

**LEASE AGREEMENT**

THIS LEASE made effective this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between the City of Merced, a California Charter Municipal Corporation ("Lessor"), and Yosemite Area Regional Transportation System, a California Joint Powers Authority between Merced County, Mariposa County and Mono County, political subdivisions of the State of California ("Lessee").

WHEREAS, The Lessor is the owner of the Merced Transportation Center building located on a tract of land in Merced, California, at 710 West 16<sup>th</sup> Street; and,

WHEREAS, Lessee operates a public transit system and desires to lease certain bus concourses at the Merced Transportation Center.

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

1. DEFINITIONS

A. Building. "Building" is defined as that certain building and surrounding improvements known as the Merced Transportation Center located at 710 West 16<sup>th</sup> Street, Merced, California, and labeled "Transpo Center" on Exhibit A.

B. Concourse. "Concourse" shall be defined as the bus parking areas behind the Transportation Center, and labeled Concourse on the attached Exhibit A.

C. Common Area. "Common Area" shall be defined as the waiting area, restroom facilities and entryways of the building located at the Building and land labeled Common Area on the attached Exhibit B.

2. CONCOURSE. 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 Concourse in Exhibit A, which is attached hereto and made a part hereof, situated in the City of Merced, County of Merced, State of California, 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 Concourse and Common Area for any purpose contemplated herein.

3. TERM. Subject to early termination under Section 16 below, the term of this Lease shall be five (5) years from the date and year first above written at the beginning of this Agreement. This Agreement may be extended annually by mutual agreement of the parties.

4. RENT. Rent shall be payable on the 1<sup>st</sup> of each month commencing on the month operations begin at the facility, and shall be Two Hundred Dollars (\$200.00) per month for the term of the lease. Rent shall be considered late if not paid within sixty (60) days after the due date, then a late payment penalty of One Hundred Dollars (\$100.00), plus interest of twelve percent (12%) per annum on the delinquent amount.

5. USE. The Lessee and its patrons shall have the right of reasonable access to the Common Area, including restrooms, for the term of this Lease.

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

6. LESSOR'S WARRANTY OF TITLE. Lessor represents and warrants that:

A. Lessor is the sole owner in fee simple of the Building and has full right and power to grant the estate demised and to execute and perform this Lease;

B. The Building will remain free and clear of all encumbrances that could adversely affect Lessee's leasehold estate;

C. The intended use of the Concourse for purposes stated herein is permitted by all applicable zoning laws and regulations;

D. The Building will comply with all applicable ordinances, regulations, and zoning and other laws; and,

E. Lessor shall maintain valid Public Entity Property Insurance (PEPIP) throughout the term of the Lease.

7. QUIET ENJOYMENT. Lessor covenants and agrees that so long as Lessee observes and performs all the agreements and covenants required of it

hereunder, Lessee shall peaceably and quietly have, hold and enjoy the Concourse for the Term without any encumbrance or hindrance by Lessor. If Lessee's use of the Concourse is significantly limited, or denied, through rezoning, environmental impact edict, or other action of any public or quasi-public agency, this Lease, at the sole option of Lessee, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the term will abate.

8. **LESSEE'S INSURANCE.** Lessee, at its expense, shall maintain plate glass and public liability insurance, including bodily injury and property damage, insuring Lessee and Lessor with minimum coverage as follows: \$1 million combined personal injury and property damage.

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The policy shall require thirty (30) DAYS' WRITTEN NOTICE TO LESSOR PRIOR TO CANCELLATION OR MATERIAL CHANGE OF COVERAGE.

9. **REPAIRS, MAINTENANCE AND UTILITIES.**

A. Exterior of Building. Lessor shall provide and pay for the day-to-day maintenance and repair of the exterior area of the Building, including but not limited to the exterior landscaping, bus concourse area, driveways, exterior roof, and exterior sidewalls.

The Lessor shall pay the total cost of the water and electricity services for the exterior area of the Building.

