



Mayor Oscar D. Montoya  
Mayor Pro-Tem Joe Martinez  
Commissioner Leonel Benavidez

Commissioner Jacob Howell  
Commissioner Jose M. Gomez  
City Manager Alberto Perez

MERCEDES CITY COMMISSION  
SPECIAL MEETING  
FEBRUARY 22, 2022 – 6:30 P.M.  
MERCEDES CITY HALL – COMMISSION CHAMBERS  
400 S. OHIO AVE., MERCEDES, TX 78570

“At any time during the course of this meeting, the City Commission may retire to Executive Session under Texas Government Code 551.071(2) to confer with its legal counsel on any subject matter on this agenda in which the duty of the attorney to the City Commission under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. Further, at any time during the course of this meeting, the City Commission may retire to Executive Session to deliberate on any subject slated for discussion at this meeting, as may be permitted under one or more of the exceptions to the Open Meetings Act set forth in Title 5, Subtitle A, Chapter 551, Subchapter D of the Texas Government Code.”

**1.) Call Meeting to Order**

**2.) Establish Quorum**

**3.) Invocation**

**4.) Pledge of Allegiance**

**5.) Open Forum-**

**6.) Executive Session:** *Chapter 551, Texas Government Code, Section 551.071 (Consultation with Attorney), Section 551.072 (Deliberation regarding Real Property), Section 551.074 (Personnel Matters) and Section 551.087 (Economic Development)*

- A.) Consultation with City Attorney regarding EMS Billing Contract (Section 551.071 and Section 551.074, Tex. Gov't Code)
- B.) Consultation with legal regarding project MD agreement (Section 551.071 and Section 551.087, Tex. Gov't Code)
- C.) Discussion regarding duties, responsibilities of administration - Section 551.074 Texas Gov't Code Annotated - Personnel Matters

**7.) Open Session:**

- A.) Discussion and Possible Action regarding item A in Executive Session.
- B.) Discussion and Possible Action regarding item B in Executive Session.
- C.) Discussion and Possible Action regarding item C in Executive Session.
- D.) Second and Final Reading of Ordinance No. 2022-03 to rezone Capisallo Lot 11 Block 66 from Class “N” Newly Annexed to Class “B” Two Family Applicant: Rosalinda H. Forsythe, Executrix of Roy B. Herrera.
- E.) Second and Final Reading of Ordinance No. 2022-04 to rezone Capisallo Lot 1 Blk 65 & 15.85 Acres of Lot 2 Blk 65 from Class “N” Newly Annexed to Class “A-1” Single Family Residence District Applicant: Valley Ranch Estates Mercedes, LLC.
- F.) Discussion and Possible Action on First Reading of Ordinance No. 2022-05 to adopt a Cell Tower Ordinance.
- G.) Discussion and Possible Action on Interlocal Agreement between the City of Mercedes and Hidalgo County, TX for Fire Rural Services.

**8.) Adjournment**

Notice is hereby given that the City Commissioners of the City of Mercedes, Texas will meet in a **Special Meeting** on Tuesday, February 22, 2022 at 6:30 P.M. Said meeting will be conducted in the Commission Chambers of the City Hall located at 400 S. Ohio, Mercedes, Texas for the purpose of considering and taking formal action regarding the items listed above. This notice is given in accordance with Vernon's Texas Codes Annotated, Texas Government Code, Section 551.001 et. Seq.

WITNESS MY HAND AND SEAL OF THE CITY THIS THE 18<sup>TH</sup> DAY OF FEBRUARY, 2022.

ATTEST:

  
Joselyn Castillo, City Secretary  
Time of Posting: 4:30 P.M.

#### ACCESSIBILITY STATEMENT

**The City of Mercedes recognizes its obligations under the Americans with Disabilities Act of 1990 to provide equal access to individuals with disabilities. Please contact the City Manager's Office at (956) 565-3114 at least 48 hours in advance of the meeting with requests for reasonable accommodations, including requests for a sign language interpreter.**

**ORDINANCE NO. 2022- 03**

**AN ORDINANCE CHANGING THE CLASSIFICATION FOR ZONING PURPOSES OF THE FOLLOWING TRACT OF LAND: CAPISALLO LOT 11 BLOCK 66, FROM "N" NEWLY ANNEXED TO CLASS "B" TWO FAMILY RESIDENCE; PROVIDING FOR A SAVINGS AND REPEAL CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on the 15<sup>th</sup> day of February, 2022 a public hearing was held for the purpose of hearing any objections as to why: Capisallo Lot 11 Block 66, Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class "A" Newly Annexed to a Class "B" Two Family Residence.

**WHEREAS**, the City Commission at its Regular Meeting of February 15<sup>th</sup>, 2022, having considered the rezoning of the above-described property as listed in the foregoing section and having heard the pros and cons as to such rezoning request, is of the opinion that the aforementioned rezoning is in the best interest of the City of Mercedes, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS:**

**Section 1:** CAPISALLO LOT 11 BLOCK 66, FROM "N" NEWLY ANNEXED TO "B" TWO FAMILY RESIDENCE, Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class "N" Newly Annexed to a Class "B" Two Family Residence District.

**Section 2:** That the aforementioned rezoning of the above property be incorporated into the official map of the City of Mercedes, Texas by the City Planner of said City.

**Section 3:** That if any provision, section, subsection, phrase, paragraph, sentence, clause or portion of this Ordinance shall for any reason be declared invalid, such invalidity shall not affect the remaining provisions of this Ordinance or their application of persons or sets of circumstances and to this end, all provisions of this Ordinance or parts of Ordinances in conflict herewith are hereby repealed.

**Section 4:** This Ordinance shall become and be effective in accordance with the City Charter of the City of Mercedes, Texas and the laws of the State of Texas.

**PASSED, APPROVED AND ADOPTED ON FIRST READING THIS THE 15<sup>th</sup> DAY OF FEBRUARY 2022.**

**PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

**CITY OF MERCEDES**

\_\_\_\_\_  
**Oscar D. Montoya, Sr., Mayor**

**ATTEST:**

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**Joselynn Castillo**  
**City Secretary**

**APPROVED AS TO FORM:**

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**Martie Garcia Vela**  
**City Attorney**

**ORDINANCE NO. 2022- 04**

**AN ORDINANCE CHANGING THE CLASSIFICATION FOR ZONING PURPOSES OF THE FOLLOWING TRACT OF LAND: CAPISALLO LOT 1 BLOCK 65 & 15.85 ACRES OF LOT 2 BLOCK 65, FROM "N" NEWLY ANNEXED TO CLASS "A-1" SINGLE FAMILY RESIDENCE; PROVIDING FOR A SAVINGS AND REPEAL CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on the 15<sup>th</sup> day of February, 2022 a public hearing was held for the purpose of hearing any objections as to why: Capisallo Lot 1 Block 65 & 15.85 Acres of Lot 2 Block 65, Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class "A" Newly Annexed to a Class "A-1" Single Family Residence.

