to an interview by a City selection committee. The selection committee will make a recommendation to the City Council based on the interview and evaluation of the submitted materials.

#### **The following is the tentative schedule:**

Proposals Released:	February 19, 2010
Proposals Due:	March 19, 2010
Review/Interview Process:	March 20-31, 2010
City Council Selects Operator:	April/May 2010
Transition Period (if necessary):	June/July 2010

### **Other Information**

- The City reserves the right to reject any and all submittals
- The City is not responsible for any costs incurred by applicants in the preparation of a response to this RFP.
- Applicants should be aware that the City, as a public entity, cannot guarantee the confidentiality of information contained in the RFP submittal. While the City will attempt to maintain confidentiality of submitted materials, applicants may choose not to submit some information requested in the RFP. If such an instance occurs, the affected applicants should note for the reviewers the specific information purposely withheld and indicate that it will be provided to the City if granted an interview.

Thank you for considering this RFP. For further information, questions, or to arrange for a site visit, please contact:

Steve Rymer  
 City of Morgan Hill  
 17555 Peak Avenue  
 Morgan Hill, CA 95037  
 (408) 779-7271

**[Steve.rymer@morganhill.ca.gov](mailto:Steve.rymer@morganhill.ca.gov)**



**Outdoor Sports Center**  
**RATES and USE**

**Synthetic Turf Fields Rates – City Responsibility**

Customer	Rate
Resident, non-profit	\$10/hour
Resident	\$21/hour
Non-resident, non-profit	\$42/hour
Non-resident	\$42/hour
Commercial	\$84/hour
Field Lights	\$8/hour
Parking Lot	\$500/day

**Synthetic Turf Fields 2009 Combined Use – City Responsibility**

2009	Hours	Days (730 available)
<b>TOTAL ALL CUSTOMERS</b>	<b>3760</b>	<b>608</b>

Primary Customers	Type	Primary Days	Hours	Days
CYSA	Non-resident, non-profit	Weekends	1150	113
Orchard Valley Youth Soccer	Resident, non-profit	Weekdays	1550	332
Pop Warner Football	Resident, non-profit	Weekends	190	17
Charter School	Resident, non-profit	Weekdays	50	29
Morgan Hill Unified School District	Resident, non-profit	Weekdays	300	121
City of Morgan Hill	Owner	Weekdays	270	57

**Grass Fields – CYSA Responsibility**

Customer	Rate
CYSA Member	\$300/day/field

*Note: Grass field schedules may be available at [www.cysanorth.org](http://www.cysanorth.org)*



CITY OF MORGAN HILL

**Grass Fields**

- 9 fields
- 23 +/- acres
- Watered by above ground water cannon system
- No field lights

**Synthetic Turf Fields**

- 2 fields
- Field lights
- Bleachers with seating for 600 and 200
- PA system
- Electronic scoreboards

**Other**

- Improved parking for 325 vehicles
- Unimproved parking for 200 +/-
- Restrooms
- Concession stand
- Tournament/meeting room

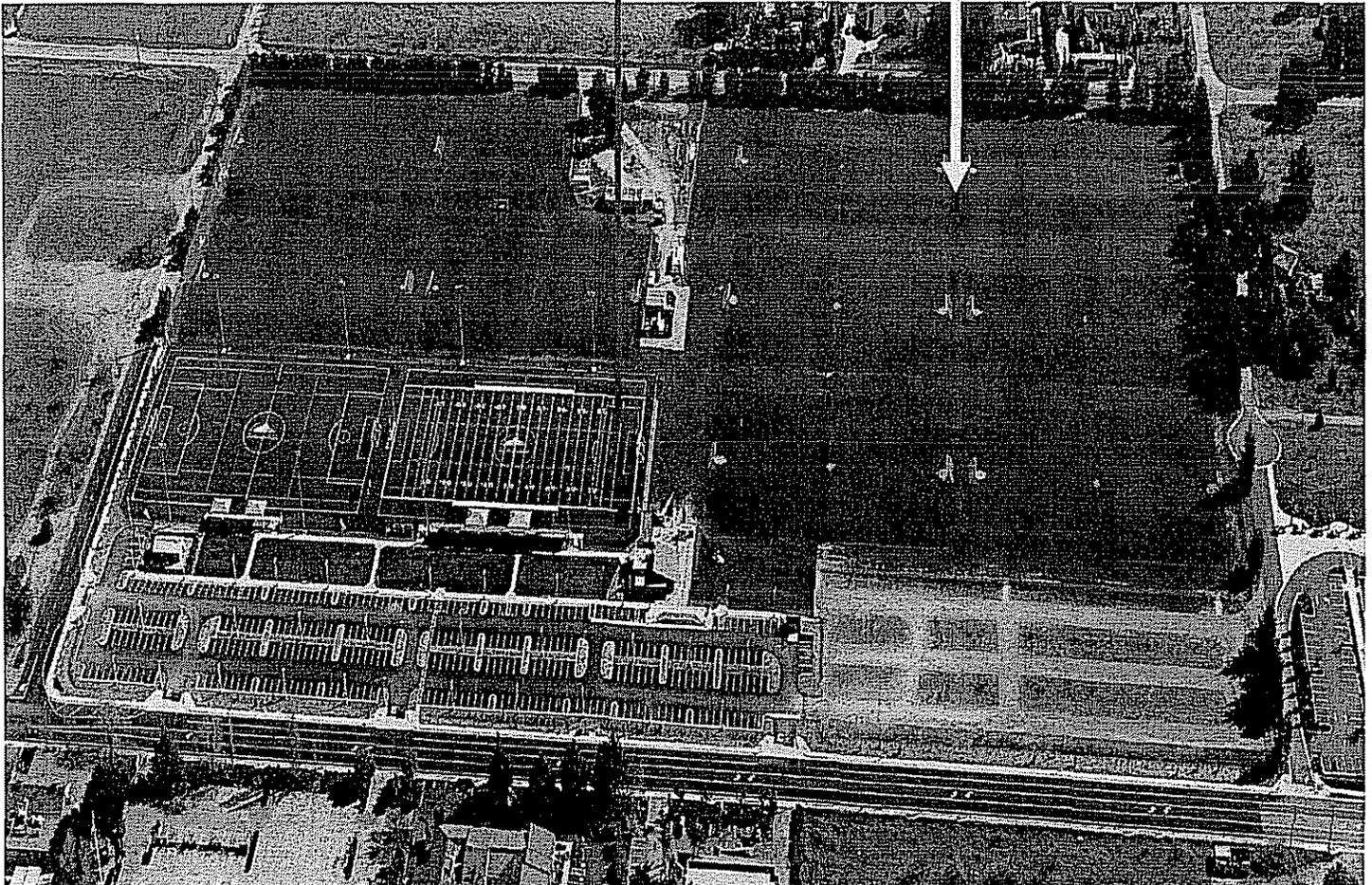




EXHIBIT C



*Morgan Hill Youth Sports Alliance, Inc.*

*Proposal for*

*Operation of the Outdoor Sports Complex*





# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

## Executive Summary

The City of Morgan Hill has requested a proposal from the Morgan Hill Youth Sports Alliance, Inc. (MHYSA) to operate and manage the Morgan Hill Outdoor Sports Complex (Complex) at 16500 Condit Road in Morgan Hill. Their three priorities are:

- Operate at no cost to the city
- Demonstrate balance of local and regional usage
- Ensure diverse mix of use by sports type

Meeting these priorities is part of a larger plan that MHYSA has for the facility. Regarding the first priority, however, our plan is to not only operate the Complex at no cost to the city, but to transform it into a direct revenue source for the City of Morgan Hill, while bringing incremental revenue to merchants and businesses.

To balance local and regional use, we will meet local sports group needs, as well as develop a comprehensive regional marketing plan to bring out-of-town tournaments, events and games to the facility. We will create a community-based team to operate the Complex to ensure the success of this priority.

Ensuring a diverse use of the facility requires acknowledging which sports we are looking for. In its current format, the Complex only accommodates rectangular sports users. MHYSA plans to bring in a more diverse group of users, but initially will accommodate only those that play on a rectangular field.

The best method to achieve these goals is to build a sustainable revenue source from field rentals, along with a complete set of services that will provide everything that a tournament host or event company will want.

The Morgan Hill Youth Sports Alliance is a California 501c4 non-profit organization, committed to increasing the opportunity and experience of children in the Morgan Hill Area who participate or want to participate in sports. Sports facilities development and operation are one way we achieve this. To manage the Complex, MHYSA will move to 501c3 status and install additional board members.

MHYSA believes we are ideal to operate and manage the Complex. We can organize community resources to offer our city the full benefit of its investment. Direct revenue streams to the city, grass field access for community organizations, and an integrated community-based organization representing local interests are the first steps.

As a non-profit organization, we will ensure remaining funds go back into the community in the form of financial assistance, program development and community support. No other proponents can offer the full measure of benefit to the City of Morgan Hill.

The transition for the current operation to the MHYSA will require a property inspection, process and/or equipment handoffs from CYSA and city staff, as well as meeting with each of the existing permit holders as of July 1, 2010.





# Morgan Hill Youth Sports Alliance

## Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

### Operate at no Cost to the City

Our objective is to do more than operate without city subsidy. Our objective is to provide a growing revenue stream directly to the city from operating the Complex. The exact trend is outlined in our pro forma and extends over the first three years. A quick summary is as follows:

- \$50,000 revenue to the City of Morgan Hill in the first year paid in quarterly segments.
- Move to a percentage of gross revenue plan by Year 3
- Jointly develop a 5 year plan with city staff for capital equipment replacement and improvements for the Complex.

First year payments should come in a sliding scale to allow for the absorption of existing field rental permits over the first six months of operation. We assume all revenue received for the first six months of rentals would be paid to MHYSA—either by the city or registered field users. The quarterly payments to the city by MHYSA would be made on the 10<sup>th</sup> day of the month, following the quarter in the amounts of:

- \$5,000 first quarter
- \$5,000 second quarter
- \$15,000 third quarter
- \$25,000 fourth quarter

The second year would have a mixture of percentage of gross revenue with fixed minimum payments by quarter. Total payment for the year will be a minimum of \$60,000 with a potential of up to \$75,000. In the third year, we will move completely into a percentage of gross revenue that will be determined after the first full year of operations.

Per contract terms, MHYSA will immediately assume responsibility for all operational costs:

- Grass field maintenance and repair
- Corporation yard maintenance and operation
- Turf field maintenance and repair
- Parking lot shrubbery and grass maintenance
- Janitorial maintenance of concession building, front parking lot, turf and grass fields
- Equipment maintenance and repair
- Field scheduling and inquiries
- Security
- Insurance
- Utilities (Gas, Electricity, Water and Trash)



# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

## Demonstrate a balance of local and regional use

Past expectations for achieving a balance of local and regional use have been portrayed as 60% local and 40% field usage, but it is much more complex than this. Looking at the field usage needs for local and regional sports organizations shows us that regional groups have shown little or no interest in week-day use and both groups covet the quality game times that weekends provide. The true achievement in meeting goals will be offering all groups the best mix of use for their mutual needs. Adhering strictly to the 60/40 split means virtually all weekend hours will need to go to regional groups. This means that the benefit of the \$17 million capital investment made by the community is used by people who don't live here. Our approach will be to meet the overall 60/40 goal, while giving the community full benefit of their investment.

