

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the City of Merced, a California Charter Municipal Corporation ("Seller") and Valley Children's Healthcare, a California Non-Profit Public Benefit Corporation, whose address of record is 9300 Valley Children's Place, Madera, California 93636 ("Buyer").

WHEREAS, Seller owns the real property identified as 301 E. Yosemite Avenue, City of Merced, California (Assessor's Parcel Number 231-040-021) and more fully described in Attachment "A" and shown on the map provided as Attachment "B," which are incorporated herein by these references, (hereinafter the "Subject Property"); and,

WHEREAS, Buyer desires to purchase the Subject Property to construct a Valley Children's Medical Group Medical Office (hereafter, the "Project"); and,

WHEREAS, City is willing to sell the Subject Property to the Buyer for construction of the Project.

WHEREAS, City declared Subject Property surplus on May 15, 2017, and the development and construction of the Project on the Subject Property will enhance the local economy and medical care in the City of Merced.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Buyer and Seller do agree as follows:

**SECTION 1.      PURCHASE & SALE.** Seller agrees to sell and Buyer agrees to purchase the Subject Property for the Project pursuant to the terms of this Agreement.

**SECTION 2.      PURCHASE PRICE.** The purchase price for the Subject Property shall be Two Million One Hundred Thousand Dollars (\$2,100,000.00) for

approximately 4.54± acres (the "Purchase Price"). Buyer is acquiring the Subject Property in "as-is" condition.

a. Deposit by Buyer: Within five (5) days from the opening of escrow, Buyer shall place a deposit of Twenty-Five Thousand Dollars (\$25,000) into escrow (the "Initial Deposit").

b. Deposit of Additional Funds By Close of Escrow: At or before the close of escrow, Buyer shall deposit the sum of Two Million Seventy-Five Thousand Dollars (\$2,075,000) into escrow to be allocated against the Purchase Price at the close of escrow.

c. Independent Consideration. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, One Hundred and No/100 Dollars (\$100.00) of the Initial Deposit shall serve as independent consideration for Seller's performance under this Agreement ("Independent Consideration"). The Independent Consideration is independent of any other consideration provided hereunder, shall be fully earned by Seller and released to Seller by escrow agent upon the Effective Date hereof, and is not refundable under any circumstances.

SECTION 3. ESCROW. Escrow shall open on the Property within ten (10) days of the full execution of this Agreement at a title company selected by Seller, and shall close no later than thirty (30) days after the Site Plan and Interface Review Approval subject to the terms and conditions of this Agreement. Closing costs, including escrow costs, title insurance and transfer tax, shall be evenly split between Buyer and Seller.

a. Escrow shall be opened with Chicago Title, 7330 North Palm Avenue, Suite 101, Fresno, California 93711, (Barbie Clothier/Sue Ford), following the full execution of this Agreement.

b. Fourteen (14) days after the closing date, Buyer shall receive a recorded copy of the grant deed conveying fee simple title of the Property to Buyer. Seller may present the grant deed prior to the closing date.

c. All closing, escrow, recording and title insurance costs shall be shared as is customary in Merced County. Real estate taxes, if applicable, will be pro-rated at close of escrow.

d. At all times after permitted exceptions have been determined, title company must be ready, willing, and able to issue, upon payment of title company's regularly scheduled premium, a California Land Title Association (CLTA) owner's policy of title insurance showing title to the Subject Property vested in Buyer subject only to the permitted exceptions ("Title Policy") in the face amount of the Purchase Price, with such endorsements as Buyer may require ("Endorsements"), subject only to the lien of real property taxes for the current fiscal year not yet due or payable, and the standard preprinted exceptions and stipulations of the Title Policy. Buyer may, at its option, require that the Title Policy be a 2006 ALTA extended coverage policy instead of a CLTA standard coverage policy and/or request title insurance endorsements as long as the title company is committed to issue such ALTA extended coverage and/or such endorsements within thirty (30) days of the Close of Escrow. Buyer shall pay the additional cost therefor including the cost of any ALTA survey required by title company.