**WHEREAS**, the City Commission at its Regular Meeting of February 15<sup>th</sup>, 2022, having considered the rezoning of the above-described property as listed in the foregoing section and having heard the pros and cons as to such rezoning request, is of the opinion that the aforementioned rezoning is in the best interest of the City of Mercedes, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS:**

**Section 1:** CAPISALLO LOT 1 BLOCK 65 & 15.85 ACRES OF LOT 2 BLOCK 65, FROM "N" NEWLY ANNEXED TO "A-1" SINGLE FAMILY RESIDENCE, Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class "N" Newly Annexed to a Class "A-1" Single Family Residence District.

**Section 2:** That the aforementioned rezoning of the above property be incorporated into the official map of the City of Mercedes, Texas by the City Planner of said City.

**Section 3:** That if any provision, section, subsection, phrase, paragraph, sentence, clause or portion of this Ordinance shall for any reason be declared invalid, such invalidity shall not affect the remaining provisions of this Ordinance or their application of persons or sets of circumstances and to this end, all provisions of this Ordinance or parts of Ordinances in conflict herewith are hereby repealed.

**Section 4:** This Ordinance shall become and be effective in accordance with the City Charter of the City of Mercedes, Texas and the laws of the State of Texas.

**PASSED, APPROVED AND ADOPTED ON FIRST READING THIS THE 15<sup>th</sup> DAY OF FEBRUARY 2022.**

**PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

**CITY OF MERCEDES**

**Oscar D. Montoya, Sr., Mayor**

**ATTEST:**

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**Joselynn Castillo**  
**City Secretary**

**APPROVED AS TO FORM:**

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**Martie Garcia Vela**  
**City Attorney**

**Ordinances/Resolution**

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**DATE:** February 22, 2022

**FROM:** Javier Ramirez, Assistant City Manager

**ITEM:** Discussion and Action to adopt a Cell Tower Ordinance

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**BACKGROUND INFORMATION:** The current Zoning Ordinance #26 does not address cell towers since the ordinance was enacted in 1958. These regulations are to protect the public's interests and to promote quality communication services within the city limits of Mercedes. It is also the city's concern to safeguard land values, establish fair compensation for use of public rights-of-way, promote orderly planning, and minimize the size, number and obtrusiveness of antennae, towers, and associated equipment.

**ATTACHMENTS:**

1. Cell Tower Ordinance

**Staff Recommendation:**

Approval

**ORDINANCE NO. : 2022 - \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MERCEDES, TEXAS, ESTABLISHING, REGULATIONS FOR THE PLACEMENT OF TELECOMMUNICATION ANTENNAS AND SUPPORT STRUCTURES WITHIN THE CITY OF MERCEDES; TO ESTABLISH OTHER SAFETY AND WELFARE PROVISIONS REGULATING COMMUNICATION ANTENNAS AND SUPPORT STRUCTURES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY AFTER SUPPORT STRUCTURES; PROVIDING A SAVINGS CLAUSE; OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, COUNTY OF HIDALGO, STATE OF TEXAS, AS FOLLOWS:**

Section 1: That the City of Mercedes Code of Ordinances is adopting the following:

**B. Institutional and public uses.**

1. Telecommunication Antennas.

**A. Purpose.**

These regulations are adopted for the following purposes:

- (1) To protect and provide for the public health, safety, and general welfare of the city.
- (2) To enhance the ability of the providers of telecommunications services to provide such services to the community safely, effectively, and efficiently.
- (3) To provide regulations for antenna support structures and antennas that provide secure mounting and construction and prevent interference with public safety communications equipment.
- (4) To encourage the users of support structures and antennas to collocate where possible and to locate all facilities, to the extent possible, in areas where adverse impact on the community is minimal. Stealth designs are required for all antenna support structures, antennas, and supporting equipment.
- (5) To protect and enhance the city's environmental and aesthetic quality.
- (6) To identify standards in order to ensure equitable treatment of providers of functionally equivalent telecommunications services.

**B. Applicability.**

- (1) This article applies to all telecommunication towers, support structures, and antennas installed, built or modified unless exempted in (2) below.
- (2) Exemptions.
- (3) In any zoning district, antennas that are two meter or less in diameter including satellite earth stations.



- (4) In any zoning district, any receive-only antennas and antenna support structures that are owned and operated by a federally licensed amateur radio station operator where the combined height does not exceed 40 feet provided an amateur radio antenna shall be installed according to manufacturer's requirements and approved by the building official.
- (5) Support structures or antennas legally installed before adoption of this ordinance are not required to comply with this ordinance but must meet all applicable state and federal requirements, building codes, and safety standards. However, If a nonconforming structure is damaged or destroyed by any means to an extent where the replacement cost is greater than 50 percent of its appraised value at the time of damage or destruction as determined by the latest tax rolls, then such nonconformity shall not be re-established and such structure may only be rebuilt in compliance with the requirements of this Code except upon action by the board of adjustment to permit reconstruction of such structure and continuance of the nonconforming use. The Board of Adjustment shall have due regard for the rights of the person or persons affected, and shall consider such in regard to public welfare, character of the area surrounding, nature of the use in relation to the intent of the area, and the conservation, preservation and protection of property. In addition, no nonconforming structure shall be enlarged or extended to occupy a greater area than was occupied at the effective date of adoption or amendment of the regulations that make the structure nonconforming. Any nonconforming use on a lot or portion of a lot may be altered to decrease its nonconformity.
- (6) An AM array shall be subject to these regulations. An AM array consisting of one or more support structure units and supporting ground equipment, which functions as one AM broadcasting antenna, shall be considered one support structure. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the support structures, including the guide wires, in the array. Additional support structure units may be added within the perimeter of the AM array by right.

### C. Definitions

- (1) For the purposes of this Section, the following terms shall have the respective meanings as ascribed to them:
- *Antenna*: Any exterior transmitting or receiving device mounted on or within a support structure, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals, television signals, or other communication signals. This definition excludes microwave and other dish structures.
  - *Antenna Support Structures*: The transmitting or receiving system, its supporting structures, and any appurtenances mounted thereon, including a free-standing structure built specifically to support or act as an antenna or a structure mounted on some other man-made object such as a building or bridge.
  - *Backhaul/ Network*: The lines that connect a communications provider's support structure/cell sites to one or more telephone switching offices and/or long distance providers, or the public switched telephone network.

- *Co/location:* The use of a single-support structure and/or site by more than one communications provider. Collocation also means locating a telecommunications facility on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) Without the need to construct a new support structure.