The cornerstones of our proposal to achieve this objective are:

- Create a Home Field Program for local sports leagues
- Change the scheduling to allow for simultaneous use of the facility by multiple organizations
- Develop aggressive marketing and sales programs directed to both local and regional users with the goal to increase both week-day and weekend use.

The approach to achieve this objective is to understand local needs first. MHYSA would reach agreement with local sports leagues, clubs and schools to give them primary access to the facility. Primary access does not, however, mean exclusive access. They will need to work with MHYSA to assure appropriate availability for regional users.

The Complex will be their home field. **Home Field** means that they store their equipment at the facility, as well as hold their meetings there. They will operate the snack bar and parking concessions during their events to help raise revenue for their program. They will pay the going rental rates, but their fees will be offset by in-kind labor support for operational needs of the facility such as:

- Field striping
- Concession stand shifts (Outside their league's operation of the Complex)
- Parking lot shifts (Outside their league's operation of the Complex)
- Field clean up
- Parking lot clean up
- In-kind trade from members in the landscaping, electrical and construction trades

The second part of our strategy is to move away from the current practice of using the entire Complex for a single organization or event. This will entail negotiating with Home Field groups, as well as CYSA as a priority customer to schedule games so that not every field is required for their rentals. This will allow for the use of the facility by multiple organizations at the same time and will help balance local and regional use. Our regional and local use target ratio is 60% local and 40% regional on a field—not facility basis. This practice will continue with future facility users as well.





# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

## Ensure diverse mix of use by sports type

To achieve this objective, MHYSA will reach out to local and regional sports organizations, including:

- Soccer (Youth and Adult)
- Tackle Football (Youth)
- Flag Football (Youth and Adult)
- Corporate leagues (Any sport/Adult)
- Field Hockey
- Lacrosse
- Rugby

Community groups, clubs and schools will be invited to participate in the **Home Field** program, thus giving them top priority. Conflict would be resolved using a priority season system that allows each league to designate a Primary Season. An example of how this would look is:

<u>Sport</u>	<u>Primary Season</u>
Football	Fall
Soccer	Spring
Flag Football	Winter

Leagues would be given top priority during their primary season and lower priority during other parts of the year. Another determining factor will be if the time requested is to be used for games, practices or fundraising events. Scheduling processes need to be capable of managing multiple considerations when achieving this objective.

Participating sports could be expanded in the future to include cricket and disc golf if facility development provides the space for the equipment needed to run these sports.

Development of additional facilities would be directed toward outdoor—not indoor sports. Creating and operating a recreational indoor sport facility would lead to competition with the Centennial Recreation Center and other privately operated businesses already in the community and would be counter-productive to the goals of the organization and community.

Outdoor sports development would need to be done in conjunction with city planning and business development. The city strategy is to build a separate facility for diamond sports instead of completing Phase 2 and 3 of the plan for the Complex. The plans for development of the Southeast Quadrant of Morgan Hill would need to be considered as part of any additional development at the Complex.

Working with the city and MHUSD to achieve this goal city-wide would be the most logical way to ensure use of all city sports facilities to support this objective. The Complex would be an integral part of this approach and MHYSA would participate in the planning.



# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

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<i>iii. Market Strategy</i>	15
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# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

a. *Provide a detailed narrative description of your proposed plan.*

Our proposal is to transform the Complex from a simple field rental revenue source into a facility that the city of Morgan Hill realizes full value for. We plan to do this by:

1. Forming a professional community-based team, paid workers and volunteers to operate the facility
2. Integrating community sports organizations into operation of the Complex.
3. Increasing community pride and participation in the success of the Complex
4. Developing a sustainable revenue stream by attracting premier regional sports field users to complement increased local use.

In its current operation, both stakeholders—City of Morgan Hill and CYSA—run their operations in a “Status quo” mode; meaning as a simple field or plot of grass asset as opposed to the dynamic community asset it can be. The Complex should be the sports focal point in our city and our region.

Having a local company as opposed to one not residing in Morgan Hill operate the Complex will ensure that the revenue and income realized by the presence of the Complex will be retained in Morgan Hill, rather than going to organizations and businesses outside our community.

The plan calls for operating the Complex as an independent business unit using an annual revenue model versus one that is just rental revenue for field use, parking lot or snack bar concession services. Here are the four major elements to MHYSA’s plan to achieve these goals:

**1. Form a professional community-based team comprised of local community, business and sports leaders.** This will be accomplished by expanding the current MHYSA Board of Directors from its current level of three up to potentially seven to bring in Morgan Hill professionals with experience in:

- Sports Marketing and Sales
- Event Planning and Management
- Business Finance and Investment
- Facility Operations and Management

This board would provide direction to the management team of the Complex, with each having a different role:

- Facility Maintenance
- Facility Scheduling
- Facility Operations
- Promotion and Sales





# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

**Facility Maintenance:** We will manage the different local contractors providing facility maintenance, landscape, janitorial, repair and field maintenance services. These contractors will be all Morgan Hill businesses. Some portion of this labor will be offset by volunteers from local sports leagues provided through the Home Field Program.

**Facility Scheduling:** We would process all field applications and manage changes as they occur. MHYSA would like to have user access and an ID to the city's CLASS Field Reservation system so field rentals of the Complex can be seamlessly incorporated into the overall city field management process. With that capability, the Field Scheduler for the Complex would enter field and facility rental reservations in the same manner as done today, responding to inquiries and availability, as well as coordinating usage with operations.

**Facility Operations:** We would coordinate all activities from field usage to field maintenance, rotation and access. Snack Bar and Parking Lot concession would be another part of our responsibilities, as well as coordination of security and vendors providing retail services.

**Promotion and Sales:** We would have three major objectives:

- Maximize usage of available field hours by bringing in a diverse mix of sport leagues, camps, tournaments and events to complement expanded local use. Current field usage is roughly 40% of available hours. This number can be doubled by a comprehensive scheduling policy and program that matches available time slots with specific users. Allowing more than one organization to use the facility at a time is critical to achieving this goal. Gaining access to the grass fields will also enable local leagues to consolidate their practices and games into one facility. This will drive week-day use.
- Conduct an aggressive advertising, sponsorship and field naming campaign to fill the available signage space at the facility. The facility venue as an advertising tool is an untapped opportunity. Given the high rate of foot traffic through the Complex on an annual basis, this can be a valuable commodity for local, regional and national companies to get their messages out to the sporting community. Facility names rights for tournaments, even the facility itself, banners and signs on fences and at the fields, announcements made during games, and ads in event programs are all tools for driving advertising revenue.
- Work closely with community businesses to develop promotion packages for organizations holding events at the Complex. **Despite all the tournaments currently held at the Complex, Morgan Hill businesses see only a limited benefit from them.** The hotels and businesses along the 101 corridor realize some revenues, but remaining city businesses probably do not. Promotional packages can be developed with downtown merchants, businesses north and south along Monterey Road, as well as local wineries and restaurants. City facilities such as the Aquatic Center could be partners in weekend specials to bring in additional revenue to city programs. Programs, fliers and brochures can be



# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

distributed during events at the Complex, helping Morgan Hill businesses get their messages out.

The key point to our approach is that it will be a **community-based focus** that helps Morgan Hill residents realize full benefit from the city money invested in the Complex—not just from field rentals and a few hotel nights. Potentially keeping most, if not all of the money in town, also benefits the city in terms of tax revenue.

**2. Integrate community sports organizations into operations of the Complex.** This will make it more of a local asset than it is today. An important part of integrating community organizations into operations of the Complex will be to honor the pricing and reservation commitments made for the first half of the first year by city staff prior to MHYSA operation.

Besides the obvious move to open grass fields to local sports organizations during the week, the key benefit to integrating community sports organizations into operation of the Complex is community pride-of-ownership. Clearly, operations would need to be controlled by MYHSA with an eye on profitability. Making the Complex the “Home of the Morgan Hill Raiders”, “Home of Orchard Valley Youth Soccer League”, or “Home of the Morgan Hill Maverick Lacrosse Club” creates a sense of community pride that simple field rentals cannot do.

The basis for this approach will be our **Home Field Program**. Home Field Program organizations will be able to meet their field and operational needs, while working through a cooperative process that saves them time and money. We have developed a test case of this program with the Pop Warner Raiders. It includes a sample of Pop Warner’s needs and an outline of the services they will receive as part of the Home Field Program. The overview of their needs is shown in Attachment A. They have committed to paying \$11,000 per year as an annual charge. Their membership in the Home Field program will give them the ability to:

- Conduct all practices and home games at the Complex
- Hold board and coaches meetings and team parties, as well as weigh-ins and walk-in registrations at the Complex
- Store all their equipment at the Complex
- Operate a snack bar and parking concessions to raise revenue for their operations
- Use barter or in-kind system to lower actual dollar amount paid for usage of the Complex
- Participate in Advisory Council to MHYSA leadership

Though this amount is higher than their existing field costs, the ability to trade labor for dollars along with additional fundraising opportunities will save them program money on an annual basis. Using this process with each organization, our objectives will be to





# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

provide leagues with an increased value for their investment and also to reduce their annual costs while doing so.

The second part of our community integration will be through our Advisory Council. The MHYSA Advisory Council will be run by a President who will have one of the expanded seats on the proposed expanded MHYSA Board. That vote, as voted on by the Advisory Council, will enable the local sports organizations to have input into the development and implementation of MHYSA Board policies and processes.

The final element of community integration will be to reach out to local sports-oriented businesses through sponsorships to bring revenue to operations of the Complex and increased messaging to businesses. Train-For-Life, Little Gym, Champions Gymnastics Academy and sports medicine practitioners are just a sample of the organizations that will benefit by supporting the Complex. More about these relationships is detailed in our Business Plan.

### **3. Create community pride in the Complex and involve the community in its success.**

Doing so will develop a strong operating team. All employees and contractors will be from Morgan Hill. They will not only be professionals in their work, but will have a vested interest in how they perform the job since their friends, neighbors and possibly families use the facility. With a community-based organization operating the Complex, management will be familiar with local business needs, attend city council and commission meetings, participate in local initiatives, and probably even know many of the people going through the facility.

All of this will take the Complex to the next level. For example, in the current facility, we have two half stadiums and neither meets our community needs. Morgan Hill residents would welcome the plan to install grandstands on the east side of the two turf fields. That installation, together with reorganizing the soccer fields so that we still have ten fields, will enable us to hold the annual EL Toro Bowl football game between Sobrato and Live Oak High Schools at the Complex without any impact to soccer field availability.

Additional opportunities to bring capital improvements to the facility include:

- Adding irrigation to the grass field section
- Moving the corporate yard to a more central location with a smaller footprint
- Adding playgrounds, volleyball pits and larger picnic facilities
- Providing multiple access points through the fence to the sports fields
- Adding a media tower to the turf fields

As these capital improvements take place, the overall value of the Complex increases. With that, potential revenue potential and support to local organizations is improved. The city will gain in reputation not only as a regional destination, but as a desirable community to live in. Positioned appropriately, these two elements can be used to bring more business into the city, thus providing a positive effect on city revenues.





