

WHEREAS, the County and City now desire to establish a partnership to collaborate with the City of Mercedes Water Well Project and create an alternative water source to mitigate water insecurity in disproportionately impacted communities to help mitigate the ongoing effects of COVID-19. To further these efforts, the County will designate a portion of the funds received from the SLFRF to be transferred to the City for the project which includes, but is not limited to design, specifications development, and construction development of the test well, and other necessary provisions;

WHEREAS, the goal of this program is to assist in promoting health and safety in disproportionately impacted communities and underserved residents who have been impacted by the COVID-19 public health emergency continue in an effort to facilitate the provisions of clean safe water in preventing and combating disease outbreaks such as COVID-19, to respond to the public health emergency in compliance with the terms and criteria of the SLFRF and as more fully described below; and

WHEREAS, amounts paid from the SLFRF are subject to restrictions outlined in the Guidance and as set forth in section 603(c) of the Social Security Act, as added by section 9901 of the American Rescue Plan Act; and

WHEREAS, the SLFRF further requires that all recipients and sub-recipient(s) comply with certain terms and conditions more particularly described below and in the Guidance attached as **Exhibit “A”** as well as any future guidance provided by the U.S. Department of Treasury; and

WHEREAS, County and City desire to enter into this agreement for a public purpose and for the benefit of those residents of the County and City and to further detail each party’s duties and responsibilities; and

NOW THEREFORE, County and City in consideration of the mutual covenants expressed hereinafter, agree as follows:

**SECTION I
RULES AND REGULATIONS**

1.1 City agrees to abide by the Guidance provided under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and as more particularly described in section 603(c) of the Social Security Act and any further guidance issued by the United States Department of Treasury. See **Exhibit “A”**

**SECTION II
DEBARMENT/SUSPENSION CERTIFICATION**

2.1 City certifies that City is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://sam.gov>.

SECTION III
TERMS AND CONDITIONS AND PROPOSED PLAN

3.1 City represents that it has read and understood the terms and conditions of the SLFRF attached hereto as **Exhibit “A”** and as a condition of being a sub-recipient of SLFRF, City agrees to comply with all terms and conditions required of entities accepting funds through a sub-recipient agreement and City further warrants and represents to the County that the funds it will expend meet the criteria allowed under the SLFRF as outlined below:

The ARPA provides that payments from the SLFRF may only be used to fund eligible uses, and specifically in this instance funds are being transferred —

To assist the City in development of the City of Mercedes Water Well Project which seeks to create an alternative safe and clean water source to mitigate water insecurity in order to promote improved health and safety outcomes for those in disproportionately impacted communities to help mitigate the ongoing effects of COVID-19, which includes underserved residents who have been impacted by the public health emergency; the funds will ensure the residents continue to have access to the provisions of clean safe water in preventing and combating disease outbreaks such as COVID-19 during public health emergencies. The creation of an alternative water source shall include, but is not limited to design, specifications development, and construction development of the test well, and other necessary provisions, thereby increasing and improving community quality of life in response to the negative impacts of the public health emergency.

As related to the eligible use identified above, costs should be incurred and/or obligated on or after March 3, 2021, and should be expended upon completion of the City of Mercedes Water Well Project, and/or by December 31, 2024, whichever occurs first.

For purposes of the ARPA Funds, *incurred* means the unit of local government (sub-recipient) has expended the funds to cover the costs of an eligible expense. Examples of eligible expenses and prohibited costs may be found in the Guidance, version 5.3 dated December 14, 2023, in the Interim Final Rule dated May 17, 2021, and in The Final Rule dated January 6, 2022, provided in the attached **Exhibit “A”**, and in the additional SLFRF FAQ’s and guidance provided by the U.S. Department of Treasury (dated May 27, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021, November 15, 2021, January 2022, April 27, 2022, July 27, 2022, April 10, 2023, February 1, 2024, March 5, 2024, March 29, 2024, and any subsequent amendments thereafter) which are attached hereto and incorporated by reference herein as **Exhibit “B” (to include any future updated guidance from the U.S. Treasury)**.

3.2 County has designated funds in the amount of **\$150,000.00** to be allocated to the City for eligible expenses for the City of Mercedes Water Well Project that seeks to create an alternative water source to mitigate water insecurity in order to promote improved health and safety outcomes for those in disproportionately impacted communities to help mitigate the ongoing effects of

COVID-19, and ensure the residents continue to have access to the provisions of clean safe water in preventing and combating disease outbreaks, through the design, specifications development, and construction development of the test well, and other necessary provisions, thereby increasing and improving community quality of life in response to the negative impacts of the public health emergency. City shall submit requests to COUNTY on the prescribed Cost Reimbursement/Payment Request Form attached as **Exhibit “C”**, and related documentation for expenses, pursuant to the paragraph (3.3) of this Agreement. COUNTY will disburse funds within thirty (30) days upon receipt of a proper Cost Reimbursement/Payment Request form and internal review and audit procedures. Requests shall be submitted to COVID-19@auditor.co.hidalgo.tx.us. City understands that funds will be disbursed on a reimbursement basis.

3.3 In consideration of the City’s representation that it will comply with the terms of the SLFRF and further agrees to comply with the terms of this sub-recipient Agreement, City shall deliver a copy of all related supporting expense documentation, along with the Cost Reimbursement/Payment Request form (attached hereto and incorporated by reference as **Exhibit “C”**), and the final report of COVID-19 related expenditures to COUNTY no later than December 31, 2024, and shall keep the supporting documentation for a minimum of five (5) years. City shall give The United States Treasury Department, the Special Inspector General of the U.S. Department of Treasury, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representative, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property belonging to or in use by City pertaining to this Agreement as it pertains to the use of federal funds.

3.4 City agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from their proposed City of Mercedes Water Well Project plan, and/or the requirements of this Agreement. Budget adjustments will be considered and may be submitted to the, Hidalgo County Budget Officer, with final approval of the Hidalgo County Commissioners Court.

3.5 County will not be liable for costs incurred by City before commencement of this Agreement or after termination of this Agreement and will not be responsible for reimbursements pertaining to costs incurred that are not in compliance with this Agreement. City further represents and understands that amounts transferred to City will be released contingent upon submission of an eligible City of Mercedes Water Well Project plan with expenses incurred on or after March 3, 2021, which meet the criteria and Guidance provided by the U.S. Treasury and County. **See Exhibits “A” and “B”**.

3.6 Upon request, City agrees to provide County with copies of all current and applicable payment and overtime policies, workers compensation policies, retirement rates, unemployment rates, and any other reimbursable benefit and rates of payment as necessary for performance under this Agreement.

**SECTION IV
RECORDS AND REPORTS**

4.1 City agrees to establish and maintain all necessary records and reports that may be required as outlined by the SLFRF from County. City understands that it is solely City's responsibility to keep all records and reports pertaining to SLFRF activity within their district in a manner acceptable to the U.S. Department of Treasury.

4.2 Per the ARPA Guidance, all government recipients are required to keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 603(c) of the Social Security Act.

4.3 Pursuant to ARPA, City, as a sub-recipient recipient of federal funds, must retain records (electronic and otherwise), and any supporting documentation for a minimum of five (5) years after all funds have been expended or returned to Treasury, whichever is later, as outlined in paragraph 4.c. of the Award Terms and Conditions.

4.4 County may direct City to retain documents for a longer period of time or to transfer certain records to County or federal custody when it is determined that the records possess a long term retention value.

4.5 Failure to maintain records and reports as required will result in forfeiture the funds transferred to City from County. In the event the U.S. Department of Treasury disallows expenditures for premium pay submitted by City due to City's failure to retain and provide necessary records, City understands that any monies reimbursed by County shall then be repaid to County by City in accordance with §8.1.

**SECTION V
MONITORING VISITS**

5.1 City shall give The United States Treasury Department, the Special Inspector General of the U.S. Department of Treasury, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property, electronic or otherwise, belonging to or in use by City pertaining to this Agreement as it pertains to the use of federal funds for this program.

5.2 City shall give the Hidalgo County Budget Office, County, County Auditor, and any of their duly authorized representatives, unobstructed access to monitor the activities of the sub-recipient pertaining to this Agreement, ensure that the sub-award is in compliance with applicable Federal statutes, regulations, and terms of the sub-award, and verify that sub-recipients are audited as required by Subpart F of the Uniform Guidance, as it pertains to this Agreement and to the use of federal funds for this program.

SECTION VI AUDIT REQUIREMENTS

6.1 City agrees to comply with the applicable requirements and standards as set forth in 2 CFR 200 Subpart F §§200.500 – 200.521 which are incorporated by reference herein.

SECTION VII SUSPENSION AND TERMINATION

7.1 City understands that this Agreement may be suspended or terminated if City materially fails to comply with the provisions of the Agreement or the prescribed terms and conditions as provided in the attached Exhibits “A”, “B”, and “C”.

7.2 If City fails to fulfill in a timely and proper manner its obligations under this Agreement, or City violates any of the agreements or stipulations of this Agreement, then the County shall provide City written notification of such non-performance. City will be given ten (10) business days to cure any non-performance. Failure to cure such non-performance will constitute a breach of this Agreement and may be the basis for immediate termination of the Agreement. **Should a breach by the City of this Agreement relate to a violation of federal law or regulation that results in The United States Department of Treasury, General Accounting Office or other applicable overseeing Federal agency demanding reimbursement from the County or the City or its successor, the County will terminate Agreement and seek reimbursement of all funds from City.** City shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by City. County may take any and all appropriate action including injunctive relief against City to prevent the continued failure of City to comply with the SLFRF requirements and/or failure to reimburse the County for funds disallowed by the U.S. Department of Treasury. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

7.3 In addition to the termination provisions stated above, either party may terminate this Agreement with or without cause upon thirty (30) days written notice to each other. Termination of the Agreement does not exempt City’s obligation to reimburse County for any incurred expenses disallowed by the U.S. Department of Treasury or any other overseeing federal agency.

SECTION VIII LIABILITY FOR DISALLOWED COSTS

8.1 City understands and agrees that as a sub-recipient under this Agreement it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of City. City further understands and agrees that reimbursement to County of such disallowed costs shall be paid by City from funds that were not provided or otherwise made available to City pursuant to this Agreement or any other federal award.

**SECTION IX
INDEMNITY CLAUSE**

9.1 THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF THE PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES.

**SECTION X
CONFLICT OF INTEREST**

10.1 City covenants that none of its elected officials, officers, employees, consultants, or agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities covered by the SLFRF. City agrees that all elected officials, officers, employees, consultants or agents shall comply fully with the requirements of Texas Local Government Code Chapter 171.

10.2 City agrees that no person who is an elected official, officer, employee, consultant, or agent of City's organization or the County's organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities for which City is now seeking funds from the SLFRF.

10.3 City is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

**SECTION XI
MISCELLANEOUS PROVISIONS**

11.1 **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflicts exists.

11.2 **No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

11.3 **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and City, and not otherwise.

11.4 **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

11.5 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile to the parties at the addresses set forth below, as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, TX 78539
(956)318-2600

With copy to: Mr. Dagoberto Soto Jr.
Hidalgo County Budget Office
505 S. McColl Rd., Suite G
Edinburg, Texas 78539
(956)292-7025
-And-

Ms. Letty Chavez
Hidalgo County Auditor
2808 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)318-2511

If to City: Oscar D. Montoya Sr.
Mayor
City of Mercedes
400 S. Ohio Ave
Mercedes, TX 78596
(956) 565-3114

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

11.6 **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

11.7 **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

11.8 **Assignment.** This Agreement shall not be assignable by City.

11.9 **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

11.10 **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

11.11 **Non-Discrimination.** The Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and City policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. City shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.

11.12 **Governmental Purpose.** To the extent applicable, each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

11.13 **Governing Provisions.** Parties shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.

11.14 **Legal Construction/Severability.** In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.15 **Immunity.** This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and City's governmental immunity, and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of immunities from suit or from liability that the County or City has by operation of law.

11.16 **Authority to Execute.** The execution and performance of this Agreement by County and City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and City in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

CITY OF MERCEDES

THE COUNTY OF HIDALGO

Oscar D. Montoya Sr., Mayor

Richard F. Cortez, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

Approved by Hidalgo County Commissioners Court on _____

APPROVED AS TO FORM FOR COUNTY:
Office of Hidalgo County Criminal District Attorney,
Toribio "Terry" Palacios.

By: _____
Victor M. Garza, Chief Administrative Attorney

TABLE OF EXHIBITS

- EXHIBIT – A** **Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) version 5.4 issued December 14, 2023; The Interim Final Rule dated May 17, 2021; The Final Rule dated January 6, 2022; and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions– to include any future updated guidance.**
- EXHIBIT – B** **Coronavirus State and Local Fiscal Recovery Funds FAQ’s issued on May 27, 2021, June 8, 2021, June 17, 2021, June 23, 2021, June 24, 2021, July 14, 2021, July 19, 2021, November 15, 2021, January 2022, April 27, 2022, July 27, 2022, April 10, 2023, February 1, 2024, March 5, 2024, and March 29, 2024– to include any future updated guidance.**
- EXHIBIT – C** **Cost Reimbursement/Payment Request Form**