The Federal Aviation Administration

The Federal Communications Commission

- *Height:* The distance measured from the finished grade of the parcel to the highest point on the support structure or other structure including the base pad and any antenna.
- *Monopole:* A structure composed of a single spire used to support telecommunications equipment.
- *Omni Antenna:* A thin, vertical, whip-type antenna that delivers an omni directional signal.
- *Pre-Existing Support Structures and Pre-Existing Antennas:* Any support structure or antenna for which a building permit or use permit has been properly issued prior to the effective date of this ordinance, including permitted support structures or antennas that have not yet been constructed so long as such approval is current and not expired.
- *Stealth Antenna Support Structure:* The design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a stealth design or tower are: architecturally screened, roof-mounted antenna/array/equipment; building-mounted antenna/array/equipment that is painted and treated as an architectural element to blend with the existing building; designs that conceal the antenna/array/equipment, such as manmade trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.
- *Telecommunications Facility:* Any unmanned facility consisting of equipment for the transmission, switching, and/or receiving of wireless communications. Such facility may be elevated (either structure-mounted or ground-mounted) transmitting and receiving antennas, low-power mobile radio service base station equipment, and interconnection equipment. The categories of facility types include both roof and/or structure-mount facilities and telecommunications support structures.
- *Telecommunication Tower:* A structure constructed for the purpose of supporting one or more antennas designed to transmit or receive wireless signals (i.e. cellular, radio, or television).
- *Temporary Antenna:* An antenna and supporting equipment used on a temporary basis in conjunction with a special event, emergency situation, or in case of equipment failure.
- *Transceiver Radio:* Radio equipment rectangular in shape that attaches to lighting fixtures and/or utility poles and meets wind load requirements. Transceiver radios may have an attached omni-directional whip antenna.

#### **D. General Requirements.**

- (1) Antennas and support structures may be considered either principal or accessory uses.

(2) Antenna installations shall comply with all other requirements of all City Ordinances and the Zoning Ordinance with the exception of those specified within this Article.

(3) All commercial attachments including but not limited to signs, flags, lights and attachments, other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be replaced on light standards that are altered or replaced to serve as antenna support structures with fixtures that comply with the lighting regulations of the City. However, this provision shall not preclude the inclusion of an antenna within or mounted on a flag pole.

(4) All antennas and support structures must meet or exceed current standards and regulations of the FAA, the FCC, and any other state and federal agency with regulatory authority over support structures and antennas. If standards change, owners must comply within six months or as required by the regulating authority.

(5) A building permit is required to erect or install an antenna, antenna support structure, and related equipment, unless the particular antenna is exempt from regulations of this Article. All installations must comply with applicable state and local building codes and the standards published by the Electronic Industries Association as may be amended from time to time. In addition to any other approvals required by this Section, no new antenna, tower, or support structure shall be erected prior to the issuance of a building permit.

(6) All support structures and antennas must be constructed and operated in a manner that does not create electromagnetic or other interference with the City of Mercedes's radio frequencies and public safety operations as required by the FCC.

(7) No commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations or support wires may be located within any required front, side, or rear yard setback.

(8) All antennas and antenna support structures owned and/or operated by a governmental entity shall be permitted by right in any district.

(9) Design.

(a) Subject to the requirements of the FAA or any applicable state or federal agency, towers shall be painted a neutral color consistent with the natural or built environment of the site.

(b) Stealth structures must be designed so they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the city will consider the following criteria:

- i. Scale;
- ii. Color;
- iii. The compatibility of the proposed facility with surrounding built and natural features;
- iv. Extent to which the proposed facility has been designed to reasonably replicate a non-wireless facility; and
- v. Extent to which the proposed facility is not readily identifiable as a wireless communications facility.

(c) Towers shall not exceed the height limitations of any airport overlay zone as may be adopted by the city.

- (d) Antenna attached to a building or stealth support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.
- (e) All towers and equipment shelters or cabinets shall be surrounded by a minimum 6 foot high decorative wall constructed of (1) brick, stone or other approved materials as listed in this Code or (2) wrought iron fence and a landscape strip of not less than 10 feet in width planted with evergreen materials, which will provide a visual barrier to a minimum height of 6 feet within 2 years. The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by administrative permit. An acceptable alternative shall be in accordance with living screen requirement of the Code, or by an equivalent method approved by the planning director where visual screening will be achieved that meet the intent of this Code.
- (f) If the equipment cabinets or storage buildings contain machinery that produces noise, the cabinet, or building shall be designed so that the noise is not perceptible outside the structure."
- (g) All towers and structures shall be set back from the property line of any adjacent use, and any thoroughfare, collector and above as indicated on the Master Thoroughfare Plan, at least a distance equal to the height of the tower. An exception to this exists where there is provided an engineered break or collapse point of the tower, in which case the setback may be 110 percent of the distance of the breakpoint to the bottom of the tower. The setback shall consider the combined fall distance of the remaining supported base and any collapsed sections so as to prevent encroachment onto adjacent property, public street, overhead utility lines or ground or pad-mounted utility services.
- (h) Vehicle or outdoor storage on any tower site is prohibited.
- (i) On-site parking on an approved concrete surface for periodic maintenance and service must be provided at all antenna or tower locations consistent with the underlying zoning district.
- (10) All antennas and support structures shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build, or modify antennas or support structures. Additional measures may be required as a condition of the issuance of a building permit and/or conditional use permit as deemed necessary.
- (11) Temporary antennas shall only be allowed in the following instances:
  - (a) In conjunction with a festival, carnival, or other Special Event.
  - (b) In case of an emergency as required by the Police or Fire Departments.
  - (c) When needed to restore service on a temporary basis after failure of an antenna installation. The city must be notified within 72 hours of the placement of a temporary antenna. If the temporary antenna is to be needed for more than seven days, then the provider must acquire a permit for the use.
- (12) Applicants must notify the city of any change in collocation or backhaul providers within 30 days of the exchange.
- (13) Obsolete non-complying tower structures.

Any portion of a tower, which is not occupied by an active antenna for a period of six consecutive months, shall be removed at the owner's expense. Failure to comply with this provision shall constitute a public nuisance that may be remedied by the city at the tower or property owner's expense. Any applicant for a new tower or disguised structure shall place a bond or other security with the city prior to any final approval for the purpose of removing any tower or disguised structure as required herein and to compensate the city for performing proper maintenance of such towers or disguised structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Code. The bond or security shall be in the form approved by the planning director, and in the amount of \$15,000.00, or such other amount as is determined by the planning director to satisfy the requirements hereof with regard to the specific tower or structure to which it would apply.

(14) Wind-load.

A tower shall be designed with a minimum 90 mile per hour wind-load. The wind load characteristics of the tower shall consider the addition of up to two antennas.

