

16-0953

A G R E E M E N T

THIS AGREEMENT is made this 23rd day of August, 2016,
by and between the COUNTY OF FRESNO, a political subdivision of the State of
California, hereinafter referred to as the "County", and the CITY OF SANGER,
hereinafter referred to as the "City".

WITNESSETH

WHEREAS, the County has been designated as the sponsoring agency to
administer and implement the Community Development Block Grant (CDBG) Program
activities for the County, and its participating cities, in accordance with the provisions of
Title I of the Housing and Community Development Act of 1974, as amended, and the
laws of the State of California; and

WHEREAS, CDBG funding has been made available to the County for housing
and community development activities; and

WHEREAS, the City has submitted the Sanger Street Light Improvements (Phase
V) Project No. 16611 for CDBG funding; and

WHEREAS, the total cost of the Project is estimated to be \$305,500 and the City
has committed local funds to the Project in the amount of \$28,054 and is in need of
\$277,446 in CDBG funding to complete the Project; and

WHEREAS, the County can make available \$277,446 in CDBG funds needed for
the Project from the City's 2016-2017 CDBG allocation (\$235,828) and from the City's
remaining balance of CDBG funds (\$41,618); and

WHEREAS, the Project is consistent with the objectives of the Fresno County
Consolidated Plan, including the annual Action Plan.

NOW THEREFORE, in consideration of their mutual promises as hereinafter set
forth, the City and County agree as follows:

I. PROJECT DESCRIPTION, LOCATION AND BUDGET

A. The project consists of the installation of street lights, electrical
conduit, and related improvements that are either deficient or non-existent at various

locations within the City. The improvements will be constructed within the area generally bounded by Greenwood Avenue, West Avenue, Seventh Street, and Ninth Street. The improvements will increase safety and benefit a service area that will principally assist low to moderate income residents.

B. The Project site is within the City's existing easements or public rights-of-way.

C. The work to be funded with CDBG funds is as follows:

1. Obtain all necessary permits.
2. Perform all necessary design engineering including, but not limited to, surveying; testing; preparation of plans, specifications, and cost estimates; bid documents and a cost or price analysis; review of bids and recommendation for award.
3. Prepare and advertise Project bid notices and award construction contracts including, but not limited to, the printing of bid documents; publishing of notices; and preparation of bid summary.
4. Perform all construction engineering including, but not limited to, shop drawing review and approval; contract change order preparation; surveying; staking; inspection; soil testing; materials testing; preparation of "as-built" drawings; labor compliance; and contract administration.
5. Provide related eligible improvements.

D. The Project budget is estimated to be as follows:

Construction	\$	227,800
Design & Construction Engineering		43,500
Contingency, Permits & Misc.		<u>34,200</u>
Total	\$	305,500

E. Notwithstanding the estimates described in the above preliminary Project budget, payments for the Project from CDBG funds will be based on the actual costs and shall not exceed the total amount of \$277,446.

F. The proposed funding for the Project will be provided from the following sources:

CDBG	\$ 277,446
Local Financial Contribution	28,054
Total	<u>\$ 305,500</u>

G. Prior to any changes that may occur which would modify the scope of the Project, the City shall submit a written request to the County. The City shall send its written request to:

Community Development Grants
County of Fresno
Department of Public Works and Planning
Community Development Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

If the Director of the County Department of Public Works and Planning determines the modified Project is still eligible under the Federal CDBG regulations, the Director is authorized to permit such modifications. The County shall specify in a letter to the City that any modifications to the scope of the Project are authorized and that the City may proceed.

II. OBLIGATIONS OF THE COUNTY

A. The County shall provide up to, but not more than, \$277,446 of CDBG funds to the City for the Project. All funds shall be paid to the City in accordance with Section V-A of this Agreement.

B. The County shall review, within thirty (30) calendar days of receipt from the City, the engineer selection process description and summary of the analysis as prepared by the City to verify that a competitive process was conducted in accordance with U.S. Department of Housing and Urban Development (HUD) procurement standards. The County shall specify in a letter to the City that these conditions have been met and that the engineering contract can be awarded.

