

**CITY OF MERCED
MCCOMBS YOUTH CENTER BUILDING**

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter called "Lessor") and the Boys and Girls Club of Merced, a California Corporation, whose address of record is 615 West 15th Street, Merced, California 95340 (hereinafter called "Lessee").

RECITALS

WHEREAS, the Lessor is the owner of the McCombs Youth Center building located at 615 West 15th Street in the City of Merced, the County of Merced and the State of California; and

WHEREAS, the Lessee is a Nonprofit Youth Organization that is recognized as tax-exempt under Section 501, subdivision (c)(3) of the Internal Revenue Code; and

WHEREAS, the Lessee desires to lease the McCombs Youth Center Building for the purpose of conducting public youth related programs and activities, as described in part and in further detail in Exhibit "C," attached hereto, which is incorporated herein by reference.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Lessor and Lessee do hereby agree as follows:

1. DEFINITION OF FACILITY. The leased premises consist of the certain building known as the McCombs Youth Center Building which is located at 615 West 15th Street, Merced, California, and which is more fully described in Exhibits "A" and "B" attached hereto, both incorporated herein by reference. Said leased premises are hereinafter referred to as the "Facility."

2. FACILITY. The Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein, the Facility which is situated in the City of Merced, County of Merced, State of California, together with all improvements thereon and appurtenances thereto, and

subject to the conditions set forth herein, the continuous and uninterrupted right of Lessee and its officers, employees, business invitees, customers and patrons, of access to and from Facility.

3. TERM. The term of this Lease shall be for a period of three (3) years,(said term hereinafter called the "Lease Term"). The Lease Term and the rent shall commence upon mutual execution of this Lease, and shall continue for thirty-six (36) months thereafter.

In addition, Lessor and Lessee agree to discuss a three (3) year extension of the Term of this Lease with said discussion commencing twelve (12) months prior to expiration of the initial Lease Term.

4. RENT. In exchange for Lessee's public youth related programs and activities at the Facility, the Facility is leased to Lessee without any monetary payment to Lessor, subject to the terms and conditions set forth in the Lease.

5. USE. During the term of this Lease, and any renewal hereof, Lessee shall use the Facility as a public Youth Center, as set forth in Exhibit "C" attached hereto.

Lessee is guaranteed an annual minimum of 1,040 hours of use from 3:00 p.m. to 7:00 p.m. Monday through Friday for Boys and Girls Club programming as required by their national charter. Lessor is guaranteed an annual minimum of 400 hours a year, which may be used Monday through Friday and as needed on Saturday and Sunday for the operation of its recreational basketball league(s), see Exhibit "D" attached hereto. In no event shall an adult event displace a previously scheduled youth activity.

Any other use of the facility by Lessor or Lessee will be subject to mutual agreement. Lessee and Lessor shall maintain a joint online calendar showing their respective reservations and scheduled uses of the Facility. Both shall regularly update the joint calendar in a timely manner with any cancellations or changes. Lessor shall be responsible for any costs associated with the online calendar.

Lessee shall not commit or permit any act or acts in or on the Facility or use the Facility or suffer it to be used in any manner which will cause a cancellation of any fire, liability, or other insurance policy covering the Facility or any part thereof.

6. REPAIRS, MAINTENANCE AND UTILITIES.

a. Lessor shall provide and pay for building maintenance and repair of the Facility, including, but not limited to, the structure, exterior roof, and exterior side walls.

b. Lessee shall pay total cost of water, sewer, electricity and other utility services for the exterior and interior area of the Facility, as well as janitorial and landscaping services for the Facility.

c. Lessee shall interview and hire janitorial and landscaping service contractors who shall be approved by Lessee's Board of Directors, provided, however, that Lessee may only interview and hire a landscaping service contractor from a list of qualified candidates that are preapproved by Lessor.

d. Commencing July 1, 2018, through June 30, 2019, Lessor shall reimburse Lessee the sum of up to Two Thousand Nine Hundred Sixteen Dollars and Sixty-Six Cents (\$2,916.66) per month to offset Lessee's repairs, maintenance and utility expenses. Lessee shall provide to Lessor full documentation of their payment of any and all expenses relating to monthly repairs, maintenance, electricity, natural gas, alarm services, landscaping services, janitorial service, and City of Merced utility expenses for which Lessor is providing reimbursement to Lessee.

7. ALTERATIONS AND IMPROVEMENTS. Lessee shall have the right to make alterations and improvements to the Facility subject to the following terms and conditions:

a. No alterations or improvements made by Lessee shall in any way impair the structural stability of the Facility or diminish the value of the property;

b. Any and all alterations or improvements shall be first approved in writing by the Lessor, but said approval shall not be unreasonably withheld by Lessor;

c. Lessee shall keep the Facility and every part of the Facility free and clear of any mechanics' liens or materialmen's liens arising out of the construction of any such alterations or improvements.

d. All alterations and improvements made to the Facility shall become the property of the Lessor and shall remain on and be surrendered with the Facility at the expiration or sooner termination of this Lease or any renewal or extension of this Lease.

e. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination of this Lease or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Facility caused by Lessee's removal of its personal property, trade fixtures, or equipment, but Lessee shall have no obligation to remove such items from the Facility at any time.

8. **MECHANICS LIENS.** The Lessor and Lessee agree to keep the Facility free from any and all claims of persons or firms or corporations who, at the request of Lessor or Lessee or their employees or contractor, furnish labor or materials to or for the benefit of the Facility and Lessor and Lessee further agree to hold each other harmless from any and all claims.

9. **DAMAGE/DESTRUCTION.** If the Facility is damaged or destroyed in whole or in part by fire or other casualty, Lessor shall repair and restore the Facility to a good tenantable condition. All rent shall wholly abate in case the entire Facility is untenable, or shall abate pro rata for the portion rendered untenable in case a part only is untenable, until the Facility is restored to a tenantable condition. Lessor shall commence and complete all work required to be done under this paragraph with reasonable promptness and diligence, but Lessor shall not be in default in any required performance if delay in performance results from fire, flood, storm, labor disputes, shortage of materials or transportation facilities, governmental regulations, war, act of God or other causes beyond Lessor's reasonable control. If Lessor shall not commence such repair or restoration within thirty (30) days after such damage or destruction shall occur or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessor or Lessee may thereafter, at its option, terminate this Lease by giving written notice of its election to do so at any time prior to the commencement of such repair or restoration. In that event, this Lease shall terminate as of the date such notice is received by Lessor.

Notwithstanding any other provisions of this section, Lessee shall be responsible for repair and restoration of Lessee's trade fixtures and personal property located in or on the Facility in the event of damage or destruction of said property.

10. FIRE INSURANCE. Lessee shall maintain fire insurance in full force and effect during the Lease Term and any renewal hereof, which shall include coverage against loss or damage to the Facility in the amount of not less than ninety (90) percent of its full insurable value, against perils included within the classifications of fire, extended coverage, vandalism, malicious mischief and special extended perils.

11. INSURANCE. Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with Lessee's operation and use of the leased premises and Facility. The cost of such insurance shall be borne by the Lessee. The insurance coverage shall be at least as broad as:

- (1) Insurance Services Office ("ISO") Commercial General Liability coverage (occurrence form CG 00 01);
- (2) Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance;
- (3) Property insurance against all risks of loss to any tenant improvements or betterments.

The Lessee shall maintain limits no less than:

General Liability:

- (1) \$1 million per occurrence for bodily injury, personal injury, death (including accidental death) and property damage. In addition, general liability insurance of not less than \$2 million for bodily injury, personal injury or death (including accidental death) of two or more persons as a result of any one accident or incident; and,
- (2) \$500,000.00 for damage to or destruction of any property of others;

- (3) Property insurance for full replacement cost with no coinsurance penalty provision.

The insurance shall:

- (1) Insure against all liability of Lessee and its authorized representatives arising out of or in connection with Lessee's use or occupancy of the Facility.
- (2) Insure performance by Lessee of the indemnity provisions of paragraph 25.
- (3) Provide that Lessor be named as an additional insured and contain cross-liability endorsements. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The City will be named as an additional insured using ISO form CG 20 10 11 85 the same form with an edition date no later than 1990.
- (4) Be considered by the parties hereto as the primary insurance.
- (5) Contain an endorsement requiring a minimum of thirty (30) days written notice to the City Clerk of Lessor from the insurance company before cancellation or change in the coverage, scope, or amount of any policy. The mailing address for the City Clerk's Office is:

City of Merced Attn: City Clerk
678 West 18th Street
Merced, California 95340

The Lessee shall furnish a Certificate of Insurance with the City Clerk evidencing the aforesaid coverage prior to the commencement of the Lease Term. Lessee shall also annually furnish copies of Certificates of Insurance to the City Clerk upon renewal of the insurance required by this section throughout the duration of the Lease Term or any extension thereof.

