

A G R E E M E N T

THIS AGREEMENT is made this 9th day of January, 2018, 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 VI) Project No. 17611 for CDBG funding; and

WHEREAS, the total cost of the Project is estimated at \$230,000 and the City has committed local funds to the Project in the amount of \$40,351 and is in need of \$189,649 in CDBG funding to complete the Project; and

WHEREAS, the County can make available \$189,649 in CDBG funds needed for the Project from the City's 2017-2018 CDBG allocation; 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 'Q' Street, Twelfth Street, Sanger Avenue and Fourteenth Street. The improvements will increase safety and benefit a service area that will principally assist low to moderate income residents.

1 B. The Project sites are within the City's existing easements or public rights-of-
2 way.

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

4 1. Obtain all necessary permits.

5 2. Perform all necessary design engineering including, but not limited
6 to, surveying; testing; preparation of plans, specifications, and cost estimates; bid documents and
7 a cost or price analysis; review of bids and recommendation for award.

8 3. Prepare and advertise Project bid notices and award construction
9 contracts including, but not limited to, the printing of bid documents; publishing of notices; and
10 preparation of bid summary.

11 4. Perform all construction engineering including, but not limited to,
12 shop drawing review and approval; contract change order preparation; surveying; staking;
13 inspection; soil testing; materials testing; preparation of "as-built" drawings; labor compliance; and
14 contract administration.

15 5. Provide related eligible improvements.

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

| | | |
|----|-----------------------------------|---------------|
| 17 | Construction | \$ 171,000 |
| 18 | Design & Construction Engineering | 41,000 |
| | Contingency, Permits & Misc. | <u>18,000</u> |
| 19 | Total | \$ 230,000 |

20 E. Notwithstanding the estimates described in the above preliminary Project
21 budget, payments for the Project from CDBG funds will be based on the actual costs and shall not
22 exceed the total amount of \$189,649.

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

| | | |
|----|------------------------------|---------------|
| 25 | CDBG | \$ 189,649 |
| 26 | Local Financial Contribution | <u>40,351</u> |
| | Total | \$ 230,000 |

27 ///

28 ///

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

4 Community Development Grants
5 County of Fresno
6 Department of Public Works and Planning
7 Community Development Division
8 2220 Tulare Street, 6th Floor
9 Fresno, CA 93721

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

14 II. OBLIGATIONS OF THE COUNTY

15 A. The County shall provide up to, but not more than, \$189,649 of CDBG funds
16 to the City for the Project. All funds shall be paid to the City in accordance with Section V-A of this
17 Agreement.

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

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

D. The County shall also review, within twenty one (21) calendar days of receipt
from the City, the name of the low bidder and cost or price analysis of the low bid proposal prepared

1 by the City to determine whether the contractor will be reasonably compensated in accordance
2 with Federal requirements, and to verify the contractor is bonded and has not been disbarred or
3 suspended from participating in Federal projects. The County shall specify in a letter to the City
4 that the conditions of this Section have been met and that the contract can be awarded.

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

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

14 III. OBLIGATIONS OF THE CITY

15 A. The City shall provide any and all sums of money in excess of \$189,649 that
16 may be necessary to complete the Project. For the purposes of awarding the construction of the
17 Project within the Agreement amount, the bid documents should include any proposed additive or
18 deduct alternatives.

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

21 C. In selecting an engineer to perform any engineering work required for the
22 Project, the City shall go through a competitive process in accordance with County Policy and HUD
23 procurement standards. Prior to selection of the engineer, the City shall prepare a written
24 description of the process, perform a cost or price analysis, and submit the process description
25 and summary of the analysis to the County Community Development Division for review. The City
26 shall obtain a letter from the County specifying that the conditions of this Section have been met.

27 D. The City shall specify in agreements with its consultants that all engineering
28 work funded with CDBG funds shall become the property of the City upon payment by the City for

1 the cost of such engineering work.

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

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

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

14 H. Within seven (7) calendar days following the bid opening, the City shall
15 furnish the County Community Development Division with the name of the low bidder and cost or
16 price analysis of the low bid proposal prepared by the City so that the County can verify with the
17 Labor Relations and Equal Opportunity Division of the HUD Area Office that the low bidder is
18 bonded and has not been debarred or suspended from participating in Federal projects, and that
19 the contractor will be reasonably compensated in accordance with Federal requirements. The City
20 shall obtain a letter from the County specifying these conditions have been met and that the City
21 is approved to award the Project for construction.

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

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

28 K. All proposed construction contract change orders shall not proceed until

1 prior written approval has been given by the County. Request for approval of a change order(s)
2 shall include a narrative description of the work, a cost or price analysis in accordance with HUD
3 requirements, a map depicting the location of the work addressed with the requested change order,
4 and a written certification from the City that the approval of the change order is consistent with the
5 final construction cost estimate approved by the County. In addition, the City shall certify that the
6 change order is within the scope of the Project and is necessary to complete the Project.

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

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

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

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

21 O. Upon approval of Project completion by the County, the City shall provide
22 the County Community Development Division with a resolution of acceptance, or similar
23 documentation, demonstrating that the Project was completed in accordance with the scope of
24 work approved and authorized pursuant to this executed Agreement and any approved
25 subsequent amendments thereto and/or change orders, and that the City has accepted the Project.
26 Prior to the final request for payment, the City shall also provide the County with a copy of the
27 recorded Notice of Completion (NOC), a written summary of all Project work completed with CDBG
28 and other funds, and documentation to demonstrate compliance with Section 3 of the Housing and

1 Urban Development Act of 1968, as amended.

2 P. During the contract period, the City shall complete and submit annually each
3 June 1, and upon completion of the Project, a Project Outcome Measurement Report (POM) form,
4 a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference. The POM
5 shall contain the following information for the County's Federal reporting purposes to the U.S.
6 Department of Housing and Urban Development (HUD):

- 7 1. Total number of households/persons assisted.
- 8 2. Number of total households/persons assisted that:
 - 9 a. Now have new access to this type of public facility or
10 infrastructure improvement.
 - 11 b. Now have improved access to this type of public facility or
12 infrastructure improvement.
 - 13 c. Now are served by a public facility or infrastructure that is no
14 longer substandard.