C. The County shall review, within thirty (30) calendar days of receipt from the City, the design plans and specifications for the Project as prepared by the City for compliance with Federal regulations, and the total Project cost estimate to ensure sufficient funds are available to complete the Project. The County shall specify in a letter to the City that these conditions have been met and that the Project can be

1 advertised.

2 D. The County shall also review, within twenty one (21) calendar days
3 of receipt from the City, the name of the low bidder and cost or price analysis of the low
4 bid proposal prepared by the City to determine whether the contractor will be reasonably
5 compensated in accordance with Federal requirements, and to verify the contractor is
6 bonded and has not been disbarred or suspended from participating in Federal projects.
7 The County shall specify in a letter to the City that the conditions of this Section have
8 been met and that the contract can be awarded.

9 E. The County shall attend the pre-construction meeting between the
10 City and the contractor to discuss labor compliance requirements for the Project, Project
11 monitoring, and to inform the City and contractor that the County will conduct field
12 reviews to ensure labor compliance and other conditions of the construction contract are
13 being met.

14 F. The County shall conduct periodic inspections of the Project, as
15 may be required, to ensure that the intended use and group of beneficiaries of the
16 Project have not changed. Upon completion of the Project, but prior to the City's
17 acceptance of the Project, the County shall conduct a final inspection of the Project.
18 The County shall specify in a letter to the City that the conditions of this Section have
19 been met.

20 III. OBLIGATIONS OF THE CITY

21 A. The City shall provide any and all sums of money in excess of
22 \$277,446 that may be necessary to complete the Project. For the purposes of awarding
23 the construction of the Project within the Agreement amount, the bid documents should
24 include any proposed additive or deduct alternatives.

25 B. The City shall perform, or cause to be performed, all engineering
26 work required for the Project.

27 C. In selecting an engineer to perform any engineering work required
28 for the Project, the City shall go through a competitive process in accordance with

1 County Policy and HUD procurement standards. Prior to selection of the engineer, the
2 City shall prepare a written description of the process, perform a cost or price analysis,
3 and submit the process description and summary of the analysis to the County
4 Community Development Division for review. The City shall obtain a letter from the
5 County specifying that the conditions of this Section have been met.

6 D. The City shall specify in agreements with its consultants that all
7 engineering work funded with CDBG funds shall become the property of the City upon
8 payment by the City for the cost of such engineering work.

9 E. The City shall furnish evidence that it has free and clear title to all
10 parcels of land on which Project improvements will be located, with any liens or
11 encumbrances noted, and/or that it has obtained or can obtain all necessary easements,
12 rights-of-way, licenses, permits and State and local approvals required for the
13 completion of the Project.

14 F. Upon completion of the design engineering, the City shall submit the
15 plans and specifications to the County Community Development Division. The County
16 will ensure Federal CDBG requirements have been adhered to and review cost
17 estimates to ensure sufficient funds are available. The City shall obtain a letter from the
18 County specifying these conditions have been met and that the City is approved to
19 advertise for bids to construct the Project.

20 G. The City shall advertise for bids and shall award the construction
21 contract to the lowest responsible bidder. At least ten (10) calendar days prior to the bid
22 opening, the City shall notify the County of the date, time, and location of the bid
23 opening.

24 H. Within seven (7) calendar days following the bid opening, the City
25 shall furnish the County Community Development Division with the name of the low
26 bidder and cost or price analysis of the low bid proposal prepared by the City so that the
27 County can verify with the Labor Relations and Equal Opportunity Division of the HUD
28 Area Office that the low bidder is bonded and has not been debarred or suspended from

1 participating in Federal projects, and that the contractor will be reasonably compensated
2 in accordance with Federal requirements. The City shall obtain a letter from the County
3 specifying these conditions have been met and that the City is approved to award the
4 Project for construction.

5 I. The City shall conduct a pre-construction meeting with the
6 contractor and shall notify the County Community Development Division at least ten (10)
7 calendar days prior to the meeting so a representative of the County can be in
8 attendance to discuss CDBG labor compliance requirements for the Project.

9 J. Prior to the construction start date, the City shall give written notice
10 thereof to the County Community Development Division.