Lessee agrees that, except where prohibited by law, any workers' compensation insurance policy of Lessee covering operations on the Facility shall include a waiver of any right or subrogation which any insurer of the Lessee might

otherwise acquire against the Lessor by virtue of payment of any loss under such insurance.

Notwithstanding the above, it is further agreed to between the parties hereto that the limits of insurance coverage specified above are the minimum amounts required and shall be subject to revision by the Lessor from time to time if a need is indicated. The Lessor hereby agrees to act reasonably at all times with respect to the provisions of this paragraph.

12. **WAIVER OF SUBROGATION.** Lessor and Lessee and all parties claiming under or through them hereby mutually release and discharge each other, any other tenants or occupants of the Facility, and the officers, employees, agents, representatives, customers and business visitors of Lessor or Lessee or such other tenants or occupants, from all claims, losses and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Facility, even if caused by the fault or negligence of a release party. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

13. **EXTERIOR SIGNS.** Any and all signs or advertisements of any nature extending into, on, or located over the Facility, shall conform to all City of Merced, California, zoning and building codes and shall be approved by Lessor in writing prior to construction, use, or erection thereof. Approval by Lessor shall not be unreasonably withheld, as to location, graphics type, content, architectural or engineering standards.

14. **TAXES.** The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this Lease, the private party may be subjected to payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee or the Facility, or any interest therein, including, but not limited to, buildings, structures, fixtures, equipment or other property installed, or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against Facility or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment or fee in the manner authorized by law.

The obligation to make any payments pursuant to this Section shall survive the expiration of the term of this Lease, provided Lessee's obligation arose out of or is equitably allocable to the period covered by this Lease.

Unless otherwise provided by this Section, the Lessee shall pay the Lessor any other taxes, assessments, or fees, which the Lessor may become obligated to pay in connection with the ownership or maintenance of the Facility.

15. ASSIGNMENT AND SUBLETTING. Lessee shall not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Facility, for a longer period than six (6) months without the prior written consent of Lessor. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrance, assignment, transfer, or subletting in violation of the requirements hereof, whether it be voluntary or involuntary, by operation of law, or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

The consent of Lessor to any assignment of Lessee's interest in this Lease or the subletting by Lessee of the Facility, shall not be unreasonably withheld or delayed.

16. TERMINATION OF LEASE.

a. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Facility, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease on ninety (90) days' prior written notice.

b. It is understood and agreed by the parties hereto that Lessor and its successors in interest shall and hereby do reserve the right to cancel or terminate this Lease prior to expiration of the term or renewed or extended term hereof as follows:

- (1) If the Lessee is in default or breach of this Lease, as specified in Section 18 of this Lease or as otherwise provided by law; or
- (2) Upon sixty (60) days' notice without cause.

17. COMPLIANCE WITH LAWS. During the term of this Lease and any renewals hereof, Lessee shall promptly execute and comply with all Federal, State, County, and City statutes, ordinances, regulations, laws, or other requirements applicable to the occupancy of the Facility, and the operation of the Facility as a youth center.

18. DEFAULT/REMEDIES – LESSEE.

The occurrence of any one or more of the following events constitutes a material default and breach of this Lease by Lessee:

- a. The failure by Lessee to make any payment required to be made by Lessee hereunder, as and when due, where the failure is continuous for a period of twenty (20) days after written notice thereof from Lessor to Lessee.
- b. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, other than those described in Subsection (a), of this section (18), where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.
- c. The making by Lessee of any general assignment, or general arrangement for the benefit of creditors.
- d. The filing by Lessee of a petition to have Lessee adjudged as bankrupt.
- e. The judicial declaration of Lessee as bankrupt.
- f. The appointment of a trustee or receiver to take possession of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if possession is not restored within thirty (30) days.
- g. The attachment, execution or other judicial seizure of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if the seizure is not discharged within thirty (30) days.

In the event of any such default or breach with the exception of bankruptcy or receivership, by Lessee, Lessor may, after giving written notice as provided above, pursue those remedies available to Lessor under the laws or judicial decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate.

If Lessee breaches this Lease or is in default, as provided above, the Lessor may terminate this Lease upon written notice as provided herein. On such termination, the Lessor may recover from Lessee:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been unreasonably avoided;
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this Lease, or which in the ordinary course of things would likely to result therefrom.

The "worth at the time of award" of the amounts referred to in Subsections (i) and (ii) hereinabove is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to in paragraph (iii) of this subsection is computed by discounting such amount at the legal rate of interest.

Even though Lessee breaches this Lease or is in default, as provided above, this Lease continues in effect for so long as the Lessor does not terminate Lessee's right of possession; and the Lessor may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease, unless the breach by Lessee constitutes a breach and abandonment of the Lease, in which case the Lessor may enforce all its rights and remedies except its right to recover rent as it becomes due.

For the purposes of this Lease, acts of maintenance or preservation or efforts to relet the Facility do not constitute a termination of Lessee's right to possession.

The rights of the Lessor under this Lease shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law. Nothing in this Lease affects the right of the Lessor to equitable relief where such relief is appropriate.

Nothing in this Lease affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer. If Lessor brings an action in unlawful detainer, and possession of the property is no longer an issue because possession of the property is delivered to Lessor before trial or, if there is no trial, before judgment is entered, unless Lessor amends the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an unlawful detainer, forcible entry, or forcible detainer action as described hereinabove does not affect Lessor's right to bring a separate action for relief on termination, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which claim for damages was made and determined on the merits in the previous action.

Efforts by the Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive the Lessor's right to recover damages under this section.

Nothing in this section affects the right of the Lessor to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damage as provided in Section 25 of this Lease.

19. DEFAULT/REMEDIES – LESSOR.

Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor commences performance within the thirty (30) day period and thereafter diligently completes performance.

If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may, after giving notice as provided above, elect to terminate this Lease upon giving thirty (30) days' written notice to Lessor of its intention to do so. In that event, this Lease

shall terminate upon the date specified in the notice, unless Lessor has meanwhile cured the default. The foregoing shall be Lessee's sole remedy in the event of a breach by Lessor.

20. CONDEMNATION. If all of the Facility or any portion thereof is taken under the power of eminent domain, sold under the threat of the exercise of said power, or disposed of to satisfy federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

Any award or payment made upon condemnation of all or any part of the Facility shall be the property of Lessor, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixtures or removable personal property.

21. SEVERABILITY. No waiver of any breach of any covenant, condition or stipulation hereunder shall be taken to be a waiver of any succeeding breach of the same covenant, condition or stipulation.

22. BINDING EFFECT. This Lease shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successors and assigns.

23. ASSUMPTION BY NEW OWNER. If the City of Merced transfers any interest in the Facility to any other party or entity, this Lease shall remain in full force and effect, with the new owner assuming the role of Lessor with all the rights and duties specified in this Lease.

24. SURRENDER. Lessee agrees to take good care of the Facility and to commit no waste, and suffer no injury to be done to the same, and to return the possession of the same to Lessor at the expiration of the term, in as good condition as at the commencement of this Lease, normal wear and tear, unavoidable accidents and damage by casualty excepted.

If Lessee fails to surrender the Facility upon the expiration or termination of this Lease, Lessee shall indemnify and hold the Lessor harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

25. INDEMNITY. Lessee shall indemnify, defend (with legal counsel selected by Lessor) and hold harmless, Lessor and its officers, employees and agents from any and all claims or demands, actions, damages, costs and expenses for injuries to persons or property arising out of the negligence or improper acts or omissions of Lessee, its agents, officers or employees which are connected with or incident to Lessee's operations, use or occupancy at or of the Facility or Lessee's sublease of the Facility, or occurring on the Facility during the term of this Lease or any time of occupancy of the Facility by Lessee and/or Lessee's sublessee, including claims, liabilities, and actions based upon nuisance or inverse condemnation. Upon demand from Lessor, Lessee shall, at its own cost and expense, indemnify, protect, defend (with legal counsel selected by Lessor), and hold harmless Lessor and its officers, employees, and agents against any and all such liabilities, claims, demands, actions, losses, damages, and costs. It is understood and agreed that the duty of Lessee to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lessor of insurance certificates and endorsements required under this Lease does not relieve Lessee from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Lease and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Lease, Lessee acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

26. COVENANTS AGAINST DISCRIMINATION. The Lessee agrees for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that any deed or deeds shall contain the following covenants.