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The final component to community integration would be to understand and support the city's 2030 General Plan. In the near term, the Complex will support city revenue objectives by generating income to the city directly with lease revenues and indirectly through tax revenues. Managed properly, it could bring support for long-term city goals such as the development of the Southeast Quadrant. In this way, the operator of the Complex can contribute to the city's future not only in the short term, but in the long term as well. This makes the selection of an operator committed to local issues more critical.

**4. Develop sustainable revenue sources.** This objective will drive business strategy and operations. Our programs will require sustainable revenue to survive. Our first step is to ensure profitability in 2010. A challenge to this will be honoring commitments made by the city for field reservations starting July 1, 2010 and going through December 31, 2010. A new pricing structure will go in effect on July 1<sup>st</sup>, but previous committed rate and dates will be honored. MHYSA expects that it will receive payment for all field use during this period from the field users or the City of Morgan Hill.

Sustainable revenue must come from more than just field rentals. Our plan calls for an evolution from simple field use to a community-based operation running a "Destination" for sports enthusiasts around the region, state and country. We see the transition taking no more than three years. As the transition takes place, the contribution each revenue source makes evolves into a more sustainable whole. Here are our projections for revenue percentage by type over the first three years:

Revenue Type	2010/11	2011/12	2012/13
Field Rental Fees	39%	41%	26%
Parking Concession	29%	26%	15%
Snack Bar Concession	24%	22%	12%
Advertising	1%	2%	9%
Sponsorship	1%	3%	18%
Camps and Clinics	2%	3%	18%
Grants	4%	3%	2%

With Field Rental revenue playing such a large part in the first two years, we have studied the historical turf field usage data provided by the city to understand usage by revenue and sports type. This report shows that the primary users of the turf fields are CYSA, OVYSL, Pop Warner and local schools, along with a couple of other sports leagues and clubs. CYSA has the majority of the weekend hours and OVYSL has the majority of the week day hours. Together, they represent 72% of the current turf field usage. Current turf field usage by all groups was approximately 58% of available hours.

We plan to retain these users at these levels at a minimum so this revenue remains consistent from last year. This will be the first priority. With the financial jumpstart from the first six months of rentals, MHYSA will be able to begin building additional revenue





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sources during the first half of 2010/11. In the second half of 2010/11, we will begin soliciting advertising, sponsor and service revenue sources. This will begin to bring the operation to more profitable levels.

Another important component to field use revenue is opening up the grass fields to local use during the week. Our plan is to open the grass fields for weekly use effective July 1, 2010. Field rental rates will be established to support 2010/11 financial objectives.

Opening the grass fields during the week will not only increase revenue to the Complex, but will support the diverse mixed use objective and Home Field Program as well. The ten grass fields on site will allow local leagues to consolidate their team practices into a single facility. Additional customers such as adult soccer can be found to use the fields once the **Home Field Program** members' requirements are met. We are reaching out to MHUSD and other local organizations looking for week day field space.

A third major element to our field user revenue component is to implement a Market Pricing Policy. Current rates around the area and regional for facilities like the Complex are:

<u>Field Type</u>	<u>MH Rate</u>	<u>Market Rate</u>	<u>% Increase</u>	<u>Source</u>
Turf Field	\$10 or \$42/hr	\$60/hr	500/20%	CSJ Sports Field Study
Grass Field	\$5 or \$6/hr	\$25/hr	400/350%	CSJ Sports Field Study

*Please note that a resident/non-resident rate structure will need to be maintained. For planning purposes, we will use a 50% discount rate for residents.*

Bringing the field rental price in-line over the next three years will not only increase revenue, but profitability as well. It must be done gradually, however, to allow current customers to develop strategies to pay for the higher price. MHYSA will look for ways to help them.

Additional revenue sources will be developed over the first three years. A big first year component will be parking and snack bar concessions. Parking alone can provide almost \$250K in revenue. Some revenue will be offset by a parking pass system that we will implement for Home Field members. Years 2 and 3 involve bringing our advertising and sponsorship programs online, reaching full stride in Year 3 when those revenues reach \$600k. This is the year the payments to Morgan Hill become a percentage of gross revenue as opposed to flat rate or a mix of the two. Additional plans included running camps and clinics, selling advertising at games and tournaments and bringing in championship tournaments.

The final component is one that only a non-profit can bring—namely grants and donations. As a non-profit, MHYSA can apply for and receive grants from regional and national philanthropic organizations. MHYSA has identified 40 potential local, regional, national and corporate grant sources. A complete list is included in the revenue sources and pricing policy section of our business plan. Examples of each type include:



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- Local
  - Morgan Hill Community Foundation
- Regional
  - Bay Area Hall Of Fame – Youth Sports Grants
- National
  - National Alliance for Youth Sports
- Corporate
  - General Mills Foundation
  - Professional sports franchises
    - San Francisco 49ers Foundation

*b. Provide a business plan with the following information*  
*i. Management structure*

Morgan Hill Youth Sports Alliance is currently run by a three member board of directors. This will be increased to create additional leadership for operation of the Complex. The roles of the new members will be defined and appropriate community leaders found to fulfill these roles.

The board of directors will manage and run the business with separate and distinct responsibilities. Their roles will reflect areas of responsibilities:

- President/Executive Director
- Vice-President/Secretary
- Director of Finance
- Director of Marketing and Fundraising
- Director of Business Development
- Advisory Council President

The Advisory Council consisting of members of various local sports organizations, city departments and MHUSD staff will provide input as to best practices and communicate community needs to the board. This council reviews policies and activities of the board, develops joint programs with MHYSA leadership, and provides feedback on programs and services.

MHYSA will have two distinct independent operations if awarded the contract for management and operation of the Complex. Both will report to the President/Executive Director. The first and primary operational group will be the Outdoor Sports Complex Operation and Management team. The second team will handle the continued operation of the South Valley Flag Football League and creation of the South Valley BMX/Skate Club. The board itself will continue running financial aid and cooperative programs for local sports leagues and will work together with the Advisory Council.





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The mixed use field marking strategy employed on the turf fields can be expanded to the grass fields. Tournament hosts will work with MHYSA staff to determine the optional number of fields needed for their events. With the extended day provided by field lights, organizations will have the flexibility of scheduling that allows them to use fewer fields during community use and to expand into the available space when local leagues finish.

Using the “simultaneous multiple user model” ensures a diverse sports mix, while maintaining a good balance between regional and local users. The new challenge becomes a field balancing process, instead of a facility balancing process. There is more flexibility toward meeting everyone’s needs, while generating sustainable revenue growth.

With that in mind, a sample of what a typical week of field usage might look like is below:

Field	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	PW	PW	PW	PW	PREP	OVYSL	PW
2	PW	PW	PW	PW	PREP	OVYSL	CYSA
3	OVYSL	OVYSL	OVYSL	OVYSL	PREP	OVYSL	CYSA
4	OVYSL	OVYSL	OVYSL	OVYSL	PREP	OVYSL	CYSA
5	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
6	MHUSD	MHUSD	MHUSD	MHUSD	PREP	CYSA	CYSA
7	MHUSD	MHUSD	MHUSD	MHUSD	PREP	CYSA	CYSA
8	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
9	OVYSL	OVYSL	OVYSL	OVYSL	PREP	CYSA	CYSA
10	MHM	MHM	MHM	MHM	PREP	CYSA	CYSA
11 (TF)	MIXED	MIXED	CMH	CMH	LO/AS	CYSA	PW
12 (TS)	OVYSL	OVYSL	OVYSL	OVYSL	LO/AS	CYSA	CYSA

**Legend:** PW = Pop Warner Raiders, OVYSL = Orchard Valley Youth Soccer League, MHUSD = High school teams, Charter School of Morgan Hill, Oakwood, MHM = Morgan Hill Mavericks Lacrosse Club, CMH = City of Morgan Hill, MIXED = Corporate leagues, local groups, city programs, LO/AS = Live Oak and Ann Sobrato

Please note that this chart is for demonstration purposes and shows only one user per field when in fact all fields will probably have more than one user throughout the course of any given day. With lights, the (TF) Turf Football and (TS) Turf Soccer fields can be used for longer hours. Actual schedules will display time slots throughout the day and the number of hours for each group. There will be hours set aside each day for maintenance and repair as well.





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### iii. Market Strategy

The Market Strategy is to utilize the facility and community resources to develop service offerings for a variety of sports organizations. The market consists of drastically different types of customers:

- Field and facility users
- Sports-related businesses
- Camps and clinics
- National championship events
- Corporate advertisers
- Sponsorship and naming

As such, separate strategies are needed for each customer type. Field and/or Facility Users are the primary market for the organization. Their use of the facility brings value to the other two target markets.

The key values of this primary target market are:

- Price/value
- Flexibility of service offerings
- Easy of use

This market can be broken into the following segments:

- Community Sports Leagues
- Local Schools
- Local Competitions and Tournaments
- Regional Leagues and Tournaments
- Special interest groups such as seniors and adult leagues, youth and travel teams
- National Tournament Tours
- Event Companies – Car Shows, Festivals

Each group has specific needs that can be addressed through service offerings with packages that include the base rental fee plus options such as:

- Field Equipment Storage
- Field Lights
- Parking
- Concession Stand
- Sport Specific Equipment Rental
- Referee/Director tents
- Photo/Video Services



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Another way to further refine our strategy is to put each of the groups in time slots that match customer needs with the capacity of the Complex:

Weekday opportunity:

- Before 11am
- 11am to 1pm
- 1pm to 3pm
- 3pm to 6pm
- 6pm-8pm
- 8pm-10pm

Weekend opportunity (In specific time and field slots to meet their needs):

- 8am to 6pm
- 6pm to 10pm

By matching program components such as time of use, services and sports type to target markets and developing specific plans for each one, a comprehensive marketing package can be created to sell our services both locally and regionally. Coupling service offerings with the facility/field rental opens the way to attracting non-traditional customers to the Complex. Examples of how this approach will reach potential customers are:

- Establish the Complex Turf Stadium as a premier “Big Game” field
- Promote facility for corporate sports league use at lunch and after 8pm
- Provide snack bar services to all tournaments and non-Home Field leagues
- Identify Senior leagues for pre-11am weekday use
- Promote packages that include hotel, restaurant, tourist services such as Aquatic Center discounts to national sports tours

All of this makes the Complex the “Destination” facility it was designed to be. During the year, local companies reserve it to hold corporate events, national tours for regional and national championship tournament and event companies to host charity events. As a destination, the Complex is packaged with other attractions around the area such as wineries, parks and lakes to bring more tourist business into the community.

The “Destination” marketing strategy necessitates a vigorous program to ensure community access. This is why the **Home Field Program** has a major strategic importance. By ensuring access protection for local sports leagues, it can also ensure their participation by allowing them to use labor and in-kind services to reduce their annual program costs. Our strategy is dependent on a willingness to share for the greater good. Organizations that do not participate fully will be assigned to the general access pool.