11 K. All proposed construction contract change orders shall not proceed
12 until prior written approval has been given by the County. Request for approval of a
13 change order(s) shall include a narrative description of the work, a cost or price analysis
14 in accordance with HUD requirements, a map depicting the location of the work
15 addressed with the requested change order, and a written certification from the City that
16 the approval of the change order is consistent with the final construction cost estimate
17 approved by the County. In addition, the City shall certify that the change order is within
18 the scope of the Project and is necessary to complete the Project.

19 L. The City shall send its written description of the engineer selection
20 process, cost or price analyses, design plans, specifications, name of low bidder and low
21 bid proposal, public notices, and all written correspondence to:

22
23 Community Development Grants
24 County of Fresno
25 Department of Public Works and Planning
Community Development Division
2220 Tulare Street, 6th Floor

26 M. The City shall comply with the mitigation measures, conditions and
27 notes identified in Initial Study/Environmental Assessment No. 6821 (the "Assessment").
28 A copy of the Assessment will be provided to the City.

1 N. Upon completion of the Project, the City shall notify the County
2 Community Development Division thereof so a representative of the Division can
3 perform an inspection of the Project to determine that it was completed in accordance
4 with the scope of work approved and authorized pursuant to this executed Agreement.

5 O. Upon approval of Project completion by the County, the City shall
6 provide the County Community Development Division with a resolution of acceptance, or
7 similar documentation, demonstrating that the Project was completed in accordance with
8 the scope of work approved and authorized pursuant to this executed Agreement and
9 any approved subsequent amendments thereto and/or change orders, and that the City
10 has accepted the Project. Prior to the final request for payment, the City shall also
11 provide the County with a copy of the recorded Notice of Completion (NOC), a written
12 summary of all Project work completed with CDBG and other funds, and documentation
13 to demonstrate compliance with Section 3 of the Housing and Urban Development Act of
14 1968, as amended.

15 P. During the contract period, the City shall complete and submit
16 annually each June 1, and upon completion of the Project, a Project Outcome
17 Measurement Report (POM) form, a copy of which is attached hereto as Exhibit 1 and
18 incorporated herein by reference. The POM shall contain the following information for
19 the County's Federal reporting purposes to HUD:

- 20 1. Total number of households/persons assisted.
- 21 2. Number of total households/persons assisted that:
 - 22 a. Now have new access to this type of public facility or
23 infrastructure improvement.
 - 24 b. Now have improved access to this type of public
25 facility or infrastructure improvement.
 - 26 c. Now are served by a public facility or infrastructure
27 that is no longer substandard.

28 Q. The City shall be responsible for maintenance of the improvements

1 after construction is completed and shall do so from non-CDBG resources.

2 R. The City must inform the County in writing of any program income
3 generated by the expenditure of CDBG funds. Any program income generated as a
4 result of the Project must be paid to the County. For purposes of this Agreement,
5 program income is defined as proceeds from the disposition of CDBG-acquired real
6 property, and principal and interest on CDBG loans. If the City contributed financially to
7 the improvement Project, the City may retain a share of the program income in
8 proportion to the City's contribution to the Project, after the City has provided a written
9 accounting acceptable to the County.

10 S. The City must obtain prior written approval from the County
11 whenever there is any modification or change in the use of any real property improved,
12 in whole or in part, using CDBG funds. If any real property improved with CDBG funds is
13 sold and/or is utilized by the City for a use which does not qualify under the CDBG
14 Program, the City shall reimburse the County in an amount equal to the current fair
15 market value for the property, less any proportional share thereof attributable to
16 expenditures of non-CDBG funds. These requirements shall continue in effect for the
17 life of the improvements. In the event the CDBG Program is closed-out, the
18 requirements of this Section shall remain in effect for activities or property funded with
19 CDBG funds, unless action is taken by the Federal government to relieve the County of
20 these obligations.

21 T. The City acknowledges that the County may periodically inspect the
22 Project to ensure the property is being used as described in this Agreement. The City
23 agrees to provide any necessary information to the County to carry out such inspections.
24 Furthermore, the City agrees to take corrective action if the County determines that
25 modifications to the use and location of the Project have resulted in a violation of the
26 Federal CDBG regulations.

27 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

28 A. The City, its consultants, contractors, and subcontractors shall

1 comply with all applicable State and Federal laws and regulations governing projects
2 that utilize Federal funds.