SECTION 4. CONDITIONS. Close of escrow and Buyer's and Seller's obligations shall be subject to the satisfaction of the following conditions:

a. Within ten (10) days of escrow opening, Seller shall deliver to Buyer a current title report, with copies of all underlying documents referenced or described therein. Buyer shall have thirty (30) days from receipt of said document to review and approve or disapprove same at Buyer's sole and absolute discretion.

b. Within ten (10) days of escrow opening, Seller shall provide Buyer with any and all documents in Seller's possession regarding the Subject Property. Buyer shall have thirty (30) days from receipt of such documents to review and satisfy itself with regards to the Subject Property.

c. Buyer shall have one hundred eighty (180) days from opening of escrow to conduct any and all due diligence including physical, economic and environmental evaluations that may include, but are not limited to, physical inspections, soil and ground water tests, other engineering feasibility studies, review of any and all governmental regulations and on- and off-site improvement obligations to Buyer's satisfaction.

d. Buyer to investigate the location and capacity of all utilities available to the Property to their satisfaction.

e. Buyer shall have one hundred eighty (180) days from opening of escrow to investigate and satisfy itself with regards to toxic or hazardous

contamination on the subject property during the due diligence period as specified in item 4b above.

f. Buyer shall be granted right of entry upon Property for the purposes of conducting soil tests and any other engineering studies Buyer deems necessary.

g. Buyer and Seller shall agree on the location and scope of any easements or restrictions on the Subject Property by the end of the one hundred eighty (180) day period following the opening of escrow.

In the event any of the foregoing conditions are not satisfied or waived by Buyer prior to the prescribed time frame herein, then all rights, obligations, and liabilities of Seller and Buyer shall terminate, and any deposited funds and any interest earned shall be returned to Buyer.

SECTION 5. RIGHT TO REPURCHASE. In the event Buyer does not develop and construct the Project as agreed upon in the specific time frame identified in Section 10, or otherwise agreed to by the parties, the Seller may repurchase the Subject Property at the sales price set forth in Section 2, minus the cost of the broker's commission with Buyer assuming all other of its out-of-pocket development costs.

SECTION 6. APPROVAL OF TITLE REPORT. Within ten (10) days of escrow opening, Seller shall provide a preliminary title report to Buyer. Buyer shall have thirty (30) days thereafter in which to approve the preliminary title report. If Buyer does not approve one or more of the exceptions of the preliminary title report and Seller refuses to remove said exception(s), then either Buyer or Seller shall have the right to terminate escrow and this Agreement.

SECTION 7. ASSIGNMENT. Neither this Agreement nor any part thereof shall be assignable; provided that, Buyer may assign this Agreement and the right to take title to the Subject Property to Valley Children's Medical Group, a California nonprofit public benefit corporation ("Medical Group"), a wholly-owned subsidiary of Buyer.

SECTION 8. SUBJECT TO OTHER OBLIGATIONS. This Agreement is conditioned upon Buyer's compliance with the requirements of the Merced Site Plan Approval Committee and/or the Merced Planning Commission. At the close of this transaction, Buyer will be issued a Grant Deed containing

restrictions and easements, including the Seller's right to repurchase the Subject Property pursuant to Section 5 and 10 of this Agreement.

SECTION 9. ZONING AND PERMITTED USES. The Subject Property is currently zoned Planned Development (P-D). The proposed Project (as described in Attachment "C" attached) is a permitted use within the Neighborhood Commercial (C-N) land use district of the City of Merced.

a. Prior to the expiration of the contingency period, Buyer will submit a Preliminary Development Application to the City for a Site Plan Review and Interface Review. Within ninety (90) days of the Preliminary Development Application review by the Development Review Committee, Buyer shall make full application for Site Plan Review and Interface Review. The full application shall be subject to consideration by the Merced Planning Commission. Buyer's deposit will be non-refundable except if they are denied their Site Plan Review and Interface Review. If the application is denied, all deposits will be returned to Buyer and neither Buyer nor Seller shall have any obligations to the other.