**E. Collocation.**

Collocation shall be accomplished as follows:

- (1) All new stealth support structures over 60 feet in height must be constructed to support antennas for at least two carriers unless the support structure is replacing an existing utility structure or light standard. Sufficient area for associated structures and equipment must also be provided. A written agreement committing to shared use as required by this subsection shall be submitted by the tower applicant prior to approval of the application. The failure of the owner of a tower built for shared use shall be in violation of this Ordinance and, among other remedies of the City, shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or towers within the city.
- (2) Telecommunications area map. Any tower approved within the city or ETJ, indicated within that jurisdiction on the telecommunications area map, shall be designed and constructed to accommodate the number of users indicated on the map to the extent feasible. The failure of the owner of the tower built for shared users to negotiate in good faith with potential users shall be a violation of this Code and, among other remedies of the city, shall be cause for the withholding or revocation of a conditional use permit.
- (3) Appeal of shared use violations. Any party seeking shared use of a tower subject to this provision shall, after responding to notice of an application, negotiate with the tower owner for such use. The tower owner may, on a legitimate and reasonable business basis, choose between multiple requests for shared use on the same tower or structure, and may reject any request where legitimate technical obstacles cannot be reasonable overcome or where the party requesting shared use will not agree to reasonable financial terms. Any party believing that the applicant has breached its duty to negotiate in good faith for shared use shall immediately notify the applicant and the planning director in writing. The planning director may reject the application upon a finding that shared use has been improperly

denied. A notice of breach of duty shall explain the precise basis for the claim and shall be accompanied by payment of an administrative review fee as established by resolution of the city council. After the tower owner's receipt of the notice, the tower owner shall have ten calendar days to provide a written submission to the planning director responding to the alleged violation of the shared use requirement. If deemed necessary by the planning director, he/she may engage, at the cost of the party alleging the violation, a neutral, qualified technical consultant to provide an opinion on feasibility or costs of the shared use request. If the planning director receives a notice alleging a violation of the shared use requirement, the time for a decision on an administrative permit is automatically extended until the planning director has determined that the tower owner has complied.

- (4) A support structure which is modified or reconstructed to accommodate collocation shall be of the same type or design as the existing structure and is subject to the following regulations:
  - (a) The support structure may be modified or rebuilt to a height not to exceed 30 feet over the support structure's existing height, with a maximum height of 150 feet above ground level (AGL). If a use permit issued for the support structure stipulated a maximum height, the support structure may not be modified unless the conditional use permit is amended.
  - (b) Distance separation from other support structures and residential zoning district boundaries are based on the original support structure and are not increased.
  - (c) The support structure may be moved on the same property within 50 feet of its existing location but may not be moved closer to residentially-zoned property. The new location must be within the boundaries of the conditional use permit.
  - (d) The original support structure must be removed from the property within 90 days of the completion of new support structure.
  - (e) Additional antennas attached to an existing support structure must comply with the design of the existing antenna on the support structure.

#### **F. Antennas and tower placement allowed by-right.**

The placement of antenna and towers are permitted by-right in all zoning districts only as follows:

- (1) The attachment of additional or replacement of antenna or shelters to any tower existing on the effective date of this Code or subsequently approved in accordance with these regulations, provided that the additional equipment, shelters, or cabinets are located within the existing tower compound area.
- (2) The mounting of antenna on any existing building or structure, such as a water tower, provided that the presence of the antenna is concealed by architectural elements or painted a color identical to the surface to which they are attached.
- (3) The mounting of antenna on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than ten feet.

- (4) The installation of antenna or the construction of a tower or support structure on building or land owned by the government.

#### **G. Antenna and tower placement allowed by administrative permit.**

The placement of antenna and towers as listed in this section shall be administratively approved by the planning department based upon compliance with the standards of this section.

- (1) Types of antenna and tower placement allowed by administrative permit.
  - (a) The attachment of additional or replacement antenna or shelters to any tower existing on the effective date of this Code or subsequently approved in accordance with these regulations and requiring the enlargement of the existing tower compound area, as long as all other requirements of this section and the underlying zoning district are met.
  - (b) The one-time replacement of any tower approved in accordance with these regulations, so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new tower shall be a monopole or stealth design. The height of the new tower may exceed that of the original by not more than 20 feet if such tower meets conditions herein. Subsequent replacements shall require the approval of a conditional use permit.
  - (c) The construction of a stealth support structure provided that all related equipment shall be placed underground or concealed within the structure when the structure is located in any district other than a district authorizing industrial uses. Equipment may be placed in a cabinet if the stealth support structure is incidental to a non-residential use.
  - (d) Towers erected and maintained for a period not to exceed 45 days for the purpose of replacing an existing tower, testing an existing or proposed network, or special events requiring mobile towers.
- (2) Application procedures.

Applications for administrative permits shall be made on the appropriate forms to the planning director and accompanied by payment of a fee as may be established by the council.
- (3) Application requirements.
  - (a) A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements within 200 feet of the proposed antenna or tower, including buildings, drives, walkway, overhead utility lines, ground or pad-mounted utilities, parking areas, and other structures, public right-of-way, the zoning categories of the subject and adjoining properties, the location of the distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the existing or proposed tower. The application shall describe the height, design, location, type and frequency of antenna, tower owner's name, longitude/latitude, antenna providers using the tower, etc.

(b) The application shall be reviewed by the planning director to determine compliance with the above standards and transmit the application for review and comments by other departments and public agencies as may be affected by the proposed facility.

(c) The planning director shall issue a decision on the permit within 45 days of the date of application, or the application shall be deemed approved unless the time period for review and action was extended pursuant to this section. The planning director may deny or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with the purpose of this section. The planning director may consider the purposes of this section and the factors established in this Code, as well as any other considerations consistent with the Code. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

(4) Appeals.

Appeals from the decision of the planning director shall be made pursuant to subchapter 777-813, Appeals of administrative decisions.

#### **H. Antennas and tower placement allowed by conditional use permit.**

Unless otherwise provided herein, all proposals to install or replace an antenna, tower, or support structure in any zoning district shall require the approval of a conditional use permit, subject to the following limitations:

(1) Applications for conditional use permits. Applications for conditional use permits shall be filed and processed subject to the requirements of and in the manner and time frame established by subchapter 77-807.

(2) Additional minimum requirements.

No conditional use permit shall be issued unless the applicant has clearly demonstrated that placement of an antenna or support structure pursuant to Antenna and Tower Placement Allowed By-Right, is not technologically or economically feasible. The planning and zoning commission may consider current or emerging industry standards and practices, among other information, in determining feasibility.

(3) Findings Required.

In addition to the determinations or limitations specified herein for the consideration of conditional use permits, the planning and zoning commission shall also base its decision upon, and shall make findings as to, the existence of the following conditions:

(a) The proposed tower is not and cannot be located to meet the co-location requirements of this section.

(b) No existing towers, structures, or buildings within the necessary geographic area for the applicant's tower network, or other limiting conditions that render towers, structures, or buildings within the applicant's required geographic area unsuitable.



- (c) The design of the tower or structure, including the antenna, shelter, and grounday out, maximally reduces visual degradation and otherwise complies with provisions and intent of this section. New towers shall be a stealth design.
- (d) The proposal minimizes the number and/or size of towers or structures that will be required in the area.
- (e) The applicant has no previously failed to take advantage of reasonable available shared use opportunities or procedures provided by this Code or otherwise.
- (f) No land owned by any agency of the federal or state government, or by any political subdivision of the state, is available for locating the structure or tower.

**SECTION II. REPEALER CLAUSE:** This Ordinance shall be cumulative of all other ordinance dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this Ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith: all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

**SECTION III. SAVINGS CLAUSE:** If any section, part, or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then in the event it is expressly provided, and it is the intention of the City Commission in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby, and they shall remain in full force and effect.

**SECTION IV. PENATLY CLAUSE:** Each violation of any of the provisions of this Ordinance shall constitute a separate offense and shall, upon conviction thereof, be punishable by a fine not to exceed \$2,000.