3 B. Whenever the City uses the services of a contractor, the City shall
4 require that the contractor comply with all Federal, State and local laws, ordinances,
5 regulations and Fresno County Charter provisions applicable in the performance of their
6 work.

7 C. This Project is subject to the requirements of Section 3 of the
8 Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u).
9 Accordingly, the City shall require the prime contractor to complete and submit
10 documentation prior to award of the construction contract and upon Project completion
11 that compliance with the Section 3 clause has been met.

12 D. Whenever the City receives at least \$100,000 for a project from the
13 County's CDBG Program under this Agreement, the City shall complete and submit to
14 the County Community Development Division a "Certification of Payments to Influence
15 Federal Transactions" form and a "Standard Form LLL - Disclosure of Lobbying
16 Activities" form. Likewise, before the City awards a contract using at least \$100,000 of
17 such CDBG funds, the City shall require the consultant and/or contractor and all their
18 sub-consultants and/or subcontractors to complete and submit these two (2) forms
19 described hereinabove to both the City and the County.

20 V. PAYMENT FOR THE PROJECT

21 A. At monthly intervals, the City shall submit a written request to the
22 County for payment of specified costs incurred in the performance of this Agreement.
23 The request for payment shall be accompanied by a written certification from the City
24 that the request for payment is consistent with the amount of work that has been
25 completed, and that said work is in accordance with the contract documents and this
26 Agreement. The request for payment shall also be accompanied by documentation
27 acceptable to the County, such as invoices or vouchers for services or materials
28 purchased, contractor's costs, or other costs chargeable to the Project. After

appropriate review and inspection, the County shall make payment from CDBG funds provided in this Agreement for all eligible costs specified herein.

B. Any savings realized in the final cost of the Project, due to Project cost and/or scope of work reductions, liquidated damages, or any other reason, shall be used to reduce the amount of this Project paid for with CDBG funds and shall be credited to the City's CDBG allocation. However, if the City is required to provide any funds toward the Project, any cost savings shall be first used to reimburse the City for its contribution in excess of the total amount provided by this Agreement.

C. Payment for advertising and award shall be based on the actual costs of printing and noticing.

D. The County will not be bound by any agreement between the City and its agents.

E. Upon the completion of the Project, the City shall submit to the County Community Development Division a written request for final payment of costs which shall provide a detailed description of the Project pay items and costs. The County shall not be obligated to make any payments under this Agreement if the request for payment is submitted by the City more than sixty (60) days after the Notice of Completion has been filed with the County Recorder's Office. An extension to the sixty (60) day period may be granted by the Director of the County Department of Public Works and Planning prior to the deadline if the City can demonstrate just cause for the delay.

F. The County may withhold reimbursement to the City until a final POM, recorded NOC, and written summary of all Project work completed with CDBG and other funds, and evidence of compliance with the Section 3 clause as specified in Sections III-O and IV-C, have been submitted to the County.

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1 G. All requests for payment and supporting documentation shall be
2 sent to:

3 Business Manager
4 County of Fresno
5 Department of Public Works and Planning
6 Financial Services Division
7 2220 Tulare Street, 6th Floor
8 Fresno, CA 93721

9 H. The City shall establish accounting and bookkeeping procedures in
10 accordance with standard accounting and bookkeeping practices, including, but not
11 limited to, employee time cards, payrolls, and other records of all transactions to be paid
12 with CDBG funds in accordance with the performance of this Agreement. All records
13 and accounts shall be available for inspection by the County, the State of California, if
14 applicable, the Comptroller General of the United States, and HUD or any of their duly
15 authorized representatives, at all reasonable times, for a period of at least five (5) years
16 following final payment under this Agreement or the closure of all other pending matters,
17 whichever is later. The City shall certify accounts when required or requested by the
18 County.