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With field use revenue flowing, other components of our market strategy can be brought to bear:

- Sponsorship
- Naming Rights
- Advertising
- Regional/National Events Schedule
- Rental of Facility for pro Training Camps

#### *iv. Risk Management*

Risk comes in four ways to the Complex operations:

- City
- Financial
- Customer
- Assets

#### **City**

In the relationship between the City of Morgan Hill and MHYSA as a General Contractor/Operator of the Complex, each party has to ensure their organization is protected. As a contractor to the City of Morgan Hill, MHYSA will need to meet City of Morgan Hill contractor guidelines and regulations, provide the city with general liability insurance, as well as demonstrate compliance with state laws and regulations with Workman's Compensation, Health and Environmental statutes. MHYSA will comply with all city requirements for background and tuberculosis testing.

MHYSA will need to ensure that all users of the facility are properly insured with the city and MHYSA named as an additional insured. Users will also have to comply with all city, state and national regulations and laws when using the Complex.

Both parties will have to ensure compliance to the terms and conditions of the contract. In terms of risk, the city is only at risk if MHYSA fails to successfully operate the Complex. Terms will need to be included in the contract to provide adequate audit and contract termination controls to minimize each party's risk.

#### **Financial**

This risk comes primarily in terms of revenue achievement and cost management. Upon award of the contract, MHYSA would move to obtain community financial support for the cost of the first year of operations. These funds, coupled with the pre-existing field reservation revenue, will provide start-up funding that will enable MHYSA to bring the second half of the first year revenue in as targeted.





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Using the initial investment as a starting point, the operation of the Complex should maintain a favorable revenue pipeline throughout its fiscal plan. Response measures if the revenue pipeline began to empty would include modifying field use policies and rates, participating in community fundraising, as well as applying for national and corporate grants.

Cost management will be supported primarily by good business practices on the part of the staff of the Complex. Setting an accurate budget and operating to plan help keep operational costs under control. Asset management and care represent the remaining majority of cost management. If there is a need to reduce costs, the service contract for janitorial and field maintenance may be reviewed. Staff level may need to be reduced and business processes analyzed. A final option, of course, would be to discuss renegotiating contract terms with the City of Morgan Hill.

### Customer

Customer damage to property or personal injury risk is primarily handled through the use of liability insurance, damage waivers and rental deposits. Customer interaction with the major assets of the Complex can be monitored to insure that possible damages are avoided. Staffing will need to be adequate to ensure customer behavior is appropriate.

The intangible risk is one of customer satisfaction. Meeting or exceeding customer expectations is the best way to maintain satisfaction. Benchmarking other facilities, finding and adopting best-of-breed practices and position pricing competitively should be sufficient to ensure the Complex remains competitive in its market. The community involvement in operations of the Complex provides an excellent base to operate from.

### Assets

The major assets of the Complex are its turf and grass fields, fixtures and buildings. Fixtures include goals and nets, lights, fencing, grandstands, scoreboard, security gates and tables. Buildings include the main concession/restrooms, equipment sheds and storage sheds.

After hours security will come in the form of an alarm company and inspection visits by MHYSA staff.

Capital reserves will need to be established between the city and MHYSA for the turf fields, fixtures and buildings. Grass fields generally stay in operating shape if usage is monitored and field quality levels are maintained. This typically involves good field care practices, field use rotation and a "rain out" policy. "Rain out" premiums can also be utilized in the case of customer cancellation clauses as might be the case in scheduling a national tournament or event. Insurance may need to be considered for disaster mitigation and recovery.





*v. Revenue Sources and Pricing System*

**Revenue Sources**

Our revenue sources come from field use rentals, service offerings such as parking and snack bar concessions, advertising, sponsorship, national and regional events, professional training camps and grants. Given the short start-up cycle, the first two quarters of operation will be limited by field rentals committed to by the city of Morgan Hill prior to MHYSA operations and the first year to building up usage. Years 2 and 3 will see the introduction of the sponsorship, advertising and events revenue sources. Grants will take at least 18 months to bring online due to their long processing times.

- **Field Use Revenue (Including lights)**
- **Parking Concessions**
  - Resident Pass for all Home Field Program
  - \$5 tournament fees
  - Free access for practices and casual users
- **Snack Bar Concessions**
  - Revenue share with Home Field Programs – Home Field partner operates concession as a fundraiser with minor share to MHYSA to cover administrative expense.
  - Tournament hosting – Operate snack bar to sell food and drink to tournament participants and guests
  - Vendor machine contract for casual users
- **Sponsorship**
  - Title Sponsorship (Seasonal)
  - Field Sponsorship (Yearly)
  - Concessions Sponsor – Example: Gatorade
  - Per Event/Day Sponsorship
- **Naming Rights**
  - Scoreboard
  - Field
  - Parking Area
  - Stadium/Complex
  - Major Events
  - Seasonal Schedules



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- **Advertising**
  - Banner and Signage Packages
  - Radio Commercials
  - Game Day Commercials (Played during games)
  - Banners and Signage Packages
  - Title Sponsors per Event per day
  
- **Regional and National Events**
  - National/Regional Training Camps hosted in Our Sports Corridor
  - National/Regional competitions held in our venue
  
- **Rental of Facility to Professional Training Camps**
  - Professional Soccer
  - Professional Football (Multiple Divisions)
  
- **Grants**

MHYSA's initial grant research has identified the following existing grant opportunities which will be engaged upon award of the contract:

  - President's Council on Physical Fitness
  - US Department of Education – various programs
  - US Department of State “Sports United” Grants
  - California Department of Education Grants
  - California After School Network
  - National Association for Sport and Physical Education -Carol M. White Physical Education Program
  - National Alliance for Youth Sports – “Start Smart” Sports Development Programs
  - After School Alliance/MetLife
  - Gilroy Grant Foundation
  - Morgan Hill Community Foundation
  - Olympic Club Foundation – City Fields Program
  - Change Makers – Team up for Youth
  - Liberty Mutual
  - Earthquakes
  - Finish Line Youth Foundation
  - SF Giants Community Fund
  - Warriors Foundation
  - 49ers Foundations
  - NFL Players Foundation
  - BAYS Foundation – Bay Area Youth Lacrosse Grants
  - Bay Area Hall of Fame – Youth Sports Grants
  - Motorola Foundation
  - General Mills Foundation “Champions for Healthy Kids”





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- Annenberg Foundation Youth Organization Funding
- Albertson's In the Community
- Herbalife "Improving the Lives of Children Grant"
- Office Depot "Helping Kids and Schools Grants"
- Liberty Mutual responsible Sports Program
- Tony Hawk Foundation
- The Christopher and Dana Reeve Foundation "Quality of Life Grants" Program
- Bird's Eye Food "Health, Education and Youth grant"
- WAL\*MART Corporate Donations & Sponsorships
- Sports Authority Corporate Donations & Sponsorships
- Target Community Grants
- Nike Product Donations
- United States Soccer Foundations
- US Youth Soccer Grants
- Soccer Across America
- Women Win Foundation
- Gatorade's "GoGirlGo! Ambassador Awards"

### Pricing System

#### Field Rentals

Field rental rates will need to be increased, but in a gradual way to allow existing customers to adapt their operations to the increased price. The plan is to honor the rate and field use commitments made for July 1<sup>st</sup> to December 31<sup>st</sup>, 2010. Rates will increase July 1<sup>st</sup> for all new reservations. Agreements will be made with existing users to prepare their organizations for new rates in the 2011 calendar years. Rates will continue to be adjusted gradually until they are inline with market rates. Local organizations will be intimately involved in the development of rate pricing.

Proposed rental rate schedule:

Hourly Rates User Type	6 Months			Base Year 1 & 2			Year 3 & 4		
	Turf	Lights	Grass	Turf	Lights	Grass	Turf	Lights	Grass
Local NP	\$10	\$8	\$5	\$20	\$8	\$12	\$20	\$12	\$12
Resident	\$21	\$8	\$6	\$30	\$8	\$25	\$30	\$12	\$25
Visitor NP	\$42	\$8	\$5	\$42	\$8	\$30	\$50	\$12	\$30
Visitor	\$42	\$8	\$6	\$60	\$8	\$45	\$60	\$12	\$45
Corporate	\$84	\$8	\$30	\$84	\$8	\$60	\$92	\$12	\$60

This schedule brings the field rates of the Complex inline with marketing pricing by Year 3. Rates will change as market rates change. Annual studies will be conducted to ensure fair value.





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### Sponsorship Levels

Levels will be set at local, regional, state and national levels. Naming rights will carry the higher amounts.

### Advertising

Advertising rates will be set based on media, labor and frequency.

### Regional and National Events

Regional and national events will be based at tournament or corporate field rental rates, but coupled with service offerings into packages designed to meet each event's needs.

### Rental of Facility to Professional Training Camps

Rental rates will be developed based on market rates for similar facilities. Service packages will augment the field rental fees.

### *vi. Itemized Expenses*

Operations Expenses	Year 1
	7/1/2010 to 6/30/2011
<b>Facility Lease</b>	\$50,000
<b>Facility Revenue Sharing</b>	\$0
<b>Utilities</b>	\$41,174
Water and Sewer (COMH)	11,211.43
Pacific Gas and Electric	21,059.00
Janitorial	\$5,000
Communications (Verizon cell and internet access)	\$1,360
Bay Area Alarm	\$1,544
<b>Repair &amp; Maintenance</b>	\$173,463
Electrical	\$122
Plumbing and gas	\$122
Equipment repair (movable - eg (soccer goals and nets))	\$122
Infrastructure repair (immovable (eg fences))	\$122
Security and Locks (Fences and Gates)	\$200
Sign and Facility Directions	\$500
Turf Field Sanitation and Rubber Replacement	
Audio System and Scoreboard	\$100
Field Maintenance (mowing and watering)	\$172,000
Pest Control	\$175
<b>Event preparations and clean up</b>	\$244,201
Open/close, Client support	\$300
Signage	\$250
Parking Concession Operations	\$109,792
Snack Bar Concession Operations	\$133,859
<b>City Liaison</b>	
<b>Inspections</b>	270,00
<b>Insurance</b>	\$6,500
General Liability	\$5,000
Workman's Compensation	\$1,500
<b>Staff</b>	\$153,000
Exempt Salaries	\$100,000
Tax Burden	\$20,000
Benefits (33% burden rate)	\$33,000
<b>TAXES</b>	\$0
<b>G&amp;A</b>	\$30,600
<b>TOTAL EXPENSE</b>	<b>\$699,208</b>



