

Memorandum of Understanding

Between City of Mercedes,

Hidalgo County Drainage District No. 1, and

Hidalgo County Urban County Program

Regarding Coordination for 2018 CDBG-DR Infrastructure Competition

**WHEREAS**, chronic flooding has affected the economy and health and safety of the citizens of the City of Mercedes, of Hidalgo County, and of the State of Texas; and

**WHEREAS**, over the last several years, the Rio Grande Valley has suffered significant catastrophic flood events that have resulted in six Major Disaster Declarations (FEMA-4223-DR, FEMA-4245-DR, FEMA-4272-DR, FEMA-4377-DR, FEMA-4454-DR, FEMA-353-EM); and

**WHEREAS**, City of Mercedes was awarded funding from the Texas General Land Office's CDBG-DR 2018 Infrastructure Competition to implement a project known as the City of Mercedes South Mercedes Lateral Improvements Project – Phase 3 (“Project”), that will mitigate flooding in the City of Mercedes and provide community resilience; and

**WHEREAS**, solving flooding requires regional coordination, as floodwater does not stop at political boundaries; and

**WHEREAS**, over the last several years, City of Mercedes, Hidalgo County Drainage District No. 1, and Hidalgo County Urban County Program have implemented robust outreach coordination efforts with the public as well as with the General Land Office (“GLO”) to identify regional needs and solutions for mitigation of flooding; and

**WHEREAS**, the Project is an identified priority to mitigate flooding in the City of Mercedes and in Hidalgo County; and

**WHEREAS**, the City of Mercedes proposed Project will effectively and safely store and redirect stormwater away from low-to-moderate income (“LMI”) housing and towards drainage reservoirs, providing both local and regional flood control; and

**WHEREAS**, the awarded GLO funding will be issued to the City of Mercedes, who will serve as the fiduciary and lead local agency for the GLO’s grant funding, and Hidalgo County Drainage District No. 1 will assist City of Mercedes in construction cost overruns and Hidalgo County Urban County Program will assist City of Mercedes with tasks, as further described in this MOU; and

**WHEREAS**, the Project will have an immediate and measurable effect in permanently mitigating flooding and safeguarding the health and safety of citizens in the City of Mercedes, the Rio Grande Valley, and the State of Texas;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Mercedes, the Board of Hidalgo County Drainage District No. 1, and the Hidalgo County Commissioners' Court on behalf of Hidalgo County Urban Program agree to enter into this MOU in order to assist the City of Mercedes to undertake the design, planning, environmental, grant management, and construction of the Project in full compliance with all GLO and Housing and Urban Development ("HUD") rules and regulations.

**LET US BE FURTHER RESOLVED THAT** the City of Mercedes acknowledges that although Hidalgo County Drainage District No. 1 and Hidalgo County Urban Program will assist the City of Mercedes in the present Project, the City of Mercedes is the only entity responsible for the successful implementation and delivery of the present Project.

## **1. Objective of the Document**

1.1 The objective of this document is to state the roles and responsibilities of the City of Mercedes, Hidalgo County Drainage District No. 1, and Hidalgo County Urban Program regarding funding and implementation of the GLO's CDBG-DR 2018 Infrastructure Competition. The overall objective is to work in partnership to maximize value and to construct the Project, which will serve to mitigate flooding and provide benefits to low-to-moderate income populations and housing. (See Attached Exhibit A)

## **2. Parties Involved**

2.1 City of Mercedes ("City"), Hidalgo County Drainage District No. 1 ("Drainage District" or "HCDD1"), and Hidalgo County Urban Program ("Urban County") will work in partnership with the General Land Office ("GLO"). All formal notices regarding this MOU shall be submitted as follows:

**If to City:** City of Mercedes  
Attn: Alberto Perez, City Manager  
400 South Ohio  
Mercedes, TX 78570

**If to HCDD1:** Hidalgo County Drainage District No. 1  
Attn: Raul E. Sesin, P.E., C.F.M.  
902 N. Doolittle Rd.  
Edinburg, Texas 78542

and

Hidalgo County Drainage District No. 1  
Attn: Richard Cortez, Chairman of the Board  
902 N. Doolittle Rd.  
Edinburg, Texas 78542

**If to Urban County:** Hidalgo County Urban County  
Attn: Nellie Flores, Division Manager III  
1916 N. Tesoro Ln.  
Pharr, Texas 78577

2.2 Pursuant to the Action Plan regarding GLO's 2018 CDBG-DR Infrastructure Competition, City of Mercedes will serve as the lead and fiduciary regarding the Project.