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, religion, sex, disability, marital status or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Facility herein leased, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, sublessees, subtenants or vendees in the Facility herein leased.”

27. NOTICES. All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or received by mail, and shall be personally delivered or mailed by certified mail, return receipt requested, with postage and fees paid, as follows:

Lessor: City of Merced
c/o City Manager
678 West 18th Street
Merced, CA 95340

Copy to: City Attorney
City of Merced
678 West 18th Street
Merced, CA 95340

Lessee: Boys and Girls Clubs of Merced County, Inc.
P.O. Box 470
Merced, CA 95341

28. ENTIRE AGREEMENT. All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease which contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

29. VALUE. There is in-kind value to the lease of the McCombs Youth Center, a 17,405 square foot building with office, activity rooms, a catering kitchen, and a 7,400 square foot high school sized gymnasium, the only gym currently in a City-owned park facility. In 2018, the lowest lease rate of a City-owned facility in Downtown Merced was \$1.25 per square foot for the Bell Station and the Transpo Center. The Economic Development Department for the City of Merced indicates that in the year 2018, there were some private properties in Downtown Merced available for lease without utilities for \$1.15 per square foot. Based on those estimates, an approximate in-kind value of the lease of the McCombs Youth Center during the year 2018 would be in the range of \$240,189.00 to \$261,075.00 per year.

30. RECORDS. It is understood and agreed that all files, studies, financial records, computer records, data and other papers, etc., in possession of the Lessee relating to the matters covered by this Lease shall be the property of the

Lessor and Lessee agrees to deliver same to the Lessor upon request or upon any termination of this Lease. Lessee shall also prepare any reports regarding expenditures and performance required by the Lessor.

The Lessee shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services or expenditure or disbursement charges to the Lessor for a minimum of three (3) years, or for any longer period as required by law, from the date of final payment. Any records or documents required to be maintained shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Lessor.

31. **COMMUNICATION.** In an effort to foster open communications, Lessee's staff and Lessor's staff will hold regular meetings to discuss operations and items of mutual concern. Those meetings will be held at least every other month.

In addition, the meeting schedules and agendas for the Merced City Council and the Merced City Recreation and Parks Commission are posted on Lessor's website. These documents can be emailed to Lessee if they register for an electronic subscription of these documents on the City's website. To keep Lessor informed about activities at the Boys and Girls Club, Lessee shall provide copy of the Director's monthly and annual reports, and Lessee shall make a quarterly report of the Boys and Girls Club activities to the Merced City Council.

32. **CONTRACT REVIEW.** Throughout the term of this Lease, in the month of December of each year of the Lease Term, Lessor's staff and the staff of Lessee will meet to discuss the Lease with the Lessee to determine if there are any changes or modifications that the parties believe should be made. If there are proposed changes, they can be brought before the City Council prior to the start of the new fiscal year.

33. **USE OF CITY NAME AND LOGO.** All notices, pamphlets, press releases, research reports, and similar documents prepared and released by Lessee shall include the following statements: "The Boys and Girls Club is a partner with the City of Merced" or "This activity is funded in part by the City of Merced under a Contract with the City of Merced." The website for the Boys and Girls Club shall include the City logo when possible.

34. MISCELLANEOUS.

(a) Attachments, Headings, Terms. All attachments referred to herein are hereby incorporated by reference into this Lease. The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. The work or words enclosed in quotation marks shall be construed as defined terms for purposes of this Agreement. The terms "Lessor" and "Lessee" shall be construed to mean, when required by the context, the directors, officers, employees, invitees, contractors, materialmen, servants and agents of Lessor and Lessee.

(b) Attorney's Fees. If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by losing party as fixed by the court.