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vii. Three Year Pro Forma

OSC-Three Year Pro Forma			
	Year 1	Year 2	Year 3
	7/1/2010 to 6/30/2011	7/1/2011 to 6/30/2012	7/1/2012 to 6/30/2013
<b>Revenue sources</b>			
Field Rentals	\$327,112	\$399,734	\$424,070
Concessions (Snack Bar, Parking, etc.)	\$453,457	\$453,457	\$453,457
Camps, Clinics and Events	\$14,000	\$25,000	\$300,000
Advertising Program	\$8,000	\$16,000	\$150,000
Naming Rights (Complex, Each Field, etc)	\$0	\$0	\$0
Sponsorship	\$5,000	\$30,000	\$300,000
Grants and donations	\$36,000	\$27,000	\$27,000
<b>Gross Revenue</b>	<b>\$843,569</b>	<b>\$951,190</b>	<b>\$1,654,526</b>
<b>Operations Expenses</b>			
Facility Lease	\$50,000	\$60,000	\$0
Facility Revenue Sharing	\$0	\$0	\$82,726
Utilities	\$41,174	\$43,088	\$46,037
Repair & Maintenance	\$173,463	\$173,073	\$175,584
Event preparations and clean up	\$244,201	\$250,894	\$261,621
Reservation services (non payroll)	\$0	\$0	\$0
Member management (non payroll)	\$0	\$0	\$0
City Liaison	\$0	\$0	\$0
Inspections	\$270	\$270	\$270
Service Operation Expenses	\$6,500	\$6,575	\$6,654
Staff	\$153,000	\$160,650	\$168,683
TAXES	\$0	\$0	\$0
G&A	\$30,600	\$32,130	\$33,737
<b>Net Expense</b>	<b>\$699,208</b>	<b>\$726,680</b>	<b>\$775,311</b>
<b>Capital Needs</b>			
Replacement and Additions	\$26,680	\$30,608	\$83,608
CYSA Transition	\$41,000	\$4,000	\$0
Capital Needs	\$20,000	\$40,000	\$60,000
Improvements	\$0	\$0	\$65,000
<b>TOTAL Capital</b>	<b>\$87,680</b>	<b>\$74,608</b>	<b>\$208,608</b>
<b>Operational Variance</b>	<b>\$56,681</b>	<b>\$149,902</b>	<b>\$670,607</b>



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## viii. Conclusion

The City of Morgan Hill needs the best partner possible to build the Complex into the facility that was envisioned years ago when it was developed. MHYSA is the best partner for the following reasons:

- We are a talented and committed **Morgan Hill** team of professionals dedicated to serving the city and residents of Morgan Hill
- We are supported by community leaders and organizations
- We will build a sustainable revenue flow for the City of Morgan Hill
- Our operations of the Complex will keep the revenue earned in the community serving local children
- We have a comprehensive plan for facility management and operation
- Our vision for the Complex fits best within the 2030 Morgan Hill General Plan

We have much to do to be operational by July 1, 2010. In the next 90 days, we will:

- Add four directors to our Board of Directors
- Prepare the necessary documents to move MHYSA to 501c3 non-profit status
- Qualify and select local landscape and janitorial contractors
- Gain commitment from local sports organizations to the **Home Field Program**
- Develop a 180-day plan to manage the rental transfer to MHYSA
- Develop a grass field renovation plan
- Secure long-term rental agreement with CYSA
- Develop a transition plan with the City of Morgan Hill and CYSA
- Develop a co-marketing plan with local hotels and retail merchants

Bringing the Complex back under community control is the best option for the City of Morgan Hill and its residents. The city needs an operator committed to our community who truly appreciates what a special place Morgan Hill is to live. Candidates from outside of our community do not understand the **Community Value** of the Complex. The financial and community effort put into the creation of the Complex deserves no less than our best. MHYSA is the optimal choice.

We thank the City of Morgan Hill staff and City Council for the opportunity to respond to this RFP. We understand this proposal to non-binding and understand that a contract will need to be negotiated and signed before operations can begin.

We look forward to working with the City of Morgan Hill staff and City Council to bring the Outdoor Sports Complex back to community.





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### *ix. Attachments*

#### *Attachment A*

#### **Morgan Hill Youth Sports Alliance, Inc. Board of Directors**

##### **Jeff Dixon, President**

Jeff is a lifetime entrepreneur and long-time community service contributor with 35 years of professional experience in sports, high-tech and telecommunications industries.

Jeff's professional experience includes 14 years as a league owner and operator of adult and youth flag football leagues. He has hosted tournaments along with many community events and fundraisers. He consulted to the NFL FLAG and USA Football on rule sets and training, coordinated all officials for the NFL FLAG Regional Tournament Tour and managed the officials at the NFL FLAG 2008 National Championship Tournament.

Jeff previously spent 17 years at Rolm Corporation/IBM/Siemens. As their Northern California Materials Manager, he created and managed a 5 site distribution network and managed \$10 million in inventory. As the Western Regional Materials Manager, he was responsible for all materials related operations west of the Rockies. He was the creator and national program manager of the Siemens MAC Challenge, a sales incentive program that generated over \$92 million in incremental installed base sales.

As a community contributor, Jeff has participated in many community organizations:

- San Jose Mayor's Advisory Council on the Metcalf Energy Center
- City of San Jose's Sports Field Study
- Morgan Hill's Outdoor Sports Complex Advisory Committee
- California Amateur Athletic Association, Inc. – Founding President
- Morgan Hill Independence Day, Inc. – Currently Vice President
- Morgan Hill Gymnastics Parents' Club - Founding president
- Morgan Hill Aquatics Center Foundation – Event Director
- Leadership Morgan Hill Class of 2009
- Volunteer Morgan Hill – Currently Director of Operations

Jeff, along with his wife and daughter, enjoy the close knit and friendly community of Morgan Hill.

##### **Dave Payne, Vice President**

Dave is a veteran of the high-tech industry, with over 25 years of experience leading teams in the creation, development and operation of advanced systems, networks, and high tech startups. He runs a technology consulting and corporate management practice from his offices in Morgan Hill, where he has lived the past decade with his wife and four children.



**Morgan Hill Youth Sports Alliance**

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# Morgan Hill Youth Sports Alliance Proposal for Operation of the Outdoor Sports Complex

March 19, 2010

Dave's customers range from the US Government (Defense, NASA, National Labs, Justice, and Homeland Security) to International clients (UN, Lockheed, and numerous Silicon Valley concerns). His practice focuses on high tech startups in consumer electronics, communications, security, RFID, as well as advanced space system design and integration. He has been a CEO/COO at multiple startups, and has been an executive director at such firms as Northrop Grumman, Lockheed Martin, Boeing, OPNET Technologies, and Bill Gates' Teledesic Corporation.

Dave is a graduate of UCLA with a Bachelor of Science in System Engineering and Economics. He and Christine have lived in Morgan Hill since the 90s raising their four children and enjoying the urban/rural/coastal mashup that is the South Valley. Dave enjoys home remodeling and jacuzzi maintenance, playing jazz piano, free lance web development, and coaching youth football, basketball, and soccer.

### **Rui Azevedo, Secretary/Treasurer**

A recent arrival in Morgan Hill, Rui Azevedo was born and raised in Santa Clara, California. He attended Archbishop Mitty High School and then went on to graduate from Santa Clara University in 1994 with a Bachelor of Arts in Accounting.

He has worked in the accounting field in positions as the Vice President of Baytech Credit Union and Controller of Signals Wireless Communications. He has spent the past two years as the Director of Accounting for the Sisters of Mercy of the Americas in Burlingame. Rui has worked for other nonprofit credit unions and religious orders with a focus on mergers.

Rui has assisted amateur sports organizations providing guidance in the areas of financial management and accounting practices.

He is excited to move to Morgan Hill and contribute to his community. With his background in amateur sports and accounting expertise, Rui is looking forward to making a positive contribution to his new community.





Attachment B

Morgan Hill Pop Warner Raiders Requirements

**Example Home Field Program: MHPW**  
***Morgan Hill Pop Warner Raiders***

**ACCESSIBILITY**

Storage Facility Area - requires full access 24/7 365 calendar days

**PRACTICE AREA - 4 Total fields duration of season July - Dec 1**

JULY-AUGUST (6 Weekdays Monday-Friday) 45 calendar days

SEPTEMBER - DECEMBER (6 Weekdays Monday-Friday) 82 calendar days

6 Football Teams = Approx. 200 football players  
(25 kids Tiny Mite 5-7 yrs old) (35 kids each MM, JP, PW, JM, M, 7-15 yrs old)  
3 Football Practice Fields ~ 50 sq yards per team

6 Cheer Teams = Approx. 100 cheerleaders  
(10 girls Tiny Mite 5-7 yrs old) (20 girls per squad each MM, JP, PW, JM, M, 7-15 yrs old)

~1 Football field sized Practice area (need not be a dedicated playing field but must be level no hazards)

Note: Duration of outdoor practice for Cheer approximately 1.5 months  
(August + 1/2 September, Cheer moves indoors)

**PHYSICAL ASSETS** - Reserved vehicle accessible space 60'X60' total footprint

- (1) 40'X8' Tractor Trailer - Container with wooden steps
- (2) 40'X8' Construction Container
- (2) 20'X8' Construction Container
- (1) 15'X6' 6 man blocking sled
- (2) 2-man blocking sleds
- (1) 25'X7' Trap Chute wheeled (large)
- (1) small flatbed trailer (single axle)
- (1) 24'X40' Equipment fitting area (included in total above)

**PARKING**

Parking for 300 families/kids & 80-100 volunteers - milligates after August 31st to drop off & pick up of football players with cheer moving indoors Mid-September

**CONCESSIONS**

Agreement to allow MHPW to maintain a concession operation on the practice fields during the course of the season.

Possible rental of City Owned concession trailer as viable alternative to a hard structure.

Additional possible rental of Concession Building at front of complex for season.

**TURF FIELDS**

Access to lighted Turf Fields minimum one weekday per week July-August 5-9pm

Saturday or Sunday Day (one day only) use of both North & South late August 21st or 22nd

Jamboree Host - August 29th Sunday Day (one day only) use of both North & South turf fields + Concession Bldg

Weekdays Monday through Friday (Football Field only) October 18th-22nd, 25th-29th & November 1st-5th 5-9pm with lights