2.3 Drainage District and Urban County will assist City of Mercedes pursuant to the terms in this MOU.

2.4 Day-to-day activities will be handled by City Manager Alberto Perez on behalf of the City. Day-to-day activities will be handled by General Manager Mr. Raul E. Sese, P.E., C.F.M. on behalf of the Drainage District. Day-to-day activities will be handled by Ms. Nellie Flores on behalf of Urban County.

2.5 Activities outside day-to-day activities will require approval by the City Council of the City of Mercedes, the Board of Hidalgo County Drainage District No. 1, and the Hidalgo County Commissioners' Court on behalf of Hidalgo County Urban Program. All decisions outside of day-to-day activities will be coordinated with GLO's designated representative.

### **3. Time Period**

3.1 The terms of this MOU shall start upon approval by the City Council of the City of Mercedes, the Board of Hidalgo County Drainage District No. 1, and the Hidalgo County Commissioners' Court on behalf of Urban County. The MOU shall be in effect for a period of five (5) years or until the Project is completed pursuant to Section 6 of this MOU. Should additional time be needed to complete the obligation of this MOU, the City Council of the City of Mercedes, the Board of Hidalgo County Drainage District No. 1, and the Hidalgo County Commissioners' Court can extend this MOU for terms of five (5) additional years, as needed to complete the Project.

### **4. Roles and Responsibilities**

4.1 Pursuant to the Action Plan regarding GLO's 2018 CDBG-DR Infrastructure Competition, City of Mercedes will serve as the lead and fiduciary regarding the Project. The City of Mercedes submitted the grant applications to the GLO.

4.2 The projected maximum cost for Technical Assistance is \$25,000. The projected maximum cost for Environmental Services is \$30,000. The Drainage District shall pay for these costs. None of the funds from the GLO's 2018 CDBG-DR Infrastructure Competition shall be used to pay for these services. This funding will be provided at no cost to the City of Mercedes.

4.3 Drainage District and Urban County will provide Technical Assistance and Environmental Services for the Project. Drainage District and Urban County shall implement these services through their in-house staff.

4.4 Drainage District will provide Design, Construction Management, and Technical Assistance for the Project. The Drainage District, through its in-house engineering department, will perform the design for the Project. These services will be provided at no cost to the City of Mercedes.

4.5 During the construction of the Project, City of Mercedes will be the owner of the Project. All of the funds received by the City of Mercedes for the Project will be allocated to construction costs.

4.6 Upon completion of the Project, in compliance with Section 6 of this MOU, the Drainage District will take over ownership of the Project and Drainage District agrees to perform maintenance work in perpetuity for the Project.

4.7 Drainage District estimates that the annual maintenance cost for Project will be \$3,000.00. Drainage District agrees to allocate funding from its annual maintenance and operation budget in perpetuity for the management of the Project. Should additional costs be necessary for maintenance and operations, Drainage District agrees to allocate any additional costs as needed to complete the maintenance and operation work associated with the Project.

4.8 The Drainage District shall conduct the Acquisition as needed for the implementation of the Project. All acquisitions will be performed in accordance with all pertinent HUD requirements, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Act ("URA"). City of Mercedes acknowledges that although the Drainage District will perform the Acquisition, the City of Mercedes is ultimately the responsible entity to ensure that all of the acquisitions are performed in compliance with HUD and URA requirements.

4.9 Should there be any cost overruns needed to complete the Project, other than the costs discussed above, the Drainage District will fund up to a cumulative total of Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the difference needed to complete these projects.

4.10 Drainage District may perform any obligations it has herein with in-house personnel, any third party selected by the Drainage District, or a combination thereof, at Drainage District's sole discretion.

## **5. Dispute Resolution**

5.1 Should a dispute arise, GLO shall form a part of all negotiations and be given time to participate and advise the City of Mercedes, Drainage District, and Urban County regarding the best way to proceed.

5.2 Given that all parties are governmental entities that are subject to the Texas Public Information Act, there shall not be any confidentiality clauses in this MOU.