**SECTION V. PUBLICATION AND EFFECTIVE DATE:** This Ordinance shall take effect immediately upon its passage and publication according to law.

**PASSED, APPROVED AND ADOPTED ON FIRST READING THIS THE 15<sup>TH</sup> DAY OF FEBRUARY 2022.**

**PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE \_\_\_\_ DAY  
OF \_\_\_\_\_, 2022.**

**CITY OF MERCEDES:**

\_\_\_\_\_  
**Oscar D. Montoya, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Joselynn Castillo**  
**City Secretary**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Martie Garcia Vela**  
**City Attorney**

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Choose an item.

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**DATE:** February 22, 2022

**FROM:** Javier Campos Jr. – Fire Chief

**ITEM:** **Interlocal Cooperation Agreement Between City of Mercedes and Hidalgo County, TX – Fire Rural Agreement**

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**BACKGROUND INFORMATION:**

This item presented is to continue fire service and receive reimbursement payment for our fire rural response in Hidalgo County to Mile 14 ½ North. We will keep our same coverage area as previous contracts approved by the city. This agreement was reviewed by the Hidalgo County Fire Chiefs Association and all fire chiefs have recommended approval of this agreement. This agreement will have a 5.46% increase of all 3 categories over a 3-year period base on the consumer price index percentages of today.

**BOARD REVIEW/CITIZEN FEEDBACK:** Approved

**ALTERNATIVES/OPTIONS:**

**FISCAL IMPACT:**

**Proposed Expenditure/(Revenue):**

none

**Account Number(s):**

**Finance Review by:**

**LEGAL REVIEW:**

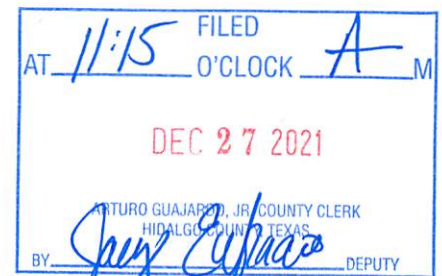
**ATTACHMENTS:**

**Staff Recommendation:** Fire Chief recommends approval.

# INTERLOCAL COOPERATION AGREEMENT BETWEEN MERCEDES AND HIDALGO COUNTY, TX

STATE OF TEXAS

COUNTY OF HIDALGO



THIS Interlocal Cooperation Agreement is made on the 14th day of December, by and between the COUNTY OF HIDALGO, TEXAS, hereafter called County, and the City of Mercedes, TEXAS, a municipal corporation/non-incorporated area hereinafter called CITY/ENTITY, is made under the authority of Chapter 791.001, Texas Government Code to be effective on the 1st day of January, 2022.

Entity and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 791.001 et seq., which authorizes local governments to contract with each other to perform Governmental functions under the terms of the Act.

## **1.0 TERMS**

- 1.1 This contract shall be for a period commencing on **January 1, 2022**, and shall terminate on **January 1, 2025**.
- 1.2 After **January 1, 2025**, this Contract, unless terminated as provided elsewhere, shall be renewed on a month-to-month basis, under the same fee(s), rate(s), term and conditions of this agreement, until re-negotiated by mutual consent of both parties.
- 1.3 Either party has the option to terminate this Contract without cause by written notification, to the other on sixty (60) day notice.
- 1.4 The Rural Emergency Service Incident Report (Exhibit "A") form must be utilized as part of the monthly report submitted to the County Fire Marshal or his designee.
- 1.5 **Any modifications to invoices shall be approved by both parties.** All Incident Reports should be submitted to County Fire Marshal's Office within (fifteen) 15 days of the following month and the County Fire Marshal's Office shall review all reports up to (fourteen) 14 days from date of receipt to determine approval or any adjustments agreeable to both parties prior to sending to Auditors Office for payment. Approved invoices shall be paid no later than **thirty (30) days** upon receipt of invoice by County.

- 1.6 Commencing on the 1st day of January 2022 and on each anniversary of that date thereafter, the parties hereinafter agree to an annual increase as identified in (Exhibit "B").

## 2.0 DEFINITIONS

**BASIC FIRST AID** - Refers to the initial process of assessing and addressing the needs of someone who has been injured or is in physiological distress due to choking, minor scrapes and bruises, allergic reactions, drugs or other medical emergencies. Basic first aid allows you to quickly determine a person's physical condition and the correct course of treatment. You should always follow correct first aid procedures for it can be the difference between life and death.

**BEE ATTACK** – Any response to a situation where there is an on-going attack on person(s), domestic animal(s), and/or livestock, or a recent attack that requires first responder entrance into the immediate scene to rescue any person(s.) INCLUDING situations of bee removal of hazards where no attack is in progress when arriving at an emergency scene, or sustained at the time of response where firefighters are required to utilize bee suits and equipment.

**BODY RECOVERY** – Any recovery of a deceased human remains.

**CATEGORY** – All and any emergency response shall be categorized in a category that will be enumerated as I, II, III. Categories are designed to simplify reporting, queries and reimbursement requests.

**COUNTY FIRE MARSHAL** – the person appointed by the Commissioners Court in accordance with LGC 352 who is responsible for the administration of fire investigations, fire safety inspections, and fire prevention activities, administration of the Rural Emergency Services Contract and enforcement of the most recently adopted International Fire Code. This is a sworn position.

**COUNTY FIRE INVESTIGATORS** – Those officers designated as such, by the County Fire Marshal that are responsible for all duties which may be assigned.

**CHIEF DEPUTY / DEPUTY FIRE MARSHAL** – Those officers designated and commissioned by the County Fire Marshal that are responsible for all duties which may be assigned by the County Fire Marshal.

**ENTITY** – The parent organization of a Fire Department whose members are full time, part time, paid or unpaid volunteers and for the purposes of this contract includes any elements from any regional response team/public works department that are requested or deployed to assist with the suppression, control or extinguishment of a fire.

**FALSE ALARM CALL** - Any emergency response to a mischievous or malicious call, or false call that requires fire personnel to investigate the scene or incident to make a determination as to whether or not there is an emergency incident. If there are multiple alarms at the same location the responding Primary/Secondary Entity shall notify the Fire Marshal's Office by the next Business Day.

**FIREFIGHTING** – Any incident upon arrival that is a Working Structural and/or Vehicle Fire, a Petroleum Based Fire, or Brush, Grassland or Rubbish Fire requires the action or process of extinguishing fires by Entities

**GOOD INTENT CALLS** – Any emergency incident response where fire personnel were summoned, but were not required to take any action (investigation, standby, or there was no actual incident). **Response to this type of call must come through a dispatch point.**

**HAZARDOUS MATERIAL FIRST RESPONDER INCIDENT** – response to any incident at a First Responder (Awareness & Operations) Level, as defined by the Environmental Protection Agency and/or the Texas Commission on Environmental Quality and includes, hazardous material Identification, low level containment / Mitigation, i.e. (fuel spills **below 35 gallons**, from any vehicle, including motor vehicles, trains, motorcycle or aircraft.)