B. Concourse. The Lessee shall pay the total cost of its telephone and communication services used at the Building, Concourse, or the Common Area, if any.

C. Interior of Building. Except as provided in Subsections A and B above, the Lessor shall provide, perform and pay a pro rata share of the total costs incurred by the Lessor for maintenance, repairs, janitorial services, garbage and rubbish services, water, gas, electricity, telephone services, maintenance and janitorial supplies, security costs, and other public utility services for the Building, including the Concourse, during the term of this Lease, or any renewals thereof as provided herein; and, Lessee shall, upon receipt of a proper accounting from Lessor, reimburse Lessor for Lessee's pro rata share of said costs, on a monthly basis, pro rata as determined by reference to Subsection D. below. Lessor shall

provide a minimum of forty-eight (48) hours weekly of custodial staff time, including at least four (4) hours daily on weekends.

D. Pro Rata Share Computation. Lessee agrees to pay three percent (3%) of the monthly costs associated with the costs and services outlined in Section C above. Payments shall be included with the monthly rent payments.

10. **ALTERATION AND IMPROVEMENTS.** Lessee shall have the right to make alternations and improvements to the Concourse subject to the following terms and conditions.

A. No alteration or improvements made by Lessee shall in any way impair the structural integrity and stability of the Building, the Concourse, and the Common Area, or diminish the value of the property;

B. All alternations 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 Building, the Concourse, and the Common Area 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 Concourse shall become the property of the Lessor and shall remain on and be surrendered with the Concourse at the expiration of this Agreement or sooner.

E. Lessee's personal property and its trade fixtures, including but not limited to machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. However, any personal property and trade fixtures not removed by Lessee within thirty (30) calendar days from the termination of this Lease, or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Concourse, Building, and Common Area caused by Lessee's removal of its personal property and/or trade fixtures.

11. **MECHANICS LIENS.** The Lessor and Lessee agree to keep the Concourse, Building, and Common Area free from any and all claims of persons or firms or corporations who, at the request of Lessor or Lessee or their employees or contractors, furnish labor or materials to or for the benefit of said Concourse,

Building, or Common Area and Lessor and Lessee further agree to hold each other harmless from any and all claims of mechanics' liens.

12. **DAMAGE/DESTRUCTION.** If the Concourse, Building, or Common Area is damaged or destroyed in whole or in part by fire or other casualty, Lessor shall repair and restore the same to a good tenable 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, or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessee may thereafter, at its option, terminate this Lease by giving the Lessor 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 Concourse, Building, or Common Area in the event of damage or destruction of said property.

Notwithstanding any provision to the contrary, Lessee shall be responsible for any damage to the Concourse, Building, or the Common Area, or other property belonging to the Lessor, resulting from Lessee's activities conducted pursuant to this Agreement.

13. **SIGNS.** Any and all signs or advertisements of any nature extending into, on, or located over the Concourse, Building, or Common Area shall conform to all City of Merced zoning, building, and safety codes, now existing or as amended in the future, shall be consistent with already existing signage at the Concourse, Building, or Common Area, and shall be approved by Lessor in writing prior to construction, use, or erection thereof. Lessee shall be allowed to install upon to six (6) square feet maximum of contiguous signage along the southerly portion of the building as located in the illustration provide in Exhibit C. Signage shall be a hanging or blade type only and shall not interfere with the daily operations and safety of the building. Signage shall be maintained by Lessee at its sole cost. Lessee shall be responsible for returning the Building to its original condition upon termination and/or forfeiture of the Lease. Any signs posted not in



conformance with this provision shall be subject to immediate removal by Lessor at the cost of Lessee.

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 Concourse, the Building, or the Common Area 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 said Concourse, Building, or Common Area 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.