SECTION 10. COMMENCEMENT OF CONSTRUCTION, SCHEDULE, AND SELLER'S RIGHT TO REPURCHASE SUBJECT PROPERTY. Buyer agrees to obtain all necessary building permits and commence construction of the Project as described in Attachment "C" within twelve (12) months of the close of escrow and to thereafter diligently pursue construction to completion. It is hereby agreed that failure of Buyer to commence construction of the Project within said twelve (12) month period shall give Seller the right and option to repurchase the Subject Property. For purposes of this Agreement, the term "commence construction" shall mean that the notice to proceed has been issued for construction to the design builder for the Project. The purchase price for Seller's repurchase of the Subject Property shall be the repurchase price set forth in Section 5, without interest, appreciation, or reimbursement for any improvements, costs, expenses, or City, County, or other taxes or assessments levied or assessed against the Subject Property. Prior to completion of the main building structure(s) required for the Project, on the Subject Property, Buyer agrees not to transfer title to the Subject Property to another person or entity without Seller's prior written consent, which may be withheld at Seller's sole and complete discretion; provided that, Seller hereby consents to Buyer's transfer of title or assignment of the Agreement and the right to title by Buyer to Medical Group prior to closing.

SECTION 11. NOTICE. All notices required or available to be sent pursuant to this Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER: Office of the Economic Development  
City of Merced  
678 West 18th Street  
Merced, California 95340

With a copy to: City Attorney  
City of Merced  
678 West 18th Street  
Merced, California 95340

BUYER: Valley Children's Healthcare  
Attn: Todd A. Santrupak,  
President and Chief Executive Officer  
9300 Valley Children's Place  
Madera, California 93636

With a copy to: Valley Children's Healthcare  
Attn: William E. Chaltraw,  
Jr., Senior Vice-President  
and Chief Legal Officer  
9300 Valley Children's Place  
Madera, California 93636

SECTION 12. INTERPRETATION. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 13. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 14. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 15. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the Agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 16. ENTIRE AGREEMENT. This Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 17. AMENDMENTS IN WRITING. This Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 18. WAIVER. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the

other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 19. COUNTERPARTS. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 20. AUTHORITY TO EXECUTE. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their governmental or business entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

SECTION 21. REAL ESTATE COMMISSION. Buyer has retained the services of Ted Waldron of Fortune Associates Commercial Real Estate Services in its proposed acquisition of the Subject Property from Seller. Seller shall be responsible to pay a real estate commission of three percent (3%) of the Purchase Price to Fortune Associates upon close of escrow of the Subject Property. .

SECTION 22. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 23. USE OF LOCAL CONTRACTORS FOR CONSTRUCTION AND LOCAL RESIDENTS AS EMPLOYEES. Buyer agrees to use its best efforts to use local contractors for the construction of Project/improvements on the Subject Property. In addition, Buyer agrees to use it best efforts to hire local residents for the jobs that will be created once the Project is completed.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

SELLER:  
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: Prudence A. Norman 2-12-19  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Office

BUYER:  
VALLEY CHILDREN'S  
HEALTHCARE,  
a California Non-Profit Benefit  
Corporation

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

TELEPHONE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 9300 Valley Children's  
Place  
Madera, CA 93636

Attachment A  
Legal Description of Subject Property

## EXHIBIT A

A parcel of land situated in the South West Quarter (SW 1/4) of Section 8, Township 7 South Range 14 East, M.D.B. & M, City of Merced, County of Merced, State of California, said parcel of land being a portion of Remainder D, as Remainder D is delineated on that certain map entitled, "FINAL MAP OF MANSIONETTE ESTATES UNIT 2", recorded in Volume 55, of Official Plats, at Pages 12-14, Merced County Records, said parcel of land also being portion of that certain real property described in Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015020, Merced County Records, said parcel of land being more particularly described as follows:

