

A G R E E M E N T

THIS AGREEMENT ("Agreement") is made this 1st day of September, 2020 ("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 Selma Sidewalk ADA Improvements Project No. 20651 ("Project") for CDBG funding; and

WHEREAS, the City has estimated that the total cost of the Project is \$531,000, and the City has committed local funds to the Project in the amount of \$326,209, and is in need of \$204,791 in CDBG funding to complete the Project; and

WHEREAS, the County can provide \$204,791 in CDBG funds needed for the Project from the City's 2020-2021 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 will fund the replacement or modification of curb ramps, sidewalk, and brick pavers that have been damaged by tree roots or otherwise do not meet Americans with Disabilities (ADA) standards at various locations within an area generally bounded by North Street, Grant Street, McCall Avenue, Third Street, and Front Street in the City. The project will also include the restoration of irrigation and electrical systems damaged by tree removal

1 operations. The improvements will provide ADA-compliant pedestrian travelling surfaces that will
2 be usable by all residents.

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

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

6 1. Obtain all necessary permits.

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

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

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

17 5. Provide related eligible improvements.

18 D. The Project budget is estimated by the City as follows:

19	Construction	\$434,700
20	Design & Construction Engineering	52,300
21	Contingency, Permits & Misc.	<u>44,000</u>
	Total	\$531,000

22 E. Notwithstanding the City's estimates described in the above-described
23 Project budget, payments for the Project from CDBG funds shall be limited to the City's actual
24 costs expended by the City, and shall not exceed the total amount of \$204,791.

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

27	CDBG	\$204,791
28	Local Financial Contribution	<u>326,209</u>
	Total	\$531,000

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 ("Director") determines the
11 modified Project is still eligible under the Federal CDBG regulations, the Director is authorized to
12 permit such modifications. The County shall specify in a letter to the City that such modifications
13 to the scope of the Project are authorized, and whether or not the City may proceed.

14 II. OBLIGATIONS OF THE COUNTY

15 A. The County shall reimburse the City an amount not to exceed \$204,791 in
16 CDBG funds to the City for the Project for the City's performance of its obligations under this
17 Agreement. All funds shall be paid to the City in accordance with Section V-A of this 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. If such conditions have been
22 met, the County shall specify in a letter to the City that these conditions have been met, and that
23 the engineering contract can be 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. If such conditions have been met, the County shall specify in a letter to
28 the City that these conditions have 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 by the City, to determine whether the contractor will be reasonably compensated in

1 accordance with Federal requirements, and to verify the contractor is bonded, and has not been
2 disbarred or suspended from participating in Federal projects. If such conditions have been met,
3 the County shall specify in a letter to the City that these conditions have been met, and that the
4 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, in the determination of the County, to ensure that the intended use and group of
11 beneficiaries of the Project have not changed. Upon completion of the Project, but prior to the
12 City's acceptance of the Project, the County shall conduct a final inspection of the Project. If such
13 conditions have been met, the County shall specify in a letter to the City that the conditions of this
14 Section have been met.

15 III. OBLIGATIONS OF THE CITY

16 A. The City shall provide any and all sums of money in excess of \$204,791
17 which may be necessary to complete the Project. For the purposes of awarding the construction
18 of the Project within the Agreement amount, the bid documents should include any proposed
19 additive or deduct alternatives.

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

22 C. In selecting an engineer to perform any engineering work required for the
23 Project, the City shall go through a competitive process in accordance with Chapter 4.10 of the
24 Ordinance Code of Fresno County, and HUD procurement standards. Prior to selection of the
25 engineer, the City shall prepare a written description of the process, perform a cost or price
26 analysis, and submit the process description and summary of the analysis to the County
27 Community Development Division for review. The City shall obtain a letter from the County
28 specifying that the conditions of this Section have been met.

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

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

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

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

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

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

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

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

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

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

17 M. The City shall comply with the mitigation measures, conditions and notes
18 identified in Environmental Review No. 7640 (the "Assessment"). A copy of the Assessment will
19 be provided to the City.

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

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

1 Prior to the final request for payment, the City shall also provide the County with a copy of the
2 recorded Notice of Completion (NOC), a written summary of all Project work completed with CDBG
3 and other funds, and documentation to demonstrate compliance with Section 3 of the Housing and
4 Urban Development Act of 1968, as amended.