**HAZARDOUS MATERIAL TECHNICIAN LEVEL INCIDENT**– response to any incident at the Technician Level, as defined by the Environmental Protection Agency and/or the Texas Commission on Environmental Quality and includes, hazardous material Identification via Monitoring / Identification devices, and or specialized equipment for such purposes, High level containment / Mitigation, (i.e. Solid, Liquid, Gas (Vapor) Chemical / Fuel spills **above 35 gallons** from any structure, vehicle, and or storage type facility..

**INCORPORATED / UNINCORPORATED AREA(S)** - any area(s) within Hidalgo County that exist at time of execution thereof, and as they may be amended by reasons of annexation and/or de-annexation of property by any respective city shall not be covered in this contract.

**LAW ENFORCEMENT ASSISTANCE** – any non-fire assistance requested by County, State, or Federal Law Enforcement Agency, and includes, but is not limited to – vehicle recovery (water), crowd control, and “standing-by” for any situation in pursuance of a law enforcement, and or Investigative mission. **Excluding MVA duties (Traffic Control, Wash downs, Patient Packaging).**

**MASS CASUALTY INCIDENT** – any emergency rescues and/or recovery of victims, eight (8) victims or more, from any major incident or accident, (i.e. Haz-Mat, aircraft, any passenger transportation bus, regardless of cause, building collapse, or assembly area.)

**MEDICAL CALL** – In an emergency situation, under exigent circumstances and the situation dictates immediate medical attention **excluding Basic First Aid. An EMS protocol shall be set up as follows:**

**Medical calls to be eligible for this category shall be limited to:**

- 1. Burns/Explosions**
- 2. Carbon Monoxide/Inhalation/Haz-Mat/CBRN**
- 3. Electrocutions/Lightning**
- 4. Inaccessible Incident. Other Entrapments (non-traffic)**
- 5. Psychiatric/Abnormal Behavior/Suicide Attempt**
- 6. Traffic/Transportation Incidents**
- 7. Heart Problems– Stroke - Chest Pains – Cardiac or Respiratory Arrest/Death**
- 8. Person Down – Unconscious/Non Responsive, Fatality**
- 9. Breathing Problems -Choking**
- 10. Traumatic Injuries**

**This section is not to be construed as a reimbursement plan for a fire-based department that operates an emergency medical service (EMS) otherwise covered by any other contracts that are already in place.**

**MUTUAL AID** – When a Primary Entity response to an emergency event where the situation is of such magnitude , either upon arrival or during the actual response, that the primary city/entity must

declare a multiple alarm and request response from one or more Secondary Entity(s) and such assistance is necessary to control, extinguish, or otherwise assist with the response. This includes any element of Public Works/Am-Bus/Regional Response Teams that is called upon to help mitigate the emergency. The call for additional resources is made by the Primary Entity and the call from Secondary Entity may be based on the extenuating circumstances, and may be made by the On-Scene Incident Commander, and must go through a dispatch point. The Fire Marshal may authorize and/or request mutual aid at any time whether or not on-scene, when the request is made directly to them. **Secondary Entities may be reimbursed at the same rate as the primary entity upon approval of the Fire Marshal, when sufficiently documented as a "Special Situation".**

**OPERATIONAL PERIOD** – A twelve (12) hour standard period shall be recognized for considering additional funding to responding Entities that is recognized by the National Incident Management system.

**PETROLEUM BASED INCIDENT** – any emergency incident or fire whose main fuel source includes natural gas, liquefied gas, crude or refined oil or any other petroleum based product that may be used or processed as fuel or as a precursor for fuel. It also includes any storage container, conveyance of said product, whether by motor vehicle, pipeline or any other type of transport medium

**PRIMARY ENTITY** – An Entity who has contracted as a party with the County and is assigned to respond as the Lead Emergency Incident-Based Response Agency to the geographical area assigned to the Entity within the rural areas of the County, wherein the respective Entity Shall be responsible for primary response to an emergency incident as per Section II, Paragraph A, of this contract. This may be based on geographical assignments or capability.

**PUBLIC WORKS/REGIONAL RESPONSE TEAM/AM-BUS RESPONSE** – Any incident response that requires operational support elements from what is commonly referred to as Public Works, to respond to an emergency situation, to help mitigate, control, or otherwise facilitate the overall response. This response may only be requested and authorized by the On-Scene Incident



Commander through the County Fire Marshal's Office. The Am-Bus is an additional resource that may respond to any special situation to provide tactical rescue/EMS assistance and support for any first responder regardless of discipline. The Regional Response Teams are based and maintained from the Lower Rio Grande Valley Development Council (LRGVDC) Homeland Security Association Committee (HSAC).

**REIMBURSEMENT PLAN** – County method by which contracted Entity is reimbursed by the County for emergency services rendered in any rural area within Hidalgo County.

**RUBBISH/BRUSH/GRASS//WILDLAND FIRE**– Any fire occurring in vegetative areas, trash, garbage, brush, grass or other unwanted things, and includes any tangible item discarded, collected, or recycled arranged as to burn for cleaning / clearing as a part of a controlled situation, whether permitted or not regardless of ignition sources, damages or benefits. An uncontrolled fire in [grassland](#), [brush-land](#), or land sown to crops.

**RURAL AREA** – any non-incorporated areas within Hidalgo County, as they exist at the time of execution thereof, and as they may be amended by reasons of annexation and/or de-annexation of property by any respective city or any incorporated area within Hidalgo County that does not provide its own emergency services or response.

**RURAL RESPONSE DISTRICT** – The area designated for the respective Primary Entity for emergency response within a delineated geographical area as depicted and described in Exhibit "B", attached hereof. The rural response district may be amended from time to time pursuant to Section 3.2.

**SEARCH and RESCUE CALLS** – all rescues of person(s), from water, high angle, confined space, or all rescue/extrication of person(s) from entanglement, entrapment, enclosed areas, elevators, building collapse Excluding Recovery, and/or Vehicle Extrication.

**SECONDARY CITY** – the Entity who is a party to a cooperative agreement with the County and is assigned or requested to respond to assist the primary city in any type of emergency response to an area where the emergency occurred (Mutual Aid). The response may occur anywhere within the rural County and may be based on geographical assignment or capability EXCLUDING any aid to any other Jurisdictions in their city limits or other counties.

**SERVICE CALLS** – any call involving, smoke scare, mischievous or malicious calls, and alarm system malfunctions requiring fire personnel to deal with an incident, but where no actual services, investigation or standby was rendered or needed. Fire based EMS calls for service shall fall under this category.

**SPECIAL SITUATIONS** – Any situation in which the Entity performed in a manner that is not covered in any of the above described situations, or for an extended period of time. The Fire Chief must justify the exigent circumstances for the response to the incident and reason for reimbursement request. If the response by the Entity covers two or more operational periods, this fee may be charged per day, above and beyond any other fees. The Fire Chief shall seek authorization from the County Fire Marshal, or his representative, justifying the exigent circumstances for the response to the incident prior to responding to a special situation. If authorized by the County Fire Marshal and if the response by the Entity covers two or more operational periods, this fee may be charged per day, above and beyond any other fees.