19 I. The City, as a sub-recipient of Federal financial assistance, is
20 required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C.
21 Sections 7501 et seq.), as amended. Whenever the City expends and/or receives
22 CDBG funds from the County for the Project, a copy of any audit performed by the City
23 in accordance with said Act shall be forwarded to the County Community Development
24 Grants Program Manager within nine (9) months of the end of any City fiscal year in
25 which funds were expended and/or received for the Project. Failure to perform the
26 requisite audit functions as required by this paragraph may result in the County
27 performing any necessary audit tasks, or, at the County's option, the County contracting
28 with a public accountant to perform the audit. All audit costs related to the City's failure
to perform the requisite audit are the sole responsibility of the City and such audit work
costs incurred by the County shall be billed to the City as determined by County's

1 Auditor-Controller/Treasurer-Tax Collector. In the event the City is only required to
2 perform an audit under the provisions of the Act because the City is receiving CDBG
3 funds, the County may perform, or cause to be performed, the required audit to
4 determine whether funds provided through this Agreement have been expended in
5 accordance with applicable laws and regulations. Any audit-related costs incurred by
6 the County under this provision shall be charged to the County CDBG Program. The
7 City agrees to take prompt and appropriate corrective action on any instance of material
8 non-compliance with applicable laws and regulations.

9 J. The City shall send a copy of the audit to:

10 Community Development Grants
11 County of Fresno
12 Department of Public Works and Planning
13 Community Development Division
2220 Tulare Street, 6th Floor
Fresno, CA 93721

14 VI. INDEMNIFICATION

15 Each party to this Agreement shall indemnify, defend and hold harmless
16 the other party, its officers, agents, employees and representatives, from any and all
17 loss, liability, costs, expenses and damage to persons or property, and from any and all
18 claims, demands and actions in law or equity (including attorney's fees and legal
19 expenses) arising or alleged to have arisen directly from any wrongful acts caused by its
20 respective activities pursuant to this Agreement.

21 VII. TIME OF PERFORMANCE

22 A. The following schedule shall commence on the date this Agreement
23 is executed by the County.

24 1. Complete Consultant Engineer Selection Process – August
25 26, 2016.

26 2. Complete Design Engineering and Submit to the County for
27 Review – November 30, 2016.

28 3. Complete County Review and Approval of Plans – March 15,

1 2017.

2 4. Begin Advertising for Bids – April 13, 2017.

3 5. Award Contract – July 20, 2017.

4 B. The Project's Notice of Completion shall be filed with the Fresno
5 County Recorder's Office no later than April 19, 2018.

6 C. The final POM Report, written summary of all work completed,
7 documentation demonstrating compliance with the Section 3 clause, and request for
8 final payment shall be submitted to the County no later than June 19, 2018.

9 D. The City shall give immediate written notification to the County
10 Community Development Division of any events that occur which may affect the above
11 time schedule and completion date and the time schedule specified in the contract
12 documents, or any event that may have significant impact upon the Project or affect the
13 attainment of the Project's objectives. The Director of the County Department of Public
14 Works and Planning is authorized to make adjustments in the above schedule if, in the
15 Director's judgment, any delay is beyond the control of the parties involved.

16 VIII. BREACH OF AGREEMENT

17 In the event the City fails to comply with any of the terms of this
18 Agreement, the County may, at its option, deem the City's failure a material breach of
19 this Agreement and utilize any of the remedies set forth in 24 CFR 85.43 or that it
20 deems appropriate. Should the County deem a breach of this Agreement material, the
21 County shall immediately be relieved of its obligations to make further payment as
22 provided herein. Termination of this Agreement due to breach shall not, in any way
23 whatsoever, limit the rights of the County in seeking any other legal relief in a court of
24 law or equity, including the recovery of damages. In addition to the Agreement being
25 terminated by the County in accord with a material breach of this Agreement by the City,
26 this Agreement may also be terminated for convenience by the County in accord with 24
27 CFR 85.44.

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1 IX. TERMINATION OF PROJECT

2 A. If the City decides to cancel the Project covered by this Agreement,
3 the City shall submit a request in writing to the County Department of Public Works and
4 Planning, Community Development Division explaining just cause for the request. The
5 Director of the Department is authorized to approve such a request if, in the Director's
6 judgment, there is just cause for the Project's cancellation.

7 B. If the Director approves the City's request to cancel the Project, any
8 unexpended CDBG funds budgeted to the Project under this Agreement may be
9 credited to the City's CDBG allocation, as appropriate.

10 X. VENUE; GOVERNING LAW

11 Venue for any action arising out of or relating to this Agreement shall be
12 only in Fresno County, California. The rights and obligations of the parties and all
13 interpretation and performance of this Agreement shall be governed in all respects by
14 the laws of the State of California.