**SCHEDULING**

8 Saturdays (one day only) use of both North & South turf fields + Concession Bldg September-October

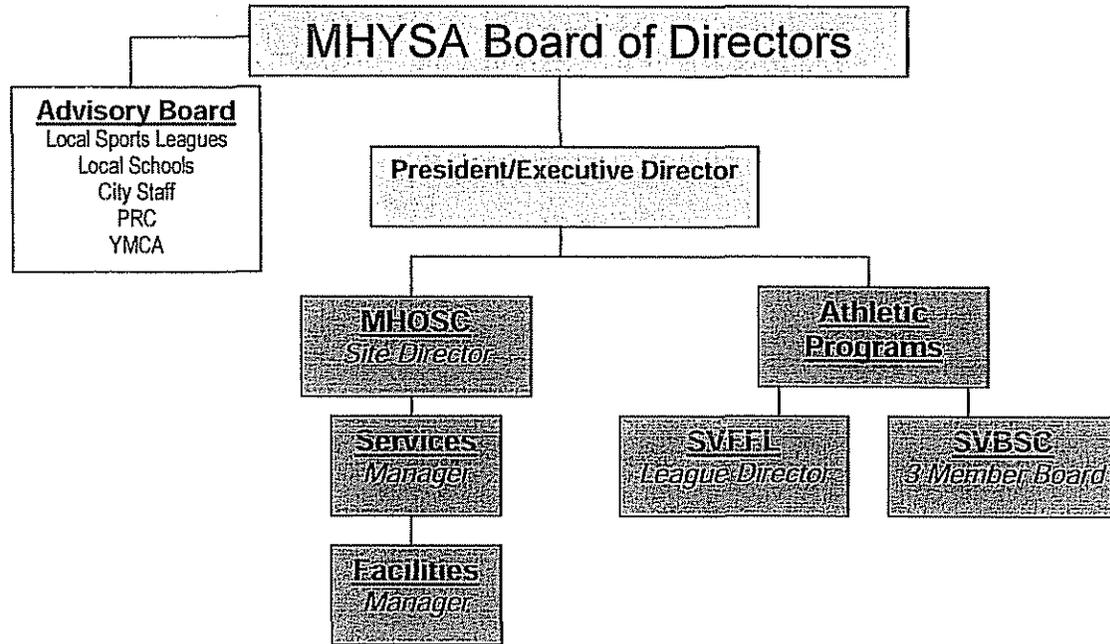
October 30 & 31st Round 1 Playoffs

Both Days use of both North & South turf fields + Concession Bldg

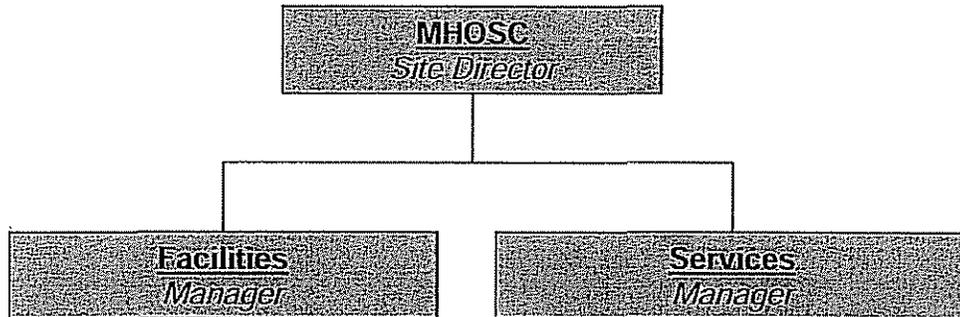


*Attachment C*

**MHYSA Organization Chart**



**Outdoor Sports Complex Operational Team**



- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Operations</li> <li>• Locks and Security</li> <li>• Janitorial</li> <li>• Field Maintenance</li> </ul> | <ul style="list-style-type: none"> <li>• Manages All Sales</li> <li>• Runs Ad Program</li> <li>• Schedules Fields</li> <li>• Run Concessions</li> </ul> |
|---|---|



1. Please explain your strategy to satisfy the City's OSC objectives to balance community access and regional use, as well as to ensure a diverse mix of field use.

**Balancing community access and regional use** first involves understanding the dynamics. Regional organizations have little or no interest in renting the fields during the week and critical interest on the weekends. Community groups would like to have weekday and weekend use is also a high priority. MHYSA's target balance is roughly 60% local and 40% regional.

MHYSA will use several methodologies to balance local access and regional use. The first will be to open the grass fields to local organizations Monday through Friday. Local organizations include OVYSL, Pop Warner, MHUSD teams and adult leagues. Additional users could come in the form of the YMCA programs and seniors. These organizations would be able to rent the fields on an hourly basis.

The second element of our approach will be to work with regional organizations to develop scheduling strategies that allow regional events (Tournaments) to take place at the same time there are local games (Leagues) going on at the facility. All users will have an opportunity to request hours on the OSC fields. The key will be balancing the ability to meet customer needs with maximizing the use of available hours. Tournaments and leagues both require a certain amount of field hours. The OSC has a fixed number of fields. The solution lies in determining how fields must be allocated to fulfill the individual need. The existence of two lighted fields allows for greater flexibility as games can be played there in the evening.

This approach also will provide the ability to **ensure a diverse mix of field use**. The facility has 12 fields and can be scheduled as such. MHYSA plans to use portable soccer goals on all fields which allows for fields to be use for different sports, possibly within the same day. As with the City of Campbell, grass fields will be marked in different colors as the OSC turf fields are today to allow for varied sports groups to play on the grass fields. Another step will be to reach out to non-traditional sports such as cricket and emerging sports such as disc golf to understand their fields needs and develop strategies to bring them into the facility in currently vacated times.

It is important to note that only rectangular sports field users can be accommodated at this time. These sports are soccer, football, rugby, lacrosse, flag football and field hockey. An additional consideration is there are leagues for both youths and adults.

Despite this fact MHYSA plans to work with diamond sports leagues such as Pony Baseball, SPIRIT and PRIDE in the near term to enhance their field access. The OSC is just one sports facility in the Morgan Hill Area. Others exist in city parks and schools as well in South San Jose and Gilroy. By bringing OVYSL and the Raiders to the OSC for all practices and games, these fields open up to allow greater access to diamond sports organizations. In the long term MHYSA will collaborate with the City of Morgan Hill and the SCCHS committee in developing permanent solutions.



## Morgan Hill Youth Sports Alliance



**MORE KIDS IN MORE SPORTS**

Flexible scheduling strategies are the key to achieving these goals. As an example, a three game minimum/single elimination tournament for 30 teams whose games are scheduled in 2 hour time slots requires a total of 118 field hours. Assuming that set up hours can be accommodated as part of the scheduling the choices, there several ways to fulfill the 118 hours requested. Two examples are:

Total Hours	Total Fields	Sat. Hrs	Hrs/Field	Sun. Hrs	Hrs/Field
118	10	60	6	58	5.8
118	6 (Sa)/12 (Su)	60	10	58	<5

Successfully combined, these elements create an environment that would allow for a Saturday scheduling with diverse users that balance local and regional use:

Time	Field 1-6	Field 7	Field 8	Field 9	Field 10	Field 11	Field 12
8:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
9:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
10:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
11:00am	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
12:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
1:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
2:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
3:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
4:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
5:00pm	NorCal	OVYSL	OVYSL	OVYSL	OVYSL	Raiders	Raiders
6:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN
7:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN
8:00pm	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN

2. How do you plan to implement your proposed rates?

Existing and traditional users will be brought into the new rates on a scheduled and pre-arranged basis. New users will pay the new rate immediately. There are two considerations driving this strategy. The first is the reservations already on record with the City of Morgan Hill for the first six months on the turf fields. Those reservations will be honored at the existing rates. In addition, those parties will be given the opportunity to pay the existing rates for the grass fields even though there currently are no reservations placed for their use. Finally, based on the organizations' needs for the second half of the year and first half usage, rates may remain fixed until fiscal 2011/12.



**MORE KIDS IN MORE SPORTS**

A second consideration is the Home Field Program. Home Field Program members will have an opportunity to negotiate fund raising opportunities and in-kind labor exchange to reduce the impact of the rate increase. Rate discussions will require total transparency in terms of needs and the impact of the rate increase so that a collaborative method can be used to ensure that all parties' needs are fairly met.

3. Please explain your priority use system and implementation plan.

The main considerations for setting priorities will be the local/regional balance strategies, providing preferred access to Home Field Program members and retaining or acquiring regional partners. Additional considerations are giving priority to youth organizations, supporting local non-profits and providing access for casual users

The historical use of a priority system has been intended to provide the fairest approach to meeting competing field needs. Its failing comes from its reactive as opposed to proactive approach in meeting customer needs. MHYSA has a plan to ensure customer satisfaction by:

- Setting annual usage needs for all use traditional and existing users
- Employing a flexible scheduling strategy
- Working in an open and collaborative way with all users
- Providing an online tools for field scheduling and reservations

4. Do you currently have agreements or memorandum of understanding conditioned on your receipt of the contract with the City with organizations interested in reserving the OSC fields? If so, for which fields, turf or grass, for how many hours, and at what hourly rates? Please provide copies.

The opportunity to have access to the Morgan Hill Outdoor Sports Center has produced a frenzy of interest that grows every day. MHYSA remains committed to retaining CYSA and bringing OVYSL into the alliance which affects our opportunities with other organizations. If they choose not to participate; MHYSA has received letters of interest from the following organizations that are interested in replacing their field usage and site management operations:

- Upper V. Management Group, Inc
- Nor Cal Soccer
- Mustang Soccer
- ZFootball National 4-on-4 Flag Football Tournament Tour
- MHUSD

All of these organizations have indicated sincere interested in operating one or more events at the OSC. Specific hours of usage have not been discussed. The rates will be at Year 1 and 2 levels. MHUSD will probably join forces with MHYSA as a Home Field Program member.

Upper V. Management Group has proposed a more comprehensive partnership where they support MHYSA in an advisory or consultancy capacity, provide technical expertise and help facilitate sponsorship.



In addition we have received a letter of interest from the Morgan Hill Sister City Committee for hosting an international tournament on the site.

Most importantly however is the opportunity for future growth beyond we already have. For example, despite the extensive use of the turf fields by CYSA and OVYSL, these two fields remain largely unused during week days and throughout the summer months. Working with MHUSD and other local schools provides an opportunity to increase week day usage between 3pm to 6pm as well as between the hours of 9am to 3pm for special events. Specific hours have not been discussed.

In addition to the organizations listed above we are currently in preliminary discussion with:

- NFL Players Associations (Camps and clinics)
- U.S. Club Soccer
- NFL FLAG Football Tournament Tours
- USA Football

5. Do you have a contingency plan if your proposal assumptions do not materialize (for example, if CYSA or other existing customers elect not to reserve the OSC)?

Our contingency plans are two-fold. The first is if CYSA and OVYSL pulls out of their current 2010/11 reservations and the second is if they choose not to reserve the fields.

Current indications are that OVYSL and CYSA intend to vacate the OSC once a decision is made to move the OSC to another operator. This represents 371 hours for CYSA and 600 hours for OVYSL on the turf fields. MHYSA has not confirmed their plans, but will immediately begin booking alternative permits to ensure that the revenue stream remains uninterrupted in case these rumors are confirmed. We expect that we have all CYSA and OVYSL turf hours replaced and the grass fields booked for the first six months of FY2010/11 by the end of April. If CYSA and OVYSL choose to keep their tentative field reservations, but not renew in January 2011 then MHYSA will begin booking the second half of the year instead.

A second part of our contingency planning involves establishing a line of credit with community banks such as Pinnacle, Heritage and South Valley National Bank. We are in the process of working with all three banks to set our line of credit with one or possibly all of these banks. This line of credit will ensure that MHYSA can manage the ebb and flow of day-to-day financial management.

6. Please discuss your local economic development strategy and steps you have taken to move this forward.



### **MORE KIDS IN MORE SPORTS**

We have shared our proposal with Morgan Hill Downtown Association, the Morgan Hill Chamber of Commerce, local community leaders such as Roger Knopf of Leadership Morgan Hill and Morgan Hill Rotary Club, Jeff Roth of South Valley National Bank, former Morgan Hill Mayor Dennis Kennedy, Anthony Goulart owner of Associated Concrete and Steven Stratton of Steven M. Stratton Insurance and Financial Services. These community leaders have contributed to and support the MHYSA proposal.

In addition we have shared our plans with local hotel association leaders David Dworkin and Keith Gapol as well as local business owners Rich and Rosie Bergin (Rosy's At The Beach), Debra Creighton (Huntington Station formerly Glory Days) and Troy Carson (Morgan Hill Bowl). While public support for our proposal varies among these parties, all have indicated a willingness to work with and/or support MHYSA should MHYSA obtain the OSC management contract.