**STRUCTURE** – any construction within reason, or any production or piece of work artificially built or composed of parts joined together in some definite manner, that is built, under construction or constructed and it includes any edifice, or building of any kind.

**TRAFFIC CONTROL** – Any incident response where the nature of the call is strictly for traffic control assistance.

**MOTOR VEHICULAR ACCIDENT (MVA)** – any motor vehicle or automobile collision regardless of amount of or type of vehicles involved, where services other than “VEHICULAR EXTRICATION” is performed.

**VEHICULAR EXTRICATION** – any emergency extrication of person(s) with the use of any specialized tools; hydraulic, and/or manual tools from wreckage entanglement as a result of an automobile collision, regardless of motor vehicle type.

**VEHICLE FIRE** -A working fire – upon arrival that involves any vehicle fire. (I.e. Semi-Truck and or Trailer, Transport Vehicle, Service Vehicles, commuter bus or personal vehicle, car, truck, van).

**WASH DOWN** – Any spill where there is no fire and the spill consists of vegetation such as fruits & vegetables and any other non-petroleum based products on roadway, parking lots, etc. that requires a wash down – no vehicular accident.

**WIRELINE INCIDENTS (All TYPES)** – where the response is of such nature that there is a “downed-wire” or “low-hanging wire” or energized or with/without fire and the responding Entity must standby and await the arrival of a utility company or responding Entity must remove, and or mitigate the non-emergency situation. Any situation where there is immediate danger to the public from an electrical wire, and the situation dictate immediate traffic control, or public redirection or any situation where there is no immediate danger to the public from an electrical wire, and the situation does not dictate immediate traffic control, or public redirection. Any situation where the Entity is not required to stand-by for the service company will be classified as a Service Call.

### **3.0 ENTITY RESPONSIBILITIES**

- 3.1 Entity hereby agrees to provide emergency incident response based services, **if resources are available**, to the geographically assigned Rural Response District, within the County, as may be required by the County Fire Marshal or otherwise as delineated within this contract.
- 3.2 Entity hereby agrees to the designation of Primary (response) within their designated Rural Response District as depicted in the attached map, as Exhibit “C”. Each Entity Rural Response District may be amended from time to time during the period of this contract by annexation or de-annexation of property by any respective city(s), or by agreement of the County Fire Marshal, and Fire Chief(s) responsible for the existing Rural Response District. The Response Districts and assigned Entity will be provided to the designated 911 Coordinator and the Sheriff’s Office. A map depicting the Rural Response Districts of all participating Entity(s) shall be maintained and provided upon request by the County Fire Marshal, at their designated office.
- 3.3 Entity hereby agrees to seek authorization from the County Fire Marshal prior to responding to a call outside of the Rural Response Districts’ geographical area as delineated and depicted in Exhibit “B” unless authorized by the County Fire Marshals and/or Entity of the Rural Response District, Otherwise Entity shall not be reimbursed for services rendered outside their designated geographical area.
- 3.4 Entity hereby agrees to provide the County Fire Marshal, with any and all records, reports, and documents, to include, but not limited to, statistics, data, calls for service records, dispatch logs, and any other records or other documents necessary to support the invoice or request for reimbursement as herein provided. In the absence of the Fire Marshal, said records, reports, and

documents may be provided to the County Judge or his designee. The standard reimbursement request shall be timely submitted. Unless this subsection is fully complied with, reimbursements shall not be granted.

- 3.5 Entity agrees that in multi-agency response calls, the communications interoperability radio channels will be used as primary communications with the designated incident commander. The Incident Commander or assigned communications officer may designate user and sub-user groups as necessary.
- 3.6 Entity agrees to allow the County Fire Marshal full access to any and all operational communications frequencies / talk groups that the Entity operates on and authorize the County Fire Marshal to use those frequencies/talk groups during a response to a designated emergency situation that the Entity responds to. This will include assigning user-identification numbers (if available) to any County Fire Marshal communications radio.
- 3.7 Entity agrees to practice NIMS/ICS during any multi-agency – multi-tiered response.
- 3.8 Entity agrees to provide its own insurance for equipment, vehicles, and personnel used in performing any of the services described herein. Emergency vehicles and fire-fighting equipment must be owned and/or managed by the Entity. Entity agrees to provide proof of current and adequate vehicle, equipment and workmen's compensation insurance to the County upon submission of this contract or upon request from the County Fire Marshal.
- 3.9 During extended operations as designated by the Incident Commander, the Entity agrees to provide adequate hydration and sustenance for its firefighters/emergency response personnel.
- 3.10 Entity agrees that it will not cause, create or allow any type of "roving-patrols" or "smoke-hunting / chasing" operations by full-time employees, volunteers or paid-volunteers, in an effort to seek out emergency responses. A simple trash burning call will be referred to the appropriate law enforcement agency, i.e... Fire Marshal, Constable Office or Sheriff's Office, unless the Roving preventive fire patrol activity is requested and authorized by the Fire Marshal in writing during an emergency situation, burn ban period, or fireworks ban period.

## **4.0 COUNTY RESPONSIBILITIES**

- 4.1 In consideration for the Entity's Rural Emergency Services, the County will reimburse the Entity in the manner provided herein.
- 4.2 The County shall designate a person and office that shall be known as the County Fire Marshal and County Fire Marshal's Office, who shall have the following responsibilities;

### **4.2.1.1 ADMINISTRATION**

- a. Administration of Fire Marshal's Office
- b. Cause Burn Ban Signs (during designated times) to be displayed in conspicuous locations at all major roadway entrances to the County.
- c. Commercial Building Inspections
- d. Fire Safety Inspections
- e. Adult and Child Day Care Facility Inspections
- f. Health Care Facility Inspections
- g. Existing and New Construction Inspections
- h. Implementation and Enforcement of the most current version of the International Fire Code.
- i. Issuance and Regulation of Burn Permits in Rural County areas
- j. Monitor weather conditions and cause burn bans and fireworks bans to be enacted by the Commissioners Court, as appropriate.
- k. Plat/Plan Reviews and approvals

#### **4.2.2 INVESTIGATIONS**

- a. Conduct Fire Investigations
- b. Assist and guide other law enforcement agencies with Fire Code violations and enforcement.
- c. Provide Information and Reports
- d. May Provide **Assistance** to municipal's Fire Marshal or representative with Fire Investigations, upon request.
- e. May Provide Primary Assistance to contracted entity where there is no fire investigator at present the county may with advanced notification to HCFMO so that arrangements can be made.
- f. Issue Citations, make arrests, and file criminal cases as appropriate.

#### **4.2.3 FIRE PREVENTION**

- a. Plan, coordinate and direct activities.
- b. Conduct and participate in training with all Fire Departments.

- c. Acquire and maintain equipment.
- d. Conduct public education.
- e. Perform fire safety presentations.

#### **4.2.4 ADMINISTER RURAL EMERGENCY SERVICES CONTRACT**

- a. Review and process all requests for reimbursements in a timely manner.
- b. Confer with the appropriate Fire Chief on any discrepancies on requests for reimbursement.
- c. Determine if a Rural Response District may respond outside of the Rural Response Districts' geographical area as delineated and depicted in Exhibit "C".