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

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

18 Q. The City shall be responsible for maintenance of the Project after
19 construction is completed, and shall perform such maintenance from non-CDBG resources.

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

27 S. The City must obtain prior written approval from the County before making
28 any modification or change in the use of any real property improved, in whole or in part, using

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

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

16 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

17 A. The City shall comply, and shall cause its consultants, contractors, and
18 subcontractors to comply with all applicable State and Federal laws and regulations governing the
19 Project.

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. section 1701(u). Accordingly, the City
25 shall require the prime contractor to complete and submit documentation prior to award of the
26 construction contract, and upon Project completion, that the prime contractor has complied with
27 Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. section
28 1701(u).

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

8 V. PAYMENT FOR THE PROJECT

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

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

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

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

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

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

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

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

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

26 I. The City, as a sub-recipient of Federal financial assistance, is required to
27 comply with the provisions of the Single Audit Act Amendments of 1996 (31 U.S.C. Sections 7501
28 et seq.). Whenever the City expends and/or receives CDBG funds from the County for the Project,

a copy of any audit performed by the City in accordance with said Act shall be forwarded to the County Community Development Grants Program Manager within nine (9) months of the 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 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 Auditor-Controller/Treasurer-Tax Collector. In the event the City is only required to perform an audit under the provisions of the Act because the City is receiving CDBG funds, the County may perform, or cause to be performed, the required audit, to determine whether funds provided through this Agreement have been expended in accordance with applicable laws and regulations. Any audit-related costs incurred by the County under this provision shall be charged to the County CDBG Program. The City agrees to take prompt and appropriate corrective action on any instance of material non-compliance with applicable laws and regulations.

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

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

VI. INDEMNIFICATION

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

VII. TIME OF PERFORMANCE

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

3 1. Complete Design Engineering and Submit to the County for Review
4 – January 4, 2021.

5 2. Complete County Review and Approval of Plans – April 5, 2021.

6 3. Begin Advertising for Bids – May 7, 2021.

7 4. Award Contract – July 5, 2021.

8 B. The Project shall be completed, and Notice of Completion shall be filed with
9 the Fresno County Recorder's Office, no later than December 10, 2021.

10 C. The final POM Report, written summary of all work completed,
11 documentation demonstrating compliance with the Section 3 clause, and request for final payment
12 shall be submitted to the County no later than February 10, 2022.

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

19 E. Time is of the essence in the City's performance of this Agreement.

20 VIII. BREACH OF AGREEMENT

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

1 may also be terminated for convenience by the County in accordance with state and federal law.

2 IX. TERMINATION OF PROJECT

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

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

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

14 X. VENUE; GOVERNING LAW

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

19 XI. ENTIRE AGREEMENT

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

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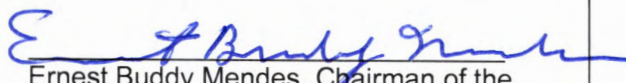
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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth
2 on page one of this Agreement.

3
4 CITY OF SELMA

COUNTY OF FRESNO

5
6 By: 
7 City Manager Teresa Gallavan

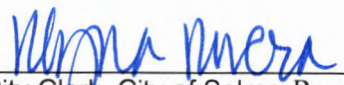

Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the
County of Fresno

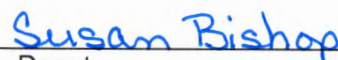
8 Date: 7-10-20

Date: 9-1-2020

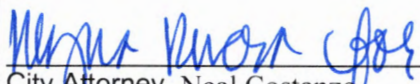
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10 ATTEST:

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

11
12
13 
14 City Clerk, City of Selma Reyna Rivera

By: 
Deputy

15 APPROVED AS TO LEGAL FORM:

16
17 
18 City Attorney Neal Costanzo

REMIT TO:

19
20
21 FUND NO: 0001
22 SUBCLASS NO: 10000
23 ORG NO: 7205
24 ACCOUNT NO: 7885
PROJECT NO: N20651
ACTIVITY CODE: 7219

City of Selma
Attn: Teresa Gallavan, City Manager
1710 Tucker Street
Selma, CA 93657
Telephone: (559) 891-2200

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, the County requests 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: _____