Our economic development strategy is three fold:

- Work with community business leaders and associations to develop a comprehensive plan leveraging the value of the Outdoor Sports Center to drive economic development. These plans will involve at a minimum:
  - Working with Community Development to produce an information packet describing the vibrancy of our residential and business community due to the local control of and access to the OSC and other recreational facilities, our cooperative and enjoyable sports environment and the multitude of entertainment options Morgan Hill enjoys. This message will help Community Development facilitate residential and commercial growth.
  - Developing a comprehensive strategy with the Morgan Hill Chamber of Commerce and the Morgan Hill Downtown Association to leverage the OSC when promoting Morgan Hill retailers to other communities, event planners, tournament organizers and national organizations.
- Develop co-marketing strategies with the aforementioned businesses along with other retail merchants, restaurants, wineries and recreational oriented businesses, associations and youth organizations that direct tournament and event attendees to the downtown, northeast and southern districts. These efforts will at a minimum include:
  - On site, web site and social media advertising
  - Information collateral on all local retailers
  - Promotions and special offers for tournament attendees
  - Hotel packages that combines hotel, retail, restaurant and winery offers that direct tournament attendees towards local businesses as PART of their planning and attendance of their event.
- Continue to work with MHYSA members to create and execute mutually beneficially fundraising efforts.



## Morgan Hill Youth Sports Alliance



### **MORE KIDS IN MORE SPORTS**

7. Do you plan to make any improvements to the grass fields? If so, what are they and how do you plan to fund the improvements as of the date you assume responsibility for the OSC?
- While the grass fields are functional now, they clearly have been allowed to deteriorate over the past few years. MHYSA will develop a renovation plan that will improve the conditions of the entire facility. The first step will be a facility evaluation prior to the beginning of MHYSA management. The next steps will be through a negotiated approach agreed to by the City of Morgan Hill and MHYSA which will encompass:
    - Bringing the fields back to a superior condition
    - Ensuring continued warranty support for the turf fields
    - Defining a capital replacement strategy
    - Defining a capital improvement plan
    - Developing a fund raising strategy to support the facility plans
  - Our plan to handle the immediate grass field renovations will primarily through donations and community support. George Chiala has indicated interest in donating compost, Aaron Gill of Grass Farms volunteered to act as a grass consultant and Volunteer Morgan Hill will serve as a conduit for attracting volunteers. Upper V. Management has offered logistical and possibly financial support. Incremental costs will be absorbed as renovations take place.
8. How do you propose to fund the start-up of your operation as of the date you assume responsibility for the OSC?

Start up funding is the primary challenge MHYSA faces. This means start up operations will need to be creatively and conservatively managed. MHYSA plans to negotiate their lease, vendor and employee contracts along with site improvements and capital equipment purchases in a manner that defers most payments to later in the fiscal year. The uncertainty of the status of CYSA and OVYSI means that the MHYSA will have to move quickly to obtain reservations from Nor Cal Soccer, U.S. Club and other organizations to reserve and pay for fields. This requires cancelling the early reservations from these two organizations, identifying the now available hours to prospective users then booking the new reservations and collecting the rental fees. The remaining users will then be contacted to understand their payment status and time frames.

The only non-negotiable payables that MHYSA will incur will be for the water, electricity and insurance. MHYSA has the financial resources to pay these services for the first six months without income.

We are mainly encouraged by the breadth and depth of interest our proposal has generated. It would be inappropriate to discuss our competitive and partnership strategies at this time. It suffices to say that there are many, many organizations willing to partner with and support MHYSA in the operation of the OSC.



**Morgan Hill Youth Sports Alliance**



**MORE KIDS IN MORE SPORTS**

9. What start-up capital do you have in your bank account?

We have immediately available financial resources of \$110,000 that is comprised of \$10,000 in an SVNB account and start up investment of up to \$100,000 from local investors. The investment funds will be moved once the amount needed is defined.

In addition, the following “pros/cons” matrix will be provided to the PRC for your organization. The PRC would also like to see a written response to these.

Organization	Pros	Cons	MHYSA Response
<p><b><u>MHYSA</u></b>  (recommended)</p>	<ul style="list-style-type: none"> <li>• Well thought out, comprehensive business plan</li> <li>• Community based field use philosophy</li> <li>• Diverse facility use plan</li> <li>• Economic development goal</li> <li>• In-depth background research</li> <li>• Diverse revenue generation strategy</li> </ul>	<ul style="list-style-type: none"> <li>• No experience operating a public, recreation facility</li> <li>• Liberal three year pro-forma</li> <li>• Business start up based on volunteer leadership</li> <li>• Suggested increasing field rates</li> </ul>	

**Con: No experience operating a public, recreation facility**

The addition of Upper V to our team mitigates this risk, and builds on the community approach. The coalition of MHYSA, NorCal Soccer, Earthquakes, Grass Farm to name a few members promises to be an exciting proposition.

**Con: Liberal three year pro-forma**

The math is solid, the assumptions conservative and our projections based on national industry standards

**Con: Business start up based on volunteer leadership**

MHYSA Directors were selected for 3 year terms based on professional qualifications, personal commitment and lack of encumbrance or potential conflict of interest through their leadership roles in similar or associated organizations.

**Con: Suggested increasing field rates**

Increasing rates are appropriate. We will offset impact to local organizations through the Home Field Program. Regional organizations will have the opportunity to pass cost on.

# EXHIBIT E



May 6, 2010

## City Council Questions MHYSA Response

### ***1. What are the City's risks associated with your proposal to operate and maintain the Outdoor Sports Center? What are your plans to manage the risk?***

The risks for the city fall into two key categories: financial and facilities management. In terms of financial risk, the two main risks are:

- 1) CYSA decides to withdraw use of the facilities
- 2) MHYSA projections are overly optimistic

The MHYSA proposal and pro forma stands as submitted almost 60 days ago. In order to address both of these potential risks, we have provided an additional pro forma business plan, (See attached). While we are confident in our initial projections, along with the industry data and assumptions that underlie them, we have taken steps to mitigate any City concerns or risk by providing this highly conservative "worst case" scenario, which demonstrates that even under the worst circumstances, MHYSA is will be able to maintain a solid financial position.

In this scenario, CYSA abruptly ends any use of the facilities, reducing revenue dramatically and removing all their equipment. We have already demonstrated there is interest from many organizations to acquire CYSA's time and making up that lost revenue, however, it is inherently impossible for them to make that commitment (or us to accept it) until a contract is awarded. So for the purposes of this worst case scenario we have made the assumption that not only has CYSA ended use of the facilities, but also made the highly unlikely assumption that MHYSA is unable to replace any of it within the first year. As you can see in the pro forma, because many of the costs of operation are variable, not only does revenue decrease dramatically, but our expenses decrease as well. This would take our first year position from a positive variance of \$56,881 to just under break even amount of -\$24,998, but given the combination of our Bank LOC and private availability of funds, our financial position would remain sound and not put the City in risk whatsoever.

The second concern would be that our revenue projections are overly aggressive. It is worth noting here that both our expense and revenue projections are highly detailed and based on known industry standards and costs. The single area which is not as easily predictable is sponsorship, but even our initial projections did not reflect significant income from this area until year



## Morgan Hill Youth Sports Alliance



### **MORE KIDS IN MORE SPORTS**

three. As you can see in the attached “worst case” pro forma, while our positive variance is significantly reduced, we run no risk of negative cash flow due to lack of sponsorship funds.

Thus – the City can be assured that even if CYSA leaves and MHYSA significantly under-performs our sponsorship projections, we remain financially strong and sound.

Another area of risk to the City is that the fields and facilities are not maintained adequately. As we have identified and contacted alternative field user groups if CYSA pulls out, we have also made initial preparations with local landscapers, sports turf and grass maintenance professionals from Sports Turf Management Association (STMA) and the California Landscaping Contractors Association (CLCA). These consultants have offered their expertise pro bono to assist with the development of an annual maintenance program. Local landscape companies will receive a detail statement of work they can bid on. There currently three companies who have provided preliminary estimates. These estimates are reflected in our pro forma.

***2. Please explain the economic impact your proposal will have on the Morgan Hill community from July 1, 2010 through June 30, 2011. Include number of weekend dates that regional events will be held and include estimated number of fields used, teams, and spectators.***

**Scenario 1:** CYSA stays and no additional users are found – We expect the CYSA response to accurately define the impact and defer to their data. Not having access to their actual data, we have estimated their volume to at least be equivalent to the Nor Cal/Mustang even though declined comparatively declined 25% in recent years. Nor Cal/CYSA data available upon request.

- Total Weekend Dates - 30
- Number of Fields - 360
- Teams – 1,427
- Spectators – 45,795

In the event that CYSA stays, there are additional events identified which provide incremental revenue opportunities. These events are:

- Nor Cal Soccer Play Date on August 22<sup>nd</sup>
- Mustang Soccer MLS Academy September 3<sup>rd</sup> through 6<sup>th</sup>
- CVSL Magic Cup Tournaments on July 31<sup>st</sup>/August 1<sup>st</sup> and August 28<sup>th</sup>/29<sup>th</sup> (Currently identified as a CYSA event, they would stay.)



## Morgan Hill Youth Sports Alliance



**MORE KIDS IN MORE SPORTS**

These events improve the local economic impact realized by MHYSA's operation by allowing non-CYSA organizations to use the OSC. The indicators are:

- Total Weekend Dates - 7
- Number of Fields - 84
- Teams - 256
- Spectators – 10,123

**Scenario 2:** CYSA pulls out leaving a gap in the first six months usage and requiring replacement users be found for the second six month of 2010/11. In addition to the non-CYSA events listed above, there are requests for Nor Cal State Cup events, MLS events and other national tours that can replace historical CYSA usage.

- Total Weekend Dates - 34
- Number of Fields - 408
- Teams – 1,567
- Spectators – 48,795

The final favorable economic impact comes from MHYSA's co-marketing and collaboration strategies. Co-marketing with local associations, businesses and hotels will have a net multiplier effect on revenue realized. Our collaboration strategy will allow business partners to reduce costs, build business-to-business networks and create synergies between community sports organization.

**3. How does your proposal enhance community access to the entire complex? For the period July 1, 2010 through June 30, 2011, please differentiate between the number of hours Morgan Hill teams will have access to:**

- Synthetic turf fields on weekdays and proposed rate** (Local Rate=\$10/hr)  
There will be no change to current policies or rates and minimal impact on Morgan Hill teams' usage. The process will utilize the collaborative approach recently adopted by the city parks and recreation staff. This will ensure an appropriate balance of access for all community groups. We expect an overall increase in facility access and utilization local teams.
- Synthetic turf fields on weekends and proposed rate** (Local Rate=\$10/hr)  
Use best scheduling practices to increase local leagues access to facility while meeting regional customers' requirements.