5.3 City of Mercedes, Drainage District, and Urban County release each other and the GLO of any liability caused by the implementation of this MOU and the Project.

5.4 Should a dispute arise between City of Mercedes, Drainage District, and Urban County, the parties, along with a representative from GLO, hereby agree to cooperate in good faith to resolve the dispute. Should this be unsuccessful, City of Mercedes, Drainage District, Urban County, and a representative from GLO shall attend mandatory mediation. Should that be unsuccessful, the City of Mercedes, the Drainage District, or Urban County can each agree to abandon their responsibilities under this MOU with a 30-Day Written Notice. In case City of Mercedes, the Drainage District, or Urban County exercise this option: (1) City of Mercedes will become the sole owner of the Project; (2) City of Mercedes agrees to undertake all responsibilities of the Drainage District and Urban County as needed to complete the Project and to maintain and operate the Project in perpetuity; and (3) Drainage District and Urban County agree to allow City of Mercedes to own the Project as well as to give the city the ability to perform maintenance and operation activities on the Project.

5.5 Under no circumstance shall the City of Mercedes be liable to the Drainage District or Urban County or vice-versa.

5.6 This MOU does not grant any waivers of immunity.

## **6. Closeout of Project**

6.1 Upon Completion of Project, and submission of all closeout paperwork to GLO and HUD, should any be needed, the City of Mercedes will take ownership of the Project. The City of Mercedes will then transfer ownership of the Project to Drainage District.

6.2 City of Mercedes, Drainage District, and Urban County will work cooperatively with GLO to perform all closeout tasks for the Project.

6.3 City of Mercedes, Drainage District, and Urban County agree to keep GLO updated of any developments regarding the Project and to provide periodic reports regarding the activities accomplished through the implementation of the Project.

## **7. Miscellaneous Provisions**

7.1 **Conflict with Applicable Law.** Nothing in this MOU 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 MOU 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 provision of this MOU shall be modified only to the extent necessary to bring this MOU within any such legal requirements and only during the times such conflict exists.

7.2 **No Waiver.** No waiver by any party hereto of any breach of any provision of this MOU shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

7.3 **Entire Agreement.** This MOU contains the entire agreement between the parties hereto, reflecting the subject matter hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this MOU not specifically set forth herein. This MOU may be modified or amended only by agreement in writing executed by Drainage District, Urban County, and City of Mercedes, only after approval of the GLO, and not otherwise.

7.4 **Texas Law to Apply.** This MOU 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.

7.5 **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 MOU.

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

7.7 **Assignment.** This MOU shall not be assignable.

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

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

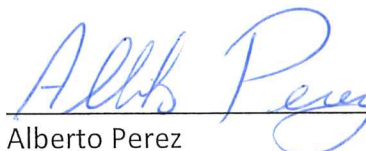
7.10 **Authority to Execute.** The execution and performance of this MOU by Drainage District and City of Mercedes have been duly authorized by all necessary laws, resolutions or governing body action of the parties and this MOU constitutes the valid and enforceable obligations of Drainage District, Urban County, and City of Mercedes in accordance with its terms only after approval of the GLO.

7.11 **Non-Discrimination.** This MOU 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 City of Mercedes, Urban County, and Drainage District policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

7.12 **Appendix II To CFR 200-Contract Provisions.** Pursuant to 2 CFR 200.326, a non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Therefore, if applicable, the provisions of Appendix II to 2 CFR 200 are attached and incorporated by reference into this contract should it be subject to Federal award.

7.13 **Governmental Purpose.** Each party hereto is entering into this MOU 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.

7.14 **Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this MOU, then any party may terminate this MOU upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this MOU. The parties intend this provision to be a continuing right to terminate this MOU at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.