#### **4.2.5 RESPONSE**

- a. When requested, respond to a fire scene within a reasonable time to conduct an investigation into the cause of the fire.
- b. Will respond to any major incidents.
- c. Will integrate into the NIMS/ICS structure as appropriate
- d. Will assist the Incident Commander with any duties as assigned.
- e. Will provide Law Enforcement assistance/coordination as needed

## **5.0 LIABILITY**

- 5.1 Entity and County agree pursuant to Section 352.004, Texas Local Government Code that the acts of any person or persons traveling to or from or in a manner as defined in Section 3, shall be deemed as the acts of agents or employees of the County in all respects, notwithstanding such person or persons may otherwise be employees or firefighters of the Entity.
- 5.2 The County of Hidalgo and Entity agree that they will provide general liability insurance coverage for liabilities caused by vehicles, equipment, and personnel. Entity shall be

responsible for any damage to its vehicles or equipment used in performing services under this Agreement. Each party agrees that it shall provide general liability insurance coverage for the action of their respective employees and firefighters.

- 5.3 Nothing herein shall be construed to prevent either party from becoming self-insured. Each Entity participating and entering into this contract must provide written proof of insurance to the County when submitting the contract for approval. Upon request by the County or its duly authorized representative, the Entity must provide documentation of completion of any other State or Federal fire-fighting training requirements.
- 5.4 If either party cannot acquire the insurance required herein, this Agreement shall be void and the parties shall negotiate their respective obligations regarding emergency services response in the rural areas of Hidalgo County at the time. If at any time during the year the respective Entity loses its insurance capacity, it must immediately report this to the Fire Marshal and cease any responses to their assigned Rural Response District.

## **6.0 REIMBURSEMENT PLAN**

- 6.1** County shall reimburse Entity for services provided hereunder in a lump sum payment to be made monthly as follows:

6.1.1 Entity shall keep true and accurate records of all rural emergency services provided hereunder and shall submit, on a monthly basis (no later than 90 days), any Rural Emergency Service Incident Reports to the County Fire Marshal, reporting is a condition precedent to receiving payments from the County. The Rural Emergency Service Incident Report form(s), and supporting documents as listed in Section 3.4 shall be required as part of the monthly report. Accident Prevention Plan documentation is required from any Entity that utilized the County Worker's Compensation Policy, as described in Section 5.3.

6.1.2 County shall communicate and provide a written itemized list of emergency services discrepancies for reimbursement or any change in the reimbursement rate category to the Entity with an explanation for the disapproval or change to the Fire Chief of entity for approval or to challenge the disapproval within fourteen (14) working days of receipt of invoices from Entity.

6.1.3. The County Fire Marshal shall accumulate records of all rural emergency service responses provided by all Entity(s) within Hidalgo County and shall calculate the amount due each Entity.

a. Any and all disputes of Entity reports shall be addressed directly to the Fire Marshal and/or the Entity in writing.

b. If a resolution of dispute for emergency response services cannot be reached, the reporting Entity may appeal to the Hidalgo County Executive Chief Officer.

c. If a resolution of dispute for emergency response services cannot be reached, the reporting Entity may appeal to the Hidalgo County Commissioner's Court.

6.1.4. For all rural emergency calls serviced by the Entity within its emergency response district to include any mutual aid outside response district, Entity shall receive a monthly lump-sum payment for all authorized services in accordance with the following payment schedule and categories;



- (6.1.4.I.)                      CATEGORY I    (CI)    Flat rate of \$1,858.00 per incident.
- (6.1.4.II.)                      CATEGORY II    (CII)    Flat Rate of \$ 921.00 per incident
- (6.1.4.III.)                      CATEGORY III    (CIII)    Flat Rate of \$ 433.00 per incident.

**6.1.4.I. CATEGORY I.** A rate of \$ 1,858.00 per incident, as set forth, shall apply, during the terms of this Contract for:

- .1      FIREFIGHTING STRUCTURAL / VEHICLE (as primary department)
- .2      HAZARDOUS MATERIALS (TECHNICIAN LEVEL)
- .3      MASS CASUALTIES
- .4      RESCUE CALLS
- .5      VEHICULAR EXTRICATION
- .6      PUBLIC WORKS/REG. RESPONSE TEAMS, AND/OR AM-BUS RESPONSE
- .7      REGIONAL MEDICAL RESPONSE TEAM
- .8      SECONDARY ENTITY (in place of primary department.)
- .9      SPECIAL SITUATIONS
- .10    RUBBISH/BRUSH/GRASS//WILDLAND above one (1) hour

**6.1.4.II. CATEGORY II.** A rate of \$ 921.00 per incident, as set forth, shall apply, during the terms of this Contract for:

- .1      BEE ATTACKS
- .2      HUMAN REMAINS RECOVERY CALLS
- .3      RUBBISH/GRASS//WILDLAND (31 minutes to 1 Hour)
- .4      HAZ-MAT (AWARENESS/OPERATIONS LEVEL)/WASH DOWN
- .5      LAW ENFORCEMENT ASSISTANCE
- .6      MUTUAL AID
- .7      MEDICAL CALLS

- .8 MVA (PATIENT PACKAGING, SECURE VEHICLE)
- .9 PETROLEUM BASED INCIDENT STANDBY
- .10 TRAFFIC CONTROL
- .11 WIRELINE INCIDENTS (ALL TYPES)

**6.1.4. III CATEGORY III.** A Rate of \$ 433.00 per incident, as set forth, shall apply, during the terms of this Contract for:

- .1 BASIC FIRST AID
- .2 RUBBISH/BRUSH/GRASS/WILDLAND (30 minutes & below)
- .3 FALSE ALARM CALL
- .4 GOOD INTENT CALLS
- .5 LANDING ZONE
- .6 SERVICE CALLS

## **7.0. ASSIGNMENT**

In the event a Rural Fire District(s) is created for the rural, non-incorporated areas of Hidalgo County, this contract may be assigned by the County to such District, and Entity shall look solely to the District(s) to perform and assume all Obligations and Responsibilities of the County.

## **8.0. AUDIT**

Any and all requests from Entity for reimbursement from County or any past reimbursements made under this contract or its predecessors shall be subject to audit by the County Auditor's Office, and/or the Fire Marshal. Should an audit procedure be invoked, Entity agrees to provide any and all records, photographs, videos, or other documents, pertaining to any request or claim for reimbursement made or paid hereunder that are requested by the Auditor or Fire Marshal. Should the County Auditor determine that any payments made were not properly claimed under the terms of this contract, Entity agrees to remit the amount of payments so found by the County Auditor to the County within ten (10) working days, following the date of receipt of Entity of County Auditors written determination.

## **9.0. MISCELLANEOUS**

**9.1 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 the 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 conflict exists.

**9.2 NO WAIVER.** No waiver by any party hereto 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.

**9.3 ENTIRE AGREEMENT** – This agreement contains the entire