(c) Execution and Delivery. This Lease shall not be binding nor confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

(d) Relationship of Parties. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

(e) Time of Essence. Time and specific performance are each of the essence of this Lease.

(f) Choice of Law. Lessor and Lessee understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Lease and also govern the interpretation of the Lease without regard to any applicable conflicts of law, including matters of construction, validity, and performance.

(g) The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Lease or the enforcement of the rights or obligations hereunder shall be brought in the state Superior Court in the County of Merced.

(h) This Lease contains the complete, final, entire, and fully integrated understanding and agreement between the parties hereto. All prior negotiations, understandings, writings, and oral agreements pertaining to the subject matter

hereof are superseded by this Lease. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Lease. All prior discussions, negotiations, and understandings have been and are merged and integrated into, and are superseded by, this Lease.

(i) This Lease may be amended only in writing, signed by the Lessor and Lessee.

(j) This Lease has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel in the negotiation and drafting of this Lease. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Lease against the party that drafted this Lease is of no application and is hereby expressly waived.

(k) Failure of any party to insist upon strict observance of, or compliance with, all of the terms of this Lease in one or more instances shall not be deemed a waiver of that party's right to insist upon such observance or compliance with the other terms of the Lease. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Lease.

(l) This Lease may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

(m) The person or persons executing this Lease on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be fully executed on the date first herein written.

LESSOR:

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

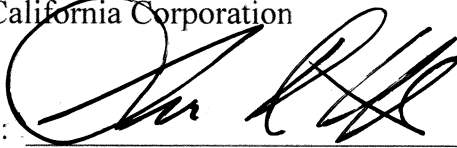
BY: *H. Flores* 6/5/18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

LESSEE:
BOYS AND GIRLS CLUB OF MERCED,
A California Corporation

BY: 
(Signature)

Lincoln Ellis
(Print name)

Its: _____

BY: _____
(Signature)

(Print name)

Its: _____

Taxpayer I.D. No. 77-035-7487

ADDRESS: P.O. Box 470
Merced, CA 95341

TELEPHONE: (209) 722-9922

DESCRIPTION

Order No: 008008274 - DK

All that portion of the railroad reservation shown as Visalia Division Central Pacific Railroad on a map entitled "MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING ACREAGE PROPERTY", recorded in Volume 2, Official Plats, Page 59, Merced County Records, and as shown on map entitled, "RECORD OF SURVEY FOR MERCED CITY REDEVELOPMENT AGENCY", recorded in Vol. 24 of Survey Maps at page 34, Merced County Records, said area being more particularly described as follows:

COMMENCING at a point that is the intersection of the North line of a road now known as West 15th Street and the West line of a road now known as "M" Street, said point being the true point of beginning; thence the following courses and distances:

North 65°18'57" West, 400.00 feet;
North 24°40'39" East, 170.00 feet;
South 65°18'57" East, 400.00 feet;
South 24°49'39" West, 170.00 feet
to the point of beginning