15. ASSIGNMENT AND SUBLETTING. Lessee shall not encumber, assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Concourse, Building, or Common Area without the prior written consent of Lessor. Neither shall Lessee sublet the Concourse, Building, or Common Area, or any part thereof, or allow any persons, other than Lessee's employees, agents, or servants, to occupy or use the Concourse, Building, or Common Area or any part thereof without the prior written consent of Lessor. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Lessor, whether it be voluntary or involuntary, by operation of law, or otherwise, is void and of no effect and shall, at the option of the 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 Concourse, shall not be unreasonably withheld or delayed.

16. **TERMINATION OF LEASE.** 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:

A. If the Lessee is in default or breach of this Lease; or

B. If the Lessee assigns or sublets the Concourse, Building, or Common Area without the prior written consent of Lessor.

Lessee shall reserve the option to terminate the Lease if public funds are no longer available for the daily operations of the Lessee and the Lessee has exhausted all options for obtaining funds to provide for rent payments described in Section 4 of this Lease and the pro-rata share described in Section 9D of the Lease. Lessee shall give ninety (90) days written notice of its intent to terminate the Lease. Lessee shall also reserve the option to terminate the Lease by mutual agreement of the parties in the event Greyhound Lines, Incorporated vacates the Building and Lessee, in good faith, has exhausted all options available to uphold the terms of the Lease. Lessor shall give ninety (90) days written notice of its intent to terminate the Lease.

17. **COMPLIANCE WITH LAWS.** During the term of this Lease and any renewals or extensions hereof, Lessee shall promptly execute and comply with federal, State, County, and City statutes, ordinances, regulations, laws, or other requirements applicable to the Concourse, Building, or Common Area, and the operation of the Building as a Multipurpose Transportation Facility.

18. **LESSEE'S DEFAULT AND REMEDIES.** 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 of rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure continues for a period of twenty (20) days.

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 above, 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 a bankrupt.
- E. The judicial declaration of Lessee as a bankrupt.
- F. The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease, if possession is not restored within thirty (30) days.

In the event of any such default or breach by Lessee, with the exception of bankruptcy or receivership, Lessor may, after giving written notice, pursue those remedies available to Lessor under the law or judicial decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate. 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 all payments that become due under this Lease.

The right 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 section affects the right of Lessor to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damage as provided in Section 24 of this Lease.

19. LESSOR'S DEFAULT AND REMEDIES. 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.



20. **WAIVER.** No term of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. 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. In the event of default, either party may also pursue those remedies available to it under the laws of judicial decisions of the State of California.

21. **BINDING EFFECT.** This Agreement and the Lease hereunder shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successor and assigns.

22. **ASSUMPTION BY NEW OWNER.** If the City of Merced transfers any interest in the Concourse, Building, or Common Area 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 rights and duties specified in this Lease.

22. **SURRENDER.** Lessee agrees to take good care of the Concourse, Building, and the Common Area 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 excepted.

If Lessee fails to surrender the Concourse 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.

23. **INDEMNITY.** Lessee shall indemnify, defend and hold harmless Lessor and its officers, officials, employees and agents from any and all claims or demands, actions, damages, costs and expenses for death or injuries to persons or property arising out of the intentional acts, negligence, improper acts or omissions of Lessee, its agents, officers, employees, contractors, or subcontractors which are connected with or incident to Lessee's possession, operations, use or occupancy at or of the Building, Concourse, and/or the Common Area.

Lessor shall indemnify, defend and hold harmless Lessee and its officers, officials, employees and agents from any and all claims or demands, actions, damages, costs and expenses for death or injuries to persons or property arising out

of the intentional acts, negligence, improper acts or omissions of Lessor, its agents, officers, employees, contractors, or subcontractors which are connected with or incident to Lessor's possession, operations, use or occupancy at or of the Building, Concourse, and/or the Common Area; provided, however, that the foregoing hold harmless provision of Lessor shall have no force or effect on actions or claims which are the result of Lessor's non-negligent fulfilling of its obligations under this Agreement or which are the result of Lessor being named in a lawsuit, action or claim merely by virtue of the business relationship which exists between the parties hereto.