15 XI. ENTIRE AGREEMENT

16 This Agreement constitutes the entire agreement between the City and the
17 County with respect to the subject matter hereof and supersedes all previous
18 negotiations, proposals, commitments, writings, advertisements, publications, and
19 understandings of any nature whatsoever unless expressly included in this Agreement.

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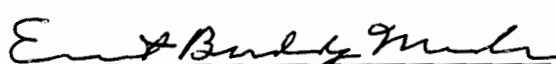
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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date
2 set forth above.

3
4 REVIEWED AND RECOMMENDED
5 FOR APPROVAL

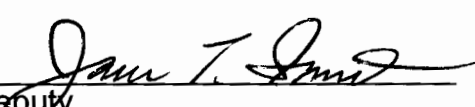
6 By: 
7 Steven E. White, Director
8 Department of Public Works
and Planning

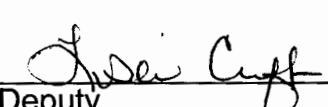
COUNTY OF FRESNO


Ernest Buddy Mendes, Chairman
Board of Supervisors

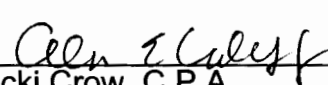
9 APPROVED AS TO LEGAL FORM:
10 DANIEL C. CEDERBORG,
COUNTY COUNSEL

ATTEST: Bernice E. Seidel, Clerk
Board of Supervisors

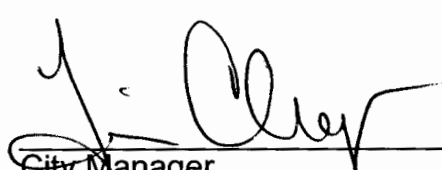
11
12 By: 
13 Deputy

By: 
Deputy

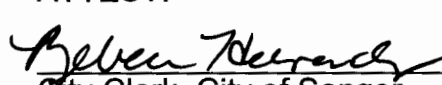
14 APPROVED AS TO ACCOUNTING
15 FORM:

16
17 By: 
18 Vicki Crow, C.P.A.
Auditor-Controller/ Treasurer-Tax
Collector

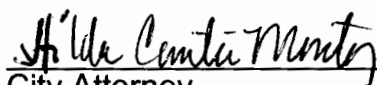
CITY OF SANGER


City Manager

ATTEST:


City Clerk, City of Sanger

APPROVED AS TO LEGAL FORM


City Attorney

REMIT TO:

City of Sanger
Attn: Tim Chapa, City Manager
1700 7th Street
Sanger, CA 93657

Telephone: (559) 875-2587

24
25 FUND NO: 0001
SUBCLASS NO: 10000
26 ORG NO: 7205
ACCOUNT NO: 7885
27 PROJECT NO: N16611
ACTIVITY CODE: 7219

Exhibit 1
County of Fresno
Project Outcome Measurement Report

Project #: _____ Project Name: _____

The County of Fresno is required to submit information annually on each project funded with Community Development Block Grant (CDBG) funds, per U.S. Department of Housing and Urban Development (HUD) guidelines. As a recipient of CDBG funds from the County, we request that you provide the following information:

1. Years Reported: _____ through _____
2. Enter the number of persons assisted that:
 - a. Now have **new access** to this type of public facility or infrastructure improvement: _____ or N/A
(New access to a public facility or infrastructure is when the facility did not previously exist and is provided for the first time.)
 - b. Now have **improved access** to this type of public facility or infrastructure improvement: _____ or N/A
(Improved access to a public facility or infrastructure is when the facility or infrastructure is improved or expanded, enabling the grantee to expand the number of people or type of service the facility provides.)
 - c. Are served by this public facility or infrastructure improvement that **is no longer substandard**: _____ or N/A
(A public facility or infrastructure is no longer substandard when the CDBG funds were used to meet a quality standard, or measurably improve the quality of the facility or infrastructure.)

(Note: The numbers of persons entered in a, b, and c, above, must add up to the total number of persons entered in question 3.)

3. Total number of persons assisted: _____
4. Please describe the accomplishments made on this project in the past year (i.e. construction progress). If the project is complete, please describe the overall accomplishments made on the project.

Form Completed By: _____