Alberto Perez

City Manager of the City of Mercedes, Texas

*Richard Cortez*

Richard Cortez  
Chairman of Board of  
Hidalgo County Drainage District No. 1

*Nellie Flores*

Nellie Flores  
Division Manager III  
Hidalgo County Urban County Program

APPROVED BY HIDALGO  
COUNTY DRAINAGE DISTRICT  
NO. 1 BOARD OF DIRECTORS

ON: 12-12-23

AI: 93580

BY: *[Signature]*

APPROVED BY

COMMISSIONERS COURT

ON: 12/12/23 *[Signature]*

AI-93578

### GLO Instructions re: MOU

*Applications that involve multiple entities or jurisdictions must clearly identify all parties and the roles and responsibilities of each party, to include financial involvement and/or liability. Applicants may provide a conditional or draft Memorandum of Understanding, Interlocal Agreement, or other binding vehicle identifying those roles and responsibilities. Applications involving multiple entities or jurisdictions that proceed to award will require a fully executed document signed by all parties. Execution of the document may occur after the application is deemed fully eligible. The contents of any given Memorandum of Understanding, Interlocal Agreement, or other binding vehicle designed to clarify roles and responsibilities will be subject to the specific circumstances of the application/project. Each document should be prepared and written in a manner that best covers the liabilities of all parties involved. The document is ultimately the responsibility of the agreeing parties. The GLO encourages each local entity to consult local legal counsel regarding contractual matters. Some best practices to consider when preparing and writing such a document are: -Clearly state the objective of the document. State the overall intent of the document including a brief statement of the intent of each party. -Clearly identify each party involved. -Specify the time period of the agreement with start and end dates. -Clearly identify the specific duties and responsibilities of each party. Include each entity's sole responsibilities, as well as responsibilities shared by all parties, as appropriate. -Clearly specify which party is financially responsible for which items, when payments are due (as appropriate), and any other detail that will help to avoid confusion or disputes. -Confidentiality clauses, as appropriate. -Indemnity clauses, as appropriate. -Dispute resolution and settlement clauses should be included in case a breach, invalidation, or termination of the document occurs. Ensure prompt resolution and identify the manner in which the dispute shall be settled. -Clearly identify termination options. -Clearly identify final closing activities and completion of the agreement, as appropriate. These are a basic outline of topics and/or issues that should be considered. Other topics and/or issues may also need to be included to fully address the particular project*