Portion of Assessor's Parcel Number: 031-360-030

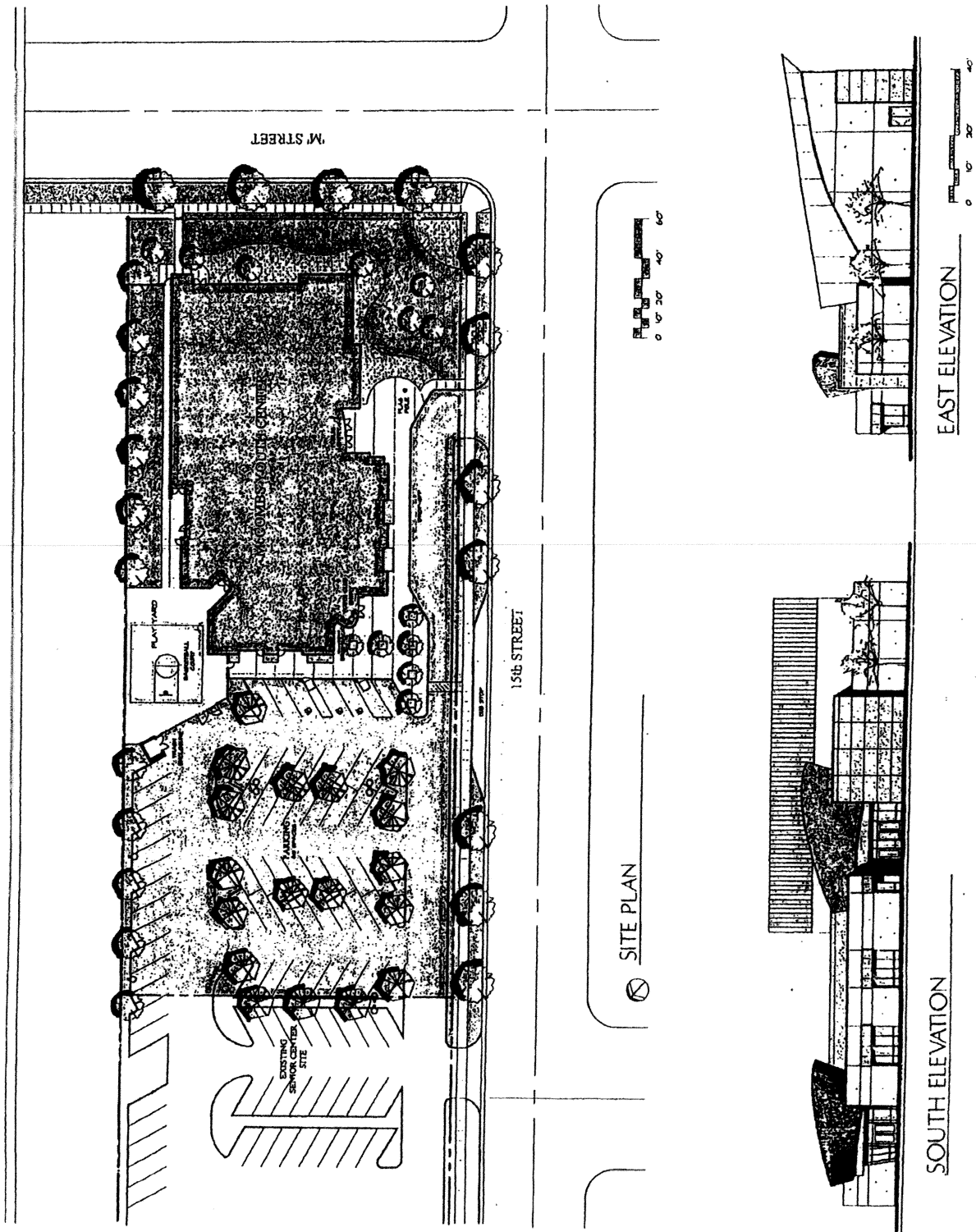
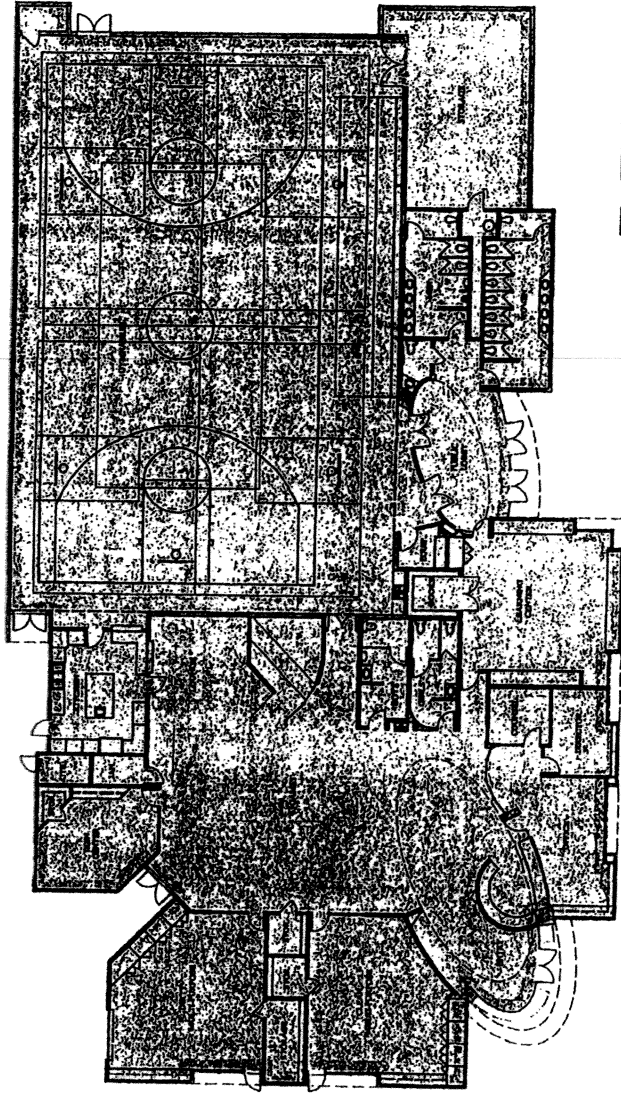
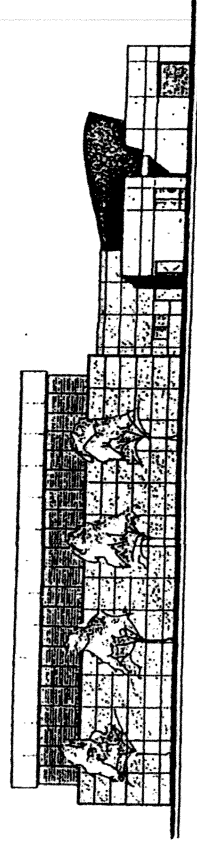