24. COVENANTS AGAINST DISCRIMINATION. The Lessee covenants for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that no person or groups of persons on the grounds of race, creed, religion, disability, sex, marital status, color, national origin or ancestry may be excluded from the use of the Lessee's public transit system or the services provided at the Merced Transportation Center. Furthermore, any deed or deeds shall contain the following covenants:

"There shall be no discrimination against or segregation or any person or groups of persons on account of race, color, creed, national origin, religion, sex, marital status, physical disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Concourse, Building, or Common Area 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 Concourse, Building, and Common Area herein leased."

25. NOTICES. All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or on the fifth (5<sup>th</sup>) day if sent 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 Clerk  
678 West 18th Street  
Merced, California 95340

COPY TO: City Attorney's Office  
City of Merced  
678 West 18th Street  
Merced, California 95340

LESSEE: Yosemite Area Regional Transportation System  
c/o MCAG  
369 West 18th Street  
Merced, California 95340

26. 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.

27. TAXES, UTILITIES AND MECHANICS' LIENS. Notwithstanding anything expressed or implied to the contrary contained in this Lease, Lessee, at its own expense, may in good faith contest charges for taxes or utilities or mechanics' lien claims and, in the event of such contest, may permit the items contested to remain unpaid during the period of the contest any appeal therefrom; provided that such nonpayment shall not be permitted to cause a loss or forfeiture of any part of the Concourse, Building, or the Common Area. Lessor shall render to Lessee all assistance reasonably possible in contesting such charges; however, Lessor shall not be obligated to join Lessee as a party in any claim, lawsuit, administrative hearings or other similar legal proceedings. Should any refund be made of any charges paid by Lessee, the amount of such refund shall belong to and be paid to Lessee.

28. SUBORDINATION. Lessor shall have the right, at any time or times during the term of this Lease, to mortgage Lessor's interest in the Concourse, Building, or the Common Area for any purposes, and Lessee shall, if requested by Lessor's lender, subordinate its interest in said Concourse, Building, or the Common Area to the lien of lender's mortgage or trust deed, provided the lender agrees in writing, in recordable form, not to disturb Lessee's possession of the Concourse, Building, or the Common Area under this Lease, so long as Lessee is not in default of any of the terms, conditions, and covenants of this Lease, and to accept the performance by Lessee of its covenants and obligations hereunder if such mortgage shall be foreclosed (hereinafter referred to as "non-disturbance agreement").

Any mortgage or lien created against the Concourse, Building, or the Common Area, or any portion thereof shall contain, and the mortgagee or lienholders shall execute, a non-disturbance agreement in favor of Lessee and its successor and assigns.

29. **EMPLOYEE CONDUCT.** Lessee's employees, agents, contractors, and subcontractors shall be subject to all street and highway safety rules, including but not limited to the provisions in the California Vehicle Code, while traveling through or stopping upon the Concourse, Building, and/or the Common Area.

30. **SEVERABILITY.** If any provision of this Agreement is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Agreement.

31. **ATTORNEY FEES.** The prevailing party in any action pertaining to this Agreement shall be entitled to all other remedies provided herein and all its costs and expenses, including reasonable attorneys' fees.

32. **CHOICE OF LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for any litigation pursuant to this Agreement shall be exclusively in a state court located in Merced County.

33. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

34. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

35. **COUNTERPARTS.** This Agreement 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.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed on the date and year first above 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: Phueda A. Dnln 11-27-18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer



LESSEE:

Yosemite Area Regional  
Transportation System, a California  
Joint Powers Authority between  
Merced, Mariposa and Mono  
Counties, political subdivisions of the  
State of California

BY: Stacie Dabbs  
(Authorized Signature)

STACIE DABBS  
(Typed Name)

Title: Executive Director  
Yosemite Area Regional  
Transportation System

Taxpayer I.D. No. 77-0539394

ADDRESS: 369 W. 18th ST  
MERCED, CA 95340

TELEPHONE: 202-723-3153

APPROVED AS TO FORM:

BY: [Signature]  
General Counsel

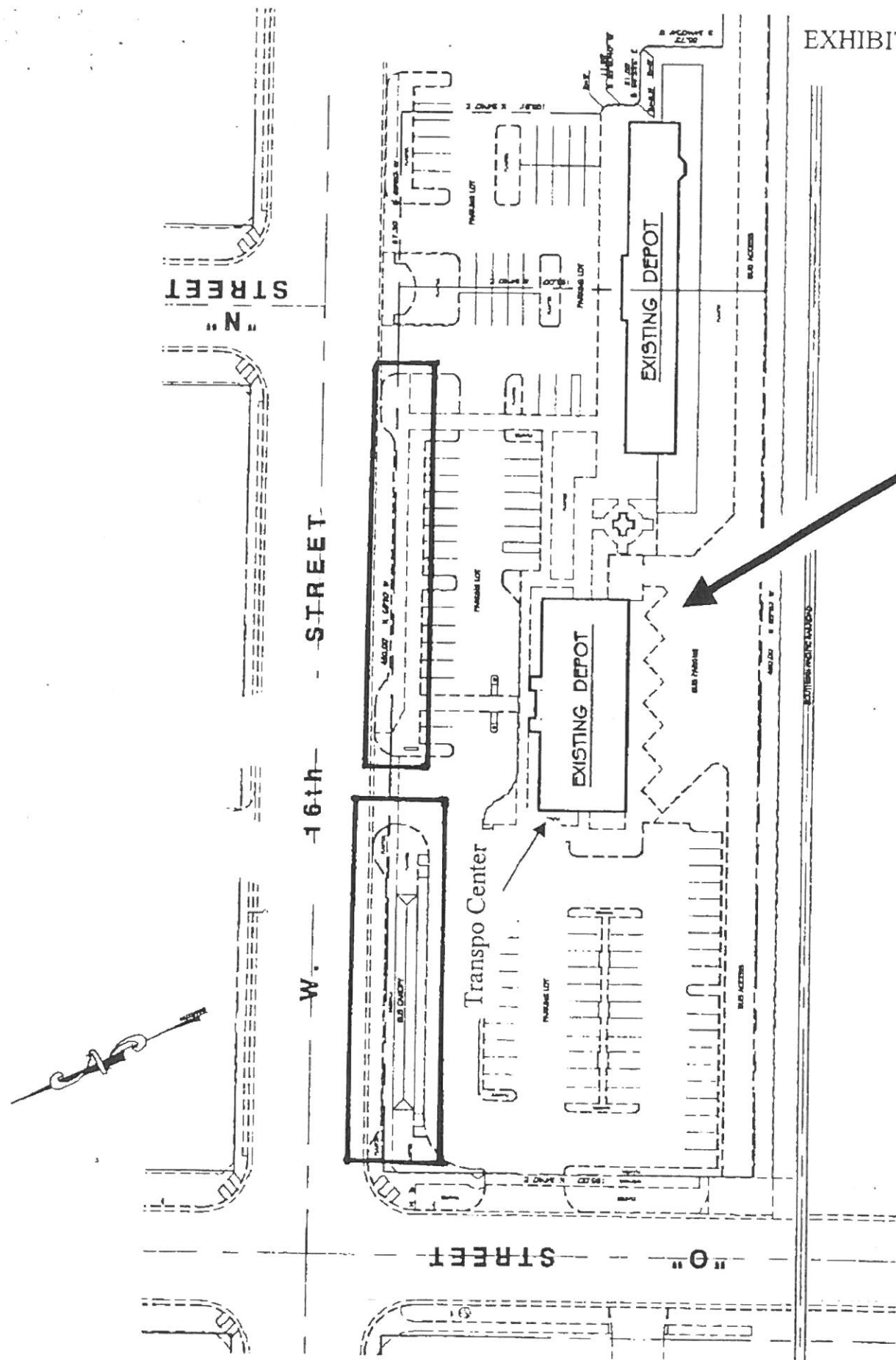


EXHIBIT A

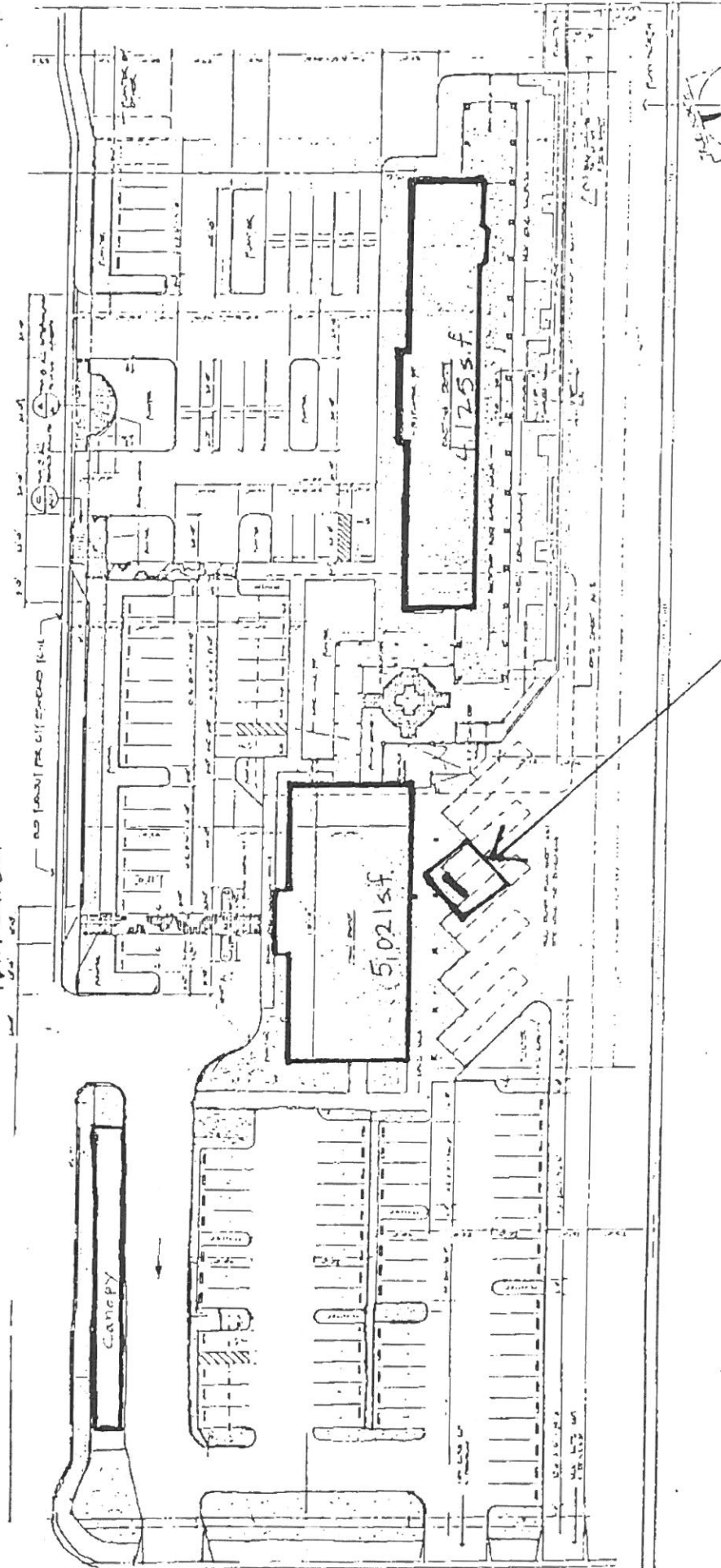
MERCED TRANSPOR CENTER  
**SITE PLAN**

SCALE 1"=70'

EXHIBIT A



16th Street



Vicinity of  
YARTS signage

NEW BUS TRANSFER AREA  
AND PARKING

Additional parking: 30 spaces or so

EXHIBIT C

EXHIBIT C