CITY MANAGER'S/STAFF'S REPORT CITY COUNCIL MEETING:

October 7, 2019

ITEM NO: 1.i.

Review and approve the Community Development Block Grant

SUBJECT: (CDBG) agreement for fiscal year 2019-2020

DISCUSSION: The County of Fresno's Department of Public Works and Planning - Community Development Division is requesting approval of the 2019-2020 agreement for CDBG grant funding from the City of Selma.

The project application for the 2019-2020 funding cycle is the:

Neighborhood Sidewalk Connectivity Project

The proposed activity includes concrete improvements in the public right of way to provide continuous curb, gutter, and sidewalk and drive approaches where missing in the following neighborhoods:

- Area bound by Thompson to the west, McCall to the east, Nebraska to the north, and Valley View to the south.
- Area bound by McCall to the west, Orange to the east, Floral to the north, and Rose to the south.

The Engineer's estimate for this project is \$275,000.

COST: (Enter cost of item to be purchased)	BUDGET IMPACT: (Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).
\$275,000	None
FUNDING: (Enter the funding source for this item – if fund exists, enter the balance in the fund).	ON-GOING COST: (Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).
Funding Source: CDBG \$229,198 LTF \$48,802 Fund Balance:	None

RECOMMENDATION:	Approve the City of Selma's Community Development Block Grant (CDBG) agreement for fiscal year 2019-2020.		
/s/ Daniel K. Bond, City Engin			
/s/ Teresa Gallavan, City Mana			

AGREEMENT

THIS AGREEMENT ("Agreement") is made this _____ day of _____,
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 Selma Sidewalk Connectivity Project No. 19651 ("Project") for CDBG funding; and

WHEREAS, the City has estimated that the total cost of the Project is \$275,000, and the City has committed local funds to the Project in the amount of \$45,802, and is in need of \$229,198 in CDBG funding to complete the Project; and

WHEREAS, the County can provide \$229,198 in CDBG funds needed for the Project from the City's 2019-2020 CDBG allocation (\$218,555) and from the City's remaining balance of CDBG funds (\$10,643); 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 or replacement of curb, gutter, sidewalk, drive approaches, and curb ramps where missing, damaged, or not meeting current Americans with Disabilities Act (ADA) requirements to create a safe continuous pedestrian

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payments for the Project from CDBG funds will be limited to the City's actual costs expended by

the City, and shall not exceed the total amount of \$229,198.

F. The proposed funding for the Project will be provided from the following 1 sources: 2 3 CDBG \$229,198 Local Financial Contribution 45,802 4 Total \$275,000 5 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 6 7 to: Community Development Grants 8 County of Fresno Department of Public Works and Planning 9 Community Development Division 2220 Tulare Street, 6th Floor 10 Fresno, CA 93721 If the Director of the County Department of Public Works and Planning ("Director") determines the 11 12 modified Project is still eligible under the Federal CDBG regulations, the Director is authorized to permit such modifications. The County shall specify in a letter to the City that such modifications 13 to the scope of the Project are authorized, and if the City may proceed. 14 15 II. OBLIGATIONS OF THE COUNTY Α. The County shall reimburse the City up to, but not more than, \$229,198 of 16 17 CDBG funds to the City for the Project for the City's performance of its obligations under this Agreement. All funds shall be paid to the City in accordance with Section V-A of this Agreement. 18 19 B. The County shall review, within thirty (30) calendar days of receipt from the 20 City, the engineer selection process description and summary of the analysis, as prepared by the 21 City, to verify that a competitive process was conducted in accordance with U.S. Department of 22 Housing and Urban Development (HUD) procurement standards. If such conditions have been 23 met, the County shall specify in a letter to the City that these conditions have been met and that 24 the engineering contract can be awarded. 25 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 26 27 with Federal regulations, and the total Project cost estimate to ensure sufficient funds are available 28 to complete the Project. If such conditions have been met, the County shall specify in a letter to 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 accordance with Federal requirements, and to verify the contractor is bonded and has not been disbarred or suspended from participating in Federal projects. If such conditions have been met, the County shall specify in a letter to the City that these conditions have been met and that the contract can be awarded.
- E. The County shall attend the pre-construction meeting between the City and the contractor to discuss labor compliance requirements for the Project, Project monitoring, and to inform the City and contractor that the County will conduct field reviews to ensure labor compliance and other conditions of the construction contract are being met.
- F. The County shall conduct periodic inspections of the Project, as may be required in the determination of the County, to ensure that the intended use and group of beneficiaries of the Project have not changed. Upon completion of the Project, but prior to the City's acceptance of the Project, the County shall conduct a final inspection of the Project. If such conditions have been met, the County shall specify in a letter to the City that the conditions of this Section have been met.

