

DONATION ACCEPTANCE AGREEMENT

THIS DONATION ACCEPTANCE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2020, by and between California Community Foundation (RE: Central Valley Opportunity Fund) ("Donor), and the City of Merced, a California Charter Municipal Corporation ("Merced").

W I T N E S S E T H

WHEREAS, Donor wishes to donate One Million Eighty Thousand (\$1,080,000.00) Dollars, ("Donation"), to Merced to fund Merced's purchase of that certain real property consisting of approximately 5.06 acres and generally known as 1137 "B" Street, Merced, California 95341, APN 035-010-071, ("Property" or "Site") from the County of Merced ("County") pursuant to the terms and conditions of the purchase and sale agreement between Merced and County ("Purchase and Sale Agreement") for the Childs and B Street Transit-Oriented Development ("TOD") Affordable Housing Project ("Project");

WHEREAS, Merced desires to accept Donor's Donation for said purpose;

WHEREAS, the Donation will be paid to Merced and Merced will deposit the Donation in the escrow account that has been established pursuant to the Purchase and Sale Agreement for the Property; and,

WHEREAS, the Donation will be used to purchase the Property from the County in accordance with the Purchase and Sale Agreement and escrow instruction for said purchase.

NOW, THEREFORE, the parties hereto, 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 parties hereto do hereby agree as follows:

SECTION 1. DONATION. Within five (5) business days after the execution of this Agreement by the Parties, Donor agrees to pay the Donation to Merced and Merced agrees to accept the Donation in the amount of One Million Eighty Thousand (\$1,080,000.00) Dollars. The Donation will be deposited by Merced into the escrow account that has been established pursuant to the Purchase and Sale Agreement for the Property.

SECTION 2. ESCROW RELEASE TERMS. At the close of escrow, the Donation will be used by Merced to pay the purchase price for the Property.

SECTION 3. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives. Neither this Agreement nor any part thereof shall be assignable except with the prior written consent of the other party hereto. Such consent shall not be unreasonably withheld. Any attempted assignment or delegation of the rights and responsibilities under this Agreement not executed in writing by the other party hereto shall constitute a material breach of this Agreement and shall be null and void.

SECTION 4. 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:

DONOR: California Community Foundation
Re: Central Valley Opportunity Fund
Erin Grimes, Grants Manager
221 S. Figueroa Street #400
Los Angeles, California 90012

MERCED: City of Merced
City Clerk's Office

678 West 18th Street
Merced, California 95340

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

SECTION 5. FURTHER DOCUMENTATION. Donor and Merced agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the Donation herein contemplated and shall use their diligent efforts to accomplish the Donation and Property purchase in accordance with the provisions in this Agreement and the Purchase and Sale Agreement.

SECTION 6. INTERPRETATION. 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 7. 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 8. 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 Donor and Merced 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 9. 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 10. VENUE. This Agreement shall be governed by and construed in accordance with 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 11. 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 12. 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 13. 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 14. TIME OF THE ESSENCE. Donor and Merced agree that time is of the essence of this Agreement.

SECTION 15. SEVERABILITY. If any provision of this Agreement or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be unconstitutional, invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

SECTION 16. 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 Donor and Merced. 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 17. 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.

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

DONOR:
CALIFORNIA COMMUNITY
FOUNDATION (RE: CENTRAL VALLEY
OPPORTUNITY FUND)

By: _____
Signature

Printed Name

Its: _____
Title

ADDRESS: 221 S. Figueroa St. #400
Los Angeles, CA 90012

TELEPHONE: (213) 413-4130 Ext 213
EMAIL: egrimes@calfund.com

CITY OF MERCED, a California Charter
Municipal Corporation

By: _____
City Manager

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ATTEST:

STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Phuena A. Mhu 4-21-2020
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer