

## A G R E E M E N T

THIS AGREEMENT ("Agreement") is made this 8th day of January, 2019 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("County"), and the CITY OF SELMA, ("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 Sheridan Street Storm Drain Project No. 18651 ("Project") for CDBG funding; and

WHEREAS, the total cost of the Project is estimated at \$271,500 and the City has requested the sum of \$271,500 in CDBG funds be made available for the Project; and

WHEREAS, the County can provide \$271,500 in CDBG funds needed for the Project from the 2018-2019 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 construction of a storm drain pipeline along Sheridan Street from Knowles Street to the groundwater recharge basin south of Valley View Street. The new pipeline will redirect flows from two existing storm drain collection systems, which operate using lift stations. A short section of new pipeline will extend east on Valley View from Sheridan. The Project will also include roadway restoration, the construction of an outfall structure at the groundwater recharge basin, piping to intercept the existing storm drain lift stations along

1 Sheridan at Knowles and at Salazar Park. Work may also include continued grading in the existing  
2 groundwater recharge basin, and street improvements along the groundwater basin frontage. The  
3 improvements will reduce flooding in the area due to capacity and reliability issues with the lift  
4 stations.

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

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

8 1. Obtain all necessary permits.

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

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

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

19 5. Provide related eligible improvements.

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

21	Construction	\$231,500
22	Design & Construction Engineering	14,500
	Contingency, Permits & Misc.	<u>25,500</u>
23	Total	\$271,500

24 E. Notwithstanding the estimates described in the above preliminary Project  
25 budget, payments for the Project from CDBG funds will be based on the actual costs expended by  
26 the City, and shall not exceed the total amount of \$271,500.

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

CDBG	\$271,500
Local Financial Contribution	0
Total	\$271,500

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 ("Director") 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 whether any modifications to the scope of the Project are authorized, and if the City may proceed.

## II. OBLIGATIONS OF THE COUNTY

A. The County shall provide up to, but not more than, \$271,500 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

1 to complete the Project. The County shall specify in a letter to the City that these conditions have  
2 been met and that the Project can be advertised.

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

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

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

18 III. OBLIGATIONS OF THE CITY

19 A. The City shall provide any and all sums of money in excess of \$271,500 that  
20 may be necessary to complete the Project. For the purposes of awarding the construction of the  
21 Project within the Agreement amount, the bid documents should include any proposed additive or  
22 deduct alternatives.

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

25 C. In selecting an engineer to perform any engineering work required for the  
26 Project, the City shall go through a competitive process in accordance with County Policy and HUD  
27 procurement standards. Prior to selection of the engineer, the City shall prepare a written  
28 description of the process, perform a cost or price analysis, and submit the process description

1 and summary of the analysis to the County Community Development Division for review. The City  
2 shall obtain a letter from the County specifying that the conditions of this Section have been met.

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

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

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

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

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

26 A. The City shall conduct a pre-construction meeting with the contractor and  
27 shall notify the County Community Development Division at least ten (10) calendar days prior to  
28 the meeting so a representative of the County can attend to discuss CDBG labor compliance

1 requirements for the Project.

2 B. Prior to the construction start date, the City shall give written notice thereof  
3 to the County Community Development Division.

4 C. All proposed construction contract change orders shall not proceed until  
5 prior written approval has been given by the County. Request for approval of a change order(s)  
6 shall include a narrative description of the work, a cost or price analysis in accordance with HUD  
7 requirements, a map depicting the location of the work addressed with the requested change order,  
8 and a written certification from the City that the approval of the change order is consistent with the  
9 final construction cost estimate approved by the County. In addition, the City shall certify that the  
10 change order is within the scope of the Project and is necessary to complete the Project.

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

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

18 E. The City shall comply with the mitigation measures, conditions and notes  
19 identified in Initial Study/Environmental Assessment No. 7445 (the "Assessment"). A copy of the  
20 Assessment will be provided to the City.

21 F. Upon completion of the Project, the City shall notify the County Community  
22 Development Division so a representative of the Division can perform an inspection of the Project  
23 to determine that it was completed in accordance with the scope of work approved and authorized  
24 pursuant to this executed Agreement.

25 G. Upon approval of Project completion by the County, the City shall provide  
26 the County Community Development Division with a resolution of acceptance, or similar  
27 documentation, demonstrating that the Project was completed in accordance with the scope of  
28 work approved and authorized pursuant to this executed Agreement and any approved

subsequent amendments thereto and/or change orders, and that the City has accepted the Project. Prior to the final request for payment, the City shall also provide the County with a copy of the recorded Notice of Completion (NOC), a written summary of all Project work completed with CDBG and other funds, and documentation to demonstrate compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended.

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

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

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

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

K. The City must obtain prior written approval from the County before there is

1 any modification or change in the use of any real property improved, in whole or in part, using  
2 CDBG funds in excess of \$25,000. The City shall provide affected citizens with notice of, and  
3 opportunity to comment on, any proposed change to the use of real property improved with CDBG  
4 funds. If any real property improved with CDBG funds is sold and/or is utilized by the City for a  
5 use which does not qualify under the CDBG Program, the City shall reimburse the County in an  
6 amount equal to the current fair market value for the property, less any proportional share thereof  
7 attributable to expenditures of non-CDBG funds. These requirements shall continue in effect for  
8 five years after the project is completed in HUD's Integrated Disbursement and Information System  
9 (IDIS). In the event the CDBG program is closed-out, the requirements of this Section shall remain  
10 in effect for activities or property funded with CDBG funds, unless action is taken by the Federal  
11 government to relieve the City of these obligations.

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

17 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

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

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

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

28 D. Whenever the City receives at least \$100,000 for a project from the County's

1 CDBG Program under this Agreement, the City shall complete and submit to the County  
2 Community Development Division a "Certification of Payments to Influence Federal Transactions"  
3 form and a "Standard Form LLL - Disclosure of Lobbying Activities" form. Likewise, before the City  
4 awards a contract using at least \$100,000 of such CDBG funds, the City shall require the  
5 consultant and/or contractor and all their sub-consultants and/or subcontractors to complete and  
6 submit these two (2) forms described hereinabove to both the City and the County.

7 V. PAYMENT FOR THE PROJECT

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

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

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

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

27 E. Upon the completion of the Project, the City shall submit to the County  
28 Community Development Division a written request for final payment of costs which shall provide

1 a detailed description of the Project pay items and costs. The County shall not be obligated to  
2 make any payments under this Agreement if the request for payment is submitted by the City more  
3 than sixty (60) days after the Notice of Completion has been filed with the County Recorder's  
4 Office. An extension to the sixty (60) day period may be granted by the Director of the County  
5 Department of Public Works and Planning prior to the deadline if the City can demonstrate just  
6 cause for the delay.

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

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

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

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

25 I. The City, as a sub-recipient of Federal financial assistance, is required to  
26 comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as  
27 amended. Whenever the City expends and/or receives CDBG funds from the County for the  
28 Project, a copy of any audit performed by the City in accordance with said Act shall be forwarded

1 to the County Community Development Grants Program Manager within nine (9) months of the  
2 end of any City fiscal year in which funds were expended and/or received for the Project. Failure  
3 to perform the requisite audit functions as required by this paragraph may result in the County  
4 performing any necessary audit tasks, or, at the County's option, the County contracting with a  
5 public accountant to perform the audit. All audit costs related to the City's failure to perform the  
6 requisite audit are the sole responsibility of the City and such audit work costs incurred by the  
7 County shall be billed to the City as determined by County's Auditor-Controller/Treasurer-Tax  
8 Collector. In the event the City is only required to perform an audit under the provisions of the Act  
9 because the City is receiving CDBG funds, the County may perform, or cause to be performed,  
10 the required audit to determine whether funds provided through this Agreement have been  
11 expended in accordance with applicable laws and regulations. Any audit-related costs incurred by  
12 the County under this provision shall be charged to the County CDBG Program. The City agrees  
13 to take prompt and appropriate corrective action on any instance of material non-compliance with  
14 applicable laws and regulations.

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

16 Community Development Grants  
17 County of Fresno  
18 Department of Public Works and Planning  
19 Community Development Division  
20 2220 Tulare Street, 6th Floor  
21 Fresno, CA 93721

22 VI. INDEMNIFICATION

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

28 VII. TIME OF PERFORMANCE

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

1. Complete Design Engineering and Submit to the County for Review – April 30, 2019.
2. Complete County Review and Approval of Plans – July 29, 2019.
3. Begin Advertising for Bids – August 21, 2019.
4. Award Contract – October 21, 2019.

B. The Project's Notice of Completion shall be filed with the Fresno County Recorder's Office no later than March 20, 2020.

C. The final POM Report, written summary of all work completed, documentation demonstrating compliance with the Section 3 clause, and request for final payment shall be submitted to the County no later than May 20, 2020.

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

#### VIII. BREACH OF AGREEMENT

In the event the City fails to comply with any of the terms of this Agreement, the County may, at its option, deem the City's failure a material breach of this Agreement and utilize any of the remedies set forth in 24 CFR 85.43 or that it deems appropriate. Should the County deem a breach of this Agreement material, the County shall immediately be relieved of its obligations to make further payment as provided herein. Termination of this Agreement due to breach shall not, in any way whatsoever, limit the rights of the County in seeking any other legal relief in a court of law or equity, including the recovery of damages. In addition to the Agreement being terminated by the County in accord with a material breach of this Agreement by the City, this Agreement may also be terminated for convenience by the County in accord with 24 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, the City  
3 shall submit a request in writing to the County Department of Public Works and Planning,  
4 Community Development Division explaining just cause for the request. The Director of the  
5 Department is authorized to approve such a request if, in the Director's judgment, there is just  
6 cause for the Project's cancellation.

7 B. If the City's request to cancel the Project covered by this Agreement is  
8 approved, the City shall promptly return to the County all payments of specified costs incurred in  
9 the performance of the Agreement to date.

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

13 X. VENUE: GOVERNING LAW

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

18 XI. ENTIRE AGREEMENT

19 This Agreement constitutes the entire agreement between the City and the County  
20 with respect to the subject matter hereof and supersedes all previous negotiations, proposals,  
21 commitments, writings, advertisements, publications, and understandings of any nature  
22 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  
2 on page one of this Agreement.

3  
4 CITY OF SELMA

COUNTY OF FRESNO

5  
6 By: Jim Avalos  
Jim Avalos, Mayor

Nathan Magsig  
Nathan Magsig Chairman of the  
Board of Supervisors of the  
County of Fresno

7  
8 Date: 11-9-18

Date: January 8, 2019

9  
10 ATTEST:

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

11  
12  
13 Maria Rivera  
City Clerk, City of Selma

By: Rosei Cruz, Deputy

14  
15 APPROVED AS TO LEGAL FORM:

16  
17 [Signature]  
18 City Attorney

REMIT TO:

19  
20  
21 FUND NO: 0001  
22 SUBCLASS NO: 10000  
23 ORG NO: 7205  
24 ACCOUNT NO: 7885  
PROJECT NO: N18651  
ACTIVITY CODE: 7219

City of Selma  
Attn: Teresa Gallavan, City Manager  
1710 Tucker Street  
Selma, CA 93662  
Telephone: (559) 891-2200

25  
26 SW-JA: \_\_\_\_\_

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October 8, 2018

**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.

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Form Completed By: \_\_\_\_\_