III. OBLIGATIONS OF THE CITY

- A. The City shall provide any and all sums of money in excess of \$229,198 that may be necessary to complete the Project. For the purposes of awarding the construction of the Project within the Agreement amount, the bid documents should include any proposed additive or deduct alternatives.
- B. The City shall perform, or cause to be performed, all engineering work required for the Project.
- C. In selecting an engineer to perform any engineering work required for the Project, the City shall go through a competitive process in accordance with Fresno County Ordinance Code 4.10 and HUD procurement standards. Prior to selection of the engineer, the City

shall prepare a written description of the process, perform a cost or price analysis, and submit the process description and summary of the analysis to the County Community Development Division for review. The City shall obtain a letter from the County specifying that the conditions of this Section have been met.

- D. The City shall specify in agreements with its consultants that all engineering work funded with CDBG funds shall become the property of the City upon payment by the City for the cost of such engineering work.
- E. The City shall furnish evidence, prior to the County's authorization to advertise for bids, that it has free and clear title to all parcels of land on which Project improvements will be located, with any liens or encumbrances noted, and/or that it has obtained or can obtain all necessary easements, rights-of-way, licenses, permits, and State and local approvals required for the completion of the Project.
- F. Upon completion of the design engineering, the City shall submit the plans and specifications to the County Community Development Division. The County will ensure Federal CDBG requirements have been adhered to, and review cost estimates to ensure sufficient funds are available. The City shall obtain a letter from the County specifying these conditions have been met, and that the City is approved to advertise for bids to construct the Project.
- G. The City shall advertise for bids, and shall award the construction contract to the lowest responsible bidder. At least ten (10) calendar days prior to the bid opening, the City shall notify the County of the date, time, and location of the bid opening.
- H. Within seven (7) calendar days following the bid opening, the City shall furnish the County Community Development Division with the name of the low bidder and cost or price analysis of the low bid proposal prepared by the City, so that the County can verify with the Labor Relations and Equal Opportunity Division of the HUD Area Office that the low bidder is bonded and has not been debarred or suspended from participating in Federal projects, and that the contractor will be reasonably compensated in accordance with Federal requirements. The City shall obtain a letter from the County specifying these conditions have been met, and that the City is approved to award the Project for construction.

the County Community Development Division with a resolution of acceptance, or similar

documentation, demonstrating that the Project was completed in accordance with the scope of 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.

- P. 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:
 - Now have new access to this type of public facility or infrastructure improvement.
 - Now have improved access to this type of public facility or infrastructure improvement.
 - Now are served by a public facility or infrastructure that is no longer substandard.
- Q. The City shall be responsible for maintenance of the Project after construction is completed, and shall perform such maintenance from non-CDBG resources.
- R. 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.

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

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

IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

- A. The City shall, and shall cause its consultants, contractors, and subcontractors to, comply with all applicable State and Federal laws and regulations governing the Project.
- B. Whenever the City uses the services of a contractor, the City shall require that the contractor comply with all Federal, State and local laws, ordinances, regulations, and Fresno County Charter provisions applicable in the performance of their work.
- C. This Project is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u). Accordingly, the City shall require the prime contractor to complete and submit documentation prior to award of the

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

V. PAYMENT FOR THE PROJECT

- A. At monthly intervals, the City shall submit a written request to the County for payment of specified costs incurred in the performance of this Agreement. The request for payment shall be accompanied by a written certification from the City that the request for payment is consistent with the amount of work that has been completed, and that said work is in accordance with the contract documents and this Agreement. The request for payment shall also be accompanied by documentation acceptable to the County, such as invoices or vouchers for services or materials purchased, contractor's costs, or other costs chargeable to the Project. After appropriate review and inspection, the County shall make payment from CDBG funds provided in this Agreement for all eligible costs specified herein up to the maximum amount payable under Section I.
- B. Any savings realized in the final cost of the Project, due to Project cost and/or scope of work reductions, liquidated damages, or any other reason, shall be used to reduce the amount of this Project paid for with CDBG funds, and shall be credited to the City's CDBG allocation. If the City is required to provide any funds toward the Project, any cost savings shall be first used to reimburse the City for its contribution in excess of the total amount provided by this Agreement.
- C. Payment for advertising and award shall be based on the actual costs of printing and noticing.

agents.