## Morgan Hill Youth Sports Alliance



**MORE KIDS IN MORE SPORTS**

c. **Grass fields on weekdays and proposed rate** (Local Rate=\$12/hr)

As previously stated, we will open grass fields to meet local needs during the week. We do not expect the need to be great enough to use every field every day. Furthermore, daily use will be primarily during the 3pm to sunset hours. Still, these fields should adequate to meet local teams' needs.

d. **Grass fields on weekends and proposed rate** (Local Rate=\$12/hr)

The MHYSA proposed hourly rate will open field availability to local leagues. Regional operators will release fields earlier if not charged a daily rate. This approach will lead to a culture shift in the way these tournaments are scheduled. Additional opportunity can be introduced if local teams pursue a similar collaborative approach when scheduling the fields when regional users are not.

Costs concerns under the new rate will be mitigated though the Home Field Program. The initial arrangement with Pop Warner Raiders gives them significant savings in the first year over their current field rental expense. Orchard Valley Youth Soccer League (OVYSL) has indicated their costs are approximately \$60,000 annually. MHYSA will work with OVYSL to reduce their annual costs while moving them off the sub par fields they play on today.

The Home Field Program also will allow alliance members to develop fundraising and cost reduction strategies providing further assistance to local teams.

4. **How do you respond to the Council's request that CYSA and MHYSA work together? Please summarize your interactions subsequent to the Council meeting of May 19, if you have a specific proposal, please provide the details below and forward to the other organization when you submit your responses to the City?**

Our verbal proposal to CYSA on April 26<sup>th</sup> is contained in the following outline. We will formally send CYSA this information in the next 24 hours.

Proposal for working relationship between CYSA and MHYSA

1. Looking for long term arrangement
2. CYSA North and affiliates retain priority status among regional users
3. Rates and permits honored for July 1<sup>st</sup> to December 31<sup>st</sup>, 2010
4. CYSA North and affiliates reserve OSC directly with MHYSA
5. MHYSA interested in rent back arrangement for on site equipment



## Morgan Hill Youth Sports Alliance



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Summary of communication (Email thread copies available upon request)

- March 8<sup>th</sup> Jeff asks Dave Mann if CYSA would work with winner of proposal if CYSA not chosen. Answer was affirmative.
- April 6<sup>th</sup> Dave Payne emails Jack Salvamini to open dialogue on CYSA/OVYSL/MHYSA partnership.
- April 15<sup>th</sup> Rodney Robinson contacts Jeff Dixon to discuss options for working together. Main topic was MHYSA proposal. Dave Payne calls Dave Mann. No Response
- April 22<sup>nd</sup> Dave Payne and Rodney Robinson exchange emails regarding CYSA District 2 using OSC. Dave Mann provides final reply that CYSA District 2 will not commit until contract is signed with city and MHYSA. No further contact with Robinson
- April 23<sup>rd</sup> Kathi Killion and Jeff Dixon schedule Monday meeting between CYSA staff and MHYSA.
- April 26<sup>th</sup> CYSA (Dave, Kathi and Margaret) and MHYSA (Jeff, Rui) meeting in San Jose. Meeting results emailed to Steve R. Proposal topics shown below discussed. Dave Mann commits to provide field dates by the following week.
- May 3<sup>rd</sup> CYSA (Dave and Margaret) and MHYSA (Jeff) meet with Steve Rymer to find common ground. CYSA reiterates position of waiting on contract. MHYSA shares priorities.
- May 7<sup>th</sup> Proposal outline sent to Dave Mann by Jeff Dixon

**5. Please clearly explain your Board of Directors' structure, including the number of directors, how directors are elected/appointed, and any local presence on the Board.**

Our Board of Directors consists entirely of unpaid volunteers that meet our three key criteria:

- 1)
- 2) Morgan Hill citizens and community members with the best interests of our community at heart
- 3) Passionate supporters of youth sports
- 4) Specialized expertise in relevant fields (management, marketing, finance, etc)



## Morgan Hill Youth Sports Alliance



**MORE KIDS IN MORE SPORTS**

Our Board has been expanded to seven members fulfilling three year terms in the following organizational positions. Each Board Candidate is voted on/approved by the existing Board of Directors:

1. President/Executive Director:
2. Vice President
3. Secretary/Treasurer
4. Marketing and Sales Director
5. Business Development Director
6. Community Advocacy Director
7. Advisory Council\* President

\*In addition to our governing Board of Directors, we have established an Advisory Council comprised of representatives of local youth sports organizations to ensure broad representation. The President of the Advisory Council is one of the seven voting members of our Board of Directors.

Board candidates must be endorsed by Advisory Council and will be selected by Board. Board members cannot have conflict of interest with OSC users or MHSYA members.



# Morgan Hill Youth Sports Alliance



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## Attachment A Worst Case Scenario Pro Forma

<b>OSC Semi-annual Pro Forma</b>	<b>First 6 mos</b>	<b>Last 6 mos</b>
	7/1/2010 to 12/31/2010	1/1/2011 to 6/30/2011
<b>Revenue sources</b>		
Field Rentals	\$109,595	\$167,851
Concessions (Snack Bar, Parking, etc.)	\$56,791	\$273,211
Camps, Clinics and Events	\$12,500	\$1,500
Advertising Program	\$3,700	\$4,300
Naming Rights (Complex, Each Field, etc)	\$0	\$0
Sponsorship	\$0	\$5,000
Grants and donations	\$0	\$0
<b>Gross Revenue</b>	<b>\$182,586</b>	<b>\$451,862</b>
<b>Operations Expenses</b>		
Facility Lease	\$10,000	\$40,000
Facility Revenue Sharing	\$0	\$0
Utilities	\$20,582	\$20,590
Repair & Maintenance	\$86,988	\$86,475
Event preparations and clean up	\$26,576	\$86,366
Reservation services (non payroll)	\$0	\$0
Member management (non payroll)	\$0	\$0
City Liaison	\$0	\$0
Inspections	\$270	\$0
Service Operation Expenses	\$5,625	\$750
Staff	\$25,035	\$59,125
TAXES	\$0	\$0
G&A	\$5,007	\$11,825
<b>Net Expense</b>	<b>\$180,083</b>	<b>\$305,131</b>
<b>Capital Needs</b>		
Replacement and Additions	\$0	\$0
CYSA Transition	\$27,500	\$0
Capital Needs	\$0	\$0
Improvements	\$0	\$0
<b>TOTAL Capital</b>	<b>\$27,500</b>	<b>\$0</b>
<b>Operational Variance</b>	<b>-\$24,998</b>	<b>\$146,731</b>



**Morgan Hill Youth Sports Alliance**



**MORE KIDS IN MORE SPORTS**

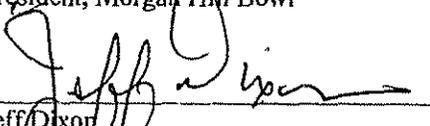
**LINE OF CREDIT AGREEMENT**

This LINE OF CREDIT AGREEMENT is made as of the 23<sup>rd</sup> day of June, 2010 (The "Line Of Credit Agreement" by and among Morgan Hill Youth Sports Alliance, Inc., corporation (MHYSA) and Troy Carson, individual (CARSON). A LINE OF CREDIT is hereby established in the amount of one hundred thousand dollars (\$100,000) for the benefit of MHYSA for the purpose of managing Outdoor Sports Center (OSC) Cash Flow during start up operations through fiscal year 2010/11.

1. CARSON hereby agrees to establish \$100,000 line of credit for access by MHYSA available for 1 year from July 1, 2010 until June 30, 2011.
2. MHYSA agrees to pay an annual interest rate of 6% on the total amount withdrawn and provide a 68"x68" advertising space at the front grass field entrance at no charge for one year.
3. MHYSA will request the funds through a Letter of Request stating the dollar amount required.
4. CARSON will provide funds requested within 48 hours of receiving the Letter of Request in the form of check or money order.
5. Interest is applied to withdrawn amount upon delivery of funds upon issuance and delivery of the check or money order to an MHYSA representative.
6. Amounts can be withdrawn as follows:
  - First Draw \$10,000
  - Minimum Draw \$5,000
7. MHYSA agrees to pay back all borrowed funds with interest immediately if OSC contract is concluded before June 30, 2011.
8. MHYSA may pay CARSON part or all of funds loaned at any time during the contract period.
9. Interest shall be calculated for the period of time the monies were held.
10. Total payment is due on July 1, 2011 for all withdrawals and interest.
11. In the event MHYSA becomes unable to pay back CARSON, Jeff Dixon will assume the AGREEMENT becoming responsible all existing debt and interest.

  
 \_\_\_\_\_  
 Troy Carson  
 President, Morgan Hill Bowl

Date: 6/28/10

  
 \_\_\_\_\_  
 Jeff Dixon  
 President, Morgan Hill Youth Sports Alliance, Inc.

Date: 6/28/10



# CERTIFICATE OF LIABILITY INSURANCE

OP ID MO  
MORGANH

DATE (MM/DD/YYYY)

07/02/10

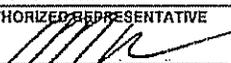
<b>PRODUCER</b> (WC) Heffernan Insurance Brkrs 1350 Carlbak Ave, Suite 200 Walnut Creek CA 94596 Phone: 925-934-8500 Fax: 925-934-8278	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Morgan Hill Youth Sports Alliance, Inc 16755 Jackson Oaks Dr Morgan Hill CA 95037	INSURER A: <b>Scottsdale Insurance Co.</b>	<b>41297</b>
	INSURER B: <b>Mount Vernon Fire Insurance Co</b>	
	INSURER C: <b>STATE COMPENSATION INS. FUND</b>	<b>35076</b>
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPS1213983	07/01/10	07/01/11	EACH OCCURRENCE	\$ 1000000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100000
						MED EXP (Any one person)	\$ 5000
						PERSONAL & ADV INJURY	\$ 1000000
						GENERAL AGGREGATE	\$ 2000000
						PRODUCTS - COMPOP AGG	\$ 2000000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS	CPS1213983 CPS1213983	07/01/10 07/01/10	07/01/11 07/01/11	COMBINED SINGLE LIMIT (Ea accident)	\$ 1000000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below	WSI0043652-01	07/01/10	07/01/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$ 1000000
						E.L. DISEASE - EA EMPLOYEE	\$ 1000000
						E.L. DISEASE - POLICY LIMIT	\$ 1000000
B		OTHER <b>DIRECTORS &amp; OFFICERS</b>	DO1182942	07/01/10	07/01/11		1000000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 The City of Morgan Hill, its' elected officials, officers, employees, volunteers and representatives are added as additional insured with respect to liability.

<b>CERTIFICATE HOLDER</b>  City of Morgan Hill 17555 Peak Ave Morgan Hill CA 95037-4128	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - STATE OR GOVERNMENTAL  
AGENCY OR SUBDIVISION OR POLITICAL  
SUBDIVISION - PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:  
CITY OF MORGAN HILL  
17555 PEAK AVENUE  
MORGAN HILL, CA 95037

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II - Who Is An Insured is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.
2. This insurance does not apply to:
  - a. "Bodily Injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
  - b. "Bodily Injury" or "property damage" included within the "products-completed operations hazard".

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

<p><b>Name Of Person Or Organization:</b> CITY OF MORGAN HILL 17555 PEAK AVENUE MORGAN HILL, CA 95037</p>
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<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>
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The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.