# Summary of Roles and Responsibilities

## GLO 2018 South Texas Floods / 2019 Disasters Grants

### CITIES

| Required Task                                                               | Completed By      | Reviewed By     | Approved By  |
|-----------------------------------------------------------------------------|-------------------|-----------------|--------------|
| TIGR Access                                                                 | City/UCP          | N/A             | GLO          |
| <b>Start Up Documentation</b>                                               |                   |                 |              |
| Prepare Start Up docs                                                       | City              | UCP             | GLO          |
| Place some items on agenda for City Council approval                        | City              | UCP             | GLO          |
| Execution of Start Up documents                                             | Mayor/City Mgr.   | UCP             | GLO          |
| Upload Start Up documents to TIGR                                           | City/UCP          | UCP             | GLO          |
| Maintain hard copy files (GLO filing system) & send electronic to UCP       | City              | UCP             | GLO          |
| <b>Environmental</b>                                                        |                   |                 |              |
| Prepare Environmental for Exempt Activity (Admin/Engineering)               | HCDD#1            | UCP             | GLO          |
| Determine Environmental Classification                                      | HCDD#1            | UCP             | GLO          |
| Prepare Environmental for project (All steps)                               | HCDD#1            | UCP             | GLO          |
| Executes Environmental                                                      | Mayor/City Mgr.   | UCP             | GLO          |
| Maintains hard copy of Environmental for public viewing                     | City              | N/A             | GLO          |
| Publication of Combined Notice and public comment period                    | City              | UCP             | GLO          |
| Submit Request for Release of Funds form to GLO via TIGR                    | City              | UCP             | GLO          |
| Issues Authority to Use Grant Funds                                         | N/A               | N/A             | GLO          |
| <b>Acquisition</b>                                                          |                   |                 |              |
| Initial Real Property Acquisition Estimate form                             | City              | UCP             | GLO          |
| All aspects of Acquisition (if required)                                    | HCDD#1            | UCP             | GLO          |
| <b>Engineering</b>                                                          |                   |                 |              |
| Prepare engineering design plans                                            | HCDD#1            | City/UCP        | GLO          |
| Upload engineering design plans to TIGR                                     | City              | UCP             | GLO          |
| Prepare project status report associated with GLOs MMAS report              | HCDD#1/Contractor | UCP             | GLO          |
| • Submit to UCP monthly on the 25th day of the reporting month              | HCDD#1            | UCP             | UCP          |
| Prepare sample bid packet                                                   | HCDD#1            | UCP             | GLO          |
| Prepare Engineer's detailed bid tabulation                                  | HCDD#1            | City/UCP        | N/A          |
| Submit Engineer's Letter of Recommendation for award                        | HCDD#1            | City/UCP        | N/A          |
| <b>Bid Process for Construction</b>                                         |                   |                 |              |
| Finalize sample bid packet                                                  | HCDD#1            | UCP             | UCP          |
| Publication of solicitation for Sealed Bids (construction)                  | City              | UCP             | GLO          |
| Provides potential bidders with plans and specs;keep log of potential bidd  | HCDD#1            | City/UCP        | N/A          |
| Attend Pre-Bid Conference                                                   | City/UCP/HCDD#1   | UCP             | N/A          |
| • Prepare and send out Addendum(s) (if applicable)                          | HCDD#1            | UCP             | UCP          |
| Attend Bid Opening                                                          | City/UCP/HCDD#1   | City/UCP        | City         |
| Cover construction cost overruns (via letter of commitment, then check)     | HCDD#1/Precinct   | City/UCP        | City/UCP     |
| Place Construction Contract Award on agenda for City Council approval       | City              | UCP             | City Council |
| Prepare Construction Contract Packets (2 sets)                              | HCDD#1            | UCP             | UCP          |
| Execution of Construction Contract                                          | City/Contractor   | UCP             | UCP          |
| <b>Construction</b>                                                         |                   |                 |              |
| Issue Notice of Award                                                       | City/UCP          | UCP             | UCP          |
| Pre-Construction Conference                                                 | City/UCP          | UCP             | GLO          |
| Issue Notice to Proceed                                                     | City/UCP          | UCP             | UCP          |
| Complete Davis Bacon Labor Standards requirements (payrolls, emp. Interview | City              | UCP             | GLO          |
| Request for Payments for construction (All parties sign RFP)                | Contractor        | HCDD#1/UCP/City | City Council |
| Submission of construction RFP's to GLO                                     | City              | UCP             | GLO          |
| Change Orders (need to be pre-approved by UCP & GLO before final approval)  | Contractor        | HCDD#1/UCP/City | City Council |
| Notifies GLO of Change Order & submits for GLO review/pre-approval          | City/UCP          | UCP             | GLO          |
| Executes Change Orders (once approved by GLO)                               | Mayor/City Mgr.   | City/UCP        | GLO          |
| Instruct Contractor to move forward                                         | City/UCP          | UCP             | N/A          |
| Prepare Construction Closeout documentation                                 | City/UCP          | UCP             | GLO          |
| <b>Administration</b>                                                       |                   |                 |              |
| Prepare and submits Financial Interest Report                               | City              | UCP             | GLO          |
| Submit Section 3 Quarterly and Annual Reports via TIGR                      | City              | UCP             | GLO          |
| Prepare monthly HUD Reports                                                 | City & HCDD#1     | UCP             | GLO          |

|                                                                  |               |            |            |
|------------------------------------------------------------------|---------------|------------|------------|
| • Submit HUD reports via TIGR                                    | City          | UCP        | GLO        |
| Prepare monthly Mitigation Activity Status Reports               | City & HCDD#1 | UCP        | GLO        |
| • Submit MMAS Reports via TIGR                                   | City          | UCP        | GLO        |
| Prepare, execute and submit Reimbursement Requests for UCP Admin | UCP           | HCDD#1/Pct | HCDD#1/Pct |
| Prepare Draws to GLO for Construction expenditures               | City          | UCP        | GLO        |
| Execute and submit Construction Draws via TIGR                   | City          | UCP        | GLO        |
| Track Total Local Match/Other Funds (if applicable)              | City          | UCP        | GLO        |
| Grant Closeout                                                   | City          | UCP        | GLO        |

**\*\* DISCLAIMER \*\***

The required tasks listed herein are not all inclusive and do not encompass all tasks and duties to be performed to satisfy the terms of the grant agreement. Additional tasks and duties may arise and the roles and responsibilities will be assigned accordingly and within reason. The Grantee (i.e. the City) is required to abide by all Texas General Land Office requirements in addition to all federal regulations. The Grantee is ultimately responsible for complying with, executing and accomplishing all aspects required to achieve satisfactory GLO administrative closeout of this grant. Hidalgo County Urban County Program is to provide technical assistance and oversight for this grant to the grantee.