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

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

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

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

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

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

I. The City, as a sub-recipient of Federal financial assistance, is required to

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comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended. 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 legal expenses) 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

- A. The following schedule shall commence on the date this Agreement is executed by the County.
- Complete Design Engineering and Submit to the County for Review
 March 6, 2020.
 - 2. Complete County Review and Approval of Plans June 12, 2020.
 - 3. Begin Advertising for Bids July 1, 2020.
 - 4. Award Contract September 1, 2020.
- B. The Project shall be completed, and Notice of Completion shall be filed with the Fresno County Recorder's Office, no later than February 19, 2021.
- 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 April 16, 2021.
- 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 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.
 - E. Time is of the essence in the City's performance of this Agreement.

VIII. <u>BREACH OF AGREEMENT</u>

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 any other remedies that the County 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

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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 accordance with a material breach of this Agreement by the City, this Agreement may also be terminated for convenience by the County in accordance with 24 CFR 85.44.

IX. <u>TERMINATION OF PROJECT</u>

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

- B. If the City's request to cancel the Project covered by this Agreement is approved by the Director, the City shall promptly return to the County all payments of specified costs incurred in the performance of the Agreement to date.
- C. If the Director approves the City's request to cancel the Project, any unexpended CDBG funds budgeted to the Project under this Agreement may be credited to the City's CDBG allocation, as appropriate.

X. <u>VENUE</u>; <u>GOVERNING LAW</u>

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

XI. <u>ENTIRE AGREEMENT</u>

This Agreement constitutes the entire agreement between the City and the County with respect to the subject matter hereof, and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature 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.		
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4	CITY OF SELMA	COUNTY OF FRESNO	
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6	By:City Manager	Nathan Magsig, Chairman of the Board	
7	City Manager	of Supervisors of the County of Fresno	
8	Date:	Date:	
9	Date.	Date.	
10	ATTEST:	ATTEST: Bernice E. Seidel	
11		Clerk of the Board of Supervisors County of Fresno, State of California	
12		County of Frootio, State of Camorina	
13	City Clerk, City of Selma	By: Deputy	
14	City Clorit, Oily of Comma	Doputy	
15	APPROVED AS TO LEGAL FORM:		
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18	City Attorney		
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21	FUND NO: 0001	REMIT TO:	
22	SUBCLASS NO: 10000 ORG NO: 7205	City of Selma Attn: Teresa Gallavan, City Manager	
23	ACCOUNT NO: 7885 PROJECT NO: N19651	1710 Tucker Street Selma, CA 93662	
24	ACTIVITY CODE: 7219	Telephone: (559) 891-2200	
25			
26	SW:JA: G:\7205ComDev\-Avedian_Draft Agreements_\SelmaSidewalk	xConnectivityCDBG19651_Agt.docx September 17, 2019	
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Exhibit 1 County of Fresno Project Outcome Measurement Report

Projec	ct #:		Project Name:			
funded Depart of CD	d with 0 tment o BG fun	Community D of Housing ar	equired to submit information annually on each project evelopment Block Grant (CDBG) funds, per U.S. and Urban Development (HUD) guidelines. As a recipient County, the County requests that you provide the			
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					
		infrastructure is	ess to a public facility or infrastructure is when the facility or simproved or expanded, enabling the grantee to expand the ple or type of service the facility provides.)			
	C.		by this public facility or infrastructure improvement that r substandard: or N/A			
			y or infrastructure is no longer substandard when the CDBG funds neet a quality standard, or measurably improve the quality of the structure.)			
			of persons entered in a, b, and c, above, must add up to the total ntered in question 3.)			
3.	Total r	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	n Comp	leted Bv:				