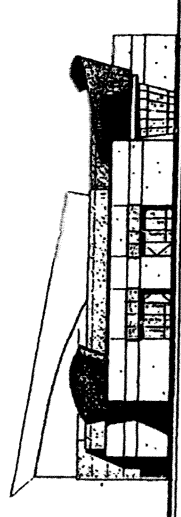
EXHIBIT B



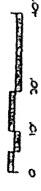
⊗ FLOOR PLAN



NORTH ELEVATION



WEST ELEVATION



A. Generally: The Boys & Girls Club shall provide youth services to the public, including but not limited to: recreation, academic programs, and drop in programs. The Club shall provide adequate professional and trained staff on site at the Youth Center to deliver these programs.

B. Mission: The mission of the Youth Center provides a general guide to services, and other requirements shall be interpreted in light of the missions:

Provide a youth center in Merced offering diverse programs and recreation for all the community's youth, through a partnership between the city and other organizations.

Boys & Girls Club of Merced County Mission: "To inspire and enable all young people, especially those who need us most to realize their full potential as productive, responsible and caring citizens."

C. Priorities: Priorities for the Youth Center use shall be:

1. Low cost youth activities offered by the Boys & Girls Club and the City of Merced
2. Free youth activities offered by other youth serving organizations
3. Paid youth activities offered by youth serving public or nonprofit organizations
4. Adult recreation
5. Community groups on a rental basis

D. Policies for Use: The following policies shall generally guide the provision of services in the Youth Center by the Boys & Girls Club:

1. At no time will an adult activity be allowed to displace a youth activity.
2. No youth will be turned away due to inability to pay; guest will be allowed by the Boys & Girls Club on a limited basis.
3. Facility will be available to the City for municipal purposes, without charge.
4. Other youth serving organizations will be encouraged to use the facility.
5. Although a Youth Center, some adult programs may occur as some times. Adult activities and youth activities will be strictly separated; youth only times will be established.
6. Policies will be adopted for short and long-term rental to community groups and private organizations. These policies will be consistent with the Youth Center mission. Uniform rental rates will be established.

**CITY OF MERCED
PARKS AND RECREATION
YOUTH BASKETBALL SCHEDULE
2019**

**TO: MICHAEL PIERICK, PROGRAM DIRECTOR
BOYS & GIRLS CLUB OF MERCED COUNTY**

FROM: JOEY CHAVEZ, IINTERIM PARKS AND RECREATION DIRECTOR

RE: MCCOMB'S YOUTH CENTER GYM USAGE

DATE: MAY 22, 2018

Activity	Days	Times	Months
Youth Basketball (4 TH TO 8 TH GRADES)	Mon. – Thur.	5:30pm – 9:00pm	Jan. 1 – Mar. 9
Youth Basketball (K TO 3 rd GRADES)	Saturdays	8:30am – 12:00pm	Jan. 5 – Mar. 9

EXHIBIT D