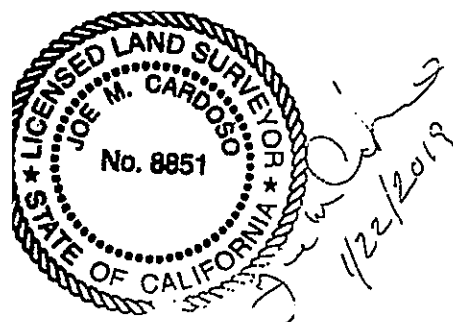
**COMMENCING** at the northwest corner of said Remainder D, thence S00°42'36"W, for 283.54 feet along the west line of said Remainder D to **TRUE POINT OF BEGINNING**; thence N89°56'09"E, for 612.97 feet parallel with the north line of said Remainder D to the east line of said Remainder D; thence S00°42'17"W, for 352.11 feet along the said east line of Remainder D; thence along a curve concave to the northwest through a central angle of 89°13'31", having a radius of 15.00 feet, and whose long chord bears S45°19'03" W, for 21.07 feet to the south line of said Remainder D; thence S89°55'48"W, for 583.00 feet along said south line of Remainder D; thence N44°40'48" W, for 21.36 feet along the southwest line of said Remainder D; thence N00°42'36"E for 351.77 feet along the west line of Remainder D to the **TRUE POINT OF BEGINNING**.

**SUBJECT TO** the Road Dedication Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015019, Merced County Records.

**ALSO SUBJECT TO** the Road Dedication Grant Deed to the City of Merced, recorded on December 22, 2011 as Document Number 2011-046171, Merced County Records.

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part thereof.

The above-described parcel of land contains 224,747 Sq. Ft., more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



Attachment B  
Site Map

# SANDPIPER AVENUE



SCALE: 1"=80'

N44°40'48"W  
21.36'

N00°42'36"E 351.77'  
334.91'

P.O.B.

297.99'

N44°40'48"W  
28.18'

N45°19'22"E  
6.99'

PORTION OF  
GRANT DEED 2010-015020, M.C.R.

4.54 ACRES  
197,540 Sq. Ft.  
(Net)

5.16 ACRES  
224,747+- Sq. Ft.  
(Gross)



*Joe M. Cardoso*  
1/22/2019

Road Dedication to City of Merced  
Deed 2010-015019, M.C.R.

N89°56'09"E 606.93'

N89°56'09"E 612.97'

Road Dedication to City of Merced  
Deed 2010-015018, M.C.R.

PORTION OF  
REMAINDER D  
55 O.P. 12

YOSEMITE AVENUE

S89°55'48"W 583.00'

S89°55'48"W 573.70'

Road Dedication to City of Merced  
Deed 2011-046171, M.C.R.

S45°18'55"W  
27.40'

S44°40'47"E  
1.60'

Δ=89°13'31"  
R=15.00'  
L=23.36'  
T=14.80'

302.52'  
S00°42'17"W 352.11'

MANSIONETTE DRIVE



**City of Merced**  
"Gateway to Yosemite"  
DEVELOPMENT SERVICES  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY: CARDOSO  
DATE: 1/18/19  
CH. BY:  
DATE:  
File No.  
SCALE: 1"=80'

Attachment C  
Project Description

## EXHIBIT C

### PROJECT DESCRIPTION

To expand services in Merced, Valley Children's Healthcare proposes to develop a pediatric primary and specialty care medical office building on the Former Police Headquarters Site. Valley Children's Medical Group's pediatricians and pediatric specialists would be the occupants of the medical office building. The first phase of the building may consist of 15,000 to 20,000 square feet. They anticipate that demand for pediatric services in Merced could grow to require a 40,000-square-foot medical office at full build-out.

Project Value: \$20 to \$30 million at full build-out.

Job Creation: 50 to 60 full-time equivalent employees at full build-out.

Construction Time: 15 to 18 months from commencement of construction.

#### Conceptual

Site Plan: To be reviewed by City staff as part of the Site Plan Review Application.

#### Salary and Benefits:

\$4 million to \$5 million at full-build out.

#### Property

VCH is a tax-exempt organization.

#### Taxes : Sales

Medical services provided by Valley Children's Medical Group are not subject to sales taxes.

#### Taxes:

Valley Children's Healthcare anticipates that the City of Merced will receive financial benefit from the families who visit the medical offices. At full build-out, Valley Children's Healthcare estimates serving 12,000 patients from outside Merced.