15 Q. The City shall be responsible for maintenance of the improvements after
16 construction is completed and shall do so from non-CDBG resources.

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

24 S. The City must obtain prior written approval from the County before there is
25 any modification or change in the use of any real property improved, in whole or in part, using
26 CDBG funds in excess of \$25,000. The City shall provide affected citizens with notice of, and
27 opportunity to comment on, any proposed change to the use of real property improved with CDBG
28 funds. If any real property improved with CDBG funds is sold and/or is utilized by the City for a

1 use which does not qualify under the CDBG Program, the City shall reimburse the County in an
2 amount equal to the current fair market value for the property, less any proportional share thereof
3 attributable to expenditures of non-CDBG funds. These requirements shall continue in effect for
4 five years after the project is completed in HUD's Integrated Disbursement and Information System
5 (IDIS). In the event the CDBG program is closed-out, the requirements of this Section shall remain
6 in effect for activities or property funded with CDBG funds, unless action is taken by the Federal
7 government to relieve the City of these obligations.

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

13 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

14 A. The City, its consultants, contractors, and subcontractors shall comply with
15 all applicable State and Federal laws and regulations governing projects that utilize Federal funds.

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

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

24 D. Whenever the City receives at least \$100,000 for a project from the County's
25 CDBG Program under this Agreement, the City shall complete and submit to the County
26 Community Development Division a "Certification of Payments to Influence Federal Transactions"
27 form and a "Standard Form LLL - Disclosure of Lobbying Activities" form. Likewise, before the City
28 awards a contract using at least \$100,000 of such CDBG funds, the City shall require the

1 consultant and/or contractor and all their sub-consultants and/or subcontractors to complete and
2 submit these two (2) forms described hereinabove to both the City and the County.

3 V. PAYMENT FOR THE PROJECT

4 A. At monthly intervals, the City shall submit a written request to the County for
5 payment of specified costs incurred in the performance of this Agreement. The request for
6 payment shall be accompanied by a written certification from the City that the request for payment
7 is consistent with the amount of work that has been completed, and that said work is in accordance
8 with the contract documents and this Agreement. The request for payment shall also be
9 accompanied by documentation acceptable to the County, such as invoices or vouchers for
10 services or materials purchased, contractor's costs, or other costs chargeable to the Project. After
11 appropriate review and inspection, the County shall make payment from CDBG funds provided in
12 this Agreement for all eligible costs specified herein.

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

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

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

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

1 Department of Public Works and Planning prior to the deadline if the City can demonstrate just
2 cause for the delay.

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

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

8 Business Manager
9 County of Fresno
10 Department of Public Works and Planning
11 Financial Services Division
12 2220 Tulare Street, 6th Floor
13 Fresno, CA 93721

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

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

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

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

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

16 VI. INDEMNIFICATION

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

22 VII. TIME OF PERFORMANCE

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

- 25 1. Complete Design Engineering and Submit to the County for Review
26 – May 1, 2018.
- 27 2. Complete County Review and Approval of Plans – August 1, 2018.
- 28 3. Begin Advertising for Bids – August 15, 2018.

1 4. Award Contract – October 18, 2018.

2 B. The Project's Notice of Completion shall be filed with the Fresno County
3 Recorder's Office no later than May 15, 2019.

4 C. The final POM Report, written summary of all work completed,
5 documentation demonstrating compliance with the Section 3 clause, and request for final payment
6 shall be submitted to the County no later than July 13, 2019.

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

14 VIII. BREACH OF AGREEMENT

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

24 IX. TERMINATION OF PROJECT

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

1 cause for the Project's cancellation.

2 B. If the City's request to cancel the Project covered by this Agreement is
3 approved, the City shall promptly return to the County all CDBG funds paid pursuant to this
4 Agreement. Such CDBG funds returned from the cancelled Project may be credited to the City's
5 CDBG allocation, as appropriate.

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

9 X. VENUE; GOVERNING LAW

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

14 XI. ENTIRE AGREEMENT

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

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

3
4 CITY OF SANGER

COUNTY OF FRESNO

5
6 By: [Signature]
City Manager

[Signature]
Sal Quintero, Chairman of the
Board of Supervisors of the
County of Fresno

7
8 Date: 11/16/17

Date: January 9, 2018

9
10 ATTEST:

ATTEST:
Bernice E. Seidel
Clerk to the Board of Supervisors
County of Fresno, State of California

11
12
13 [Signature]
City Clerk, City of Sanger

By: [Signature]

14
15 APPROVED AS TO LEGAL FORM:

16
17 [Signature]
18 City Attorney

19
20
21 FUND NO: 0001
22 SUBCLASS NO: 10000
23 ORG NO: 7205
24 ACCOUNT NO: 7885
PROJECT NO: N17611
ACTIVITY CODE: 7219

REMIT TO:
City of Sanger
Attn: Tim Chapa, City Manager
1700 7th Street
Sanger, CA 93657
Telephone: (559) 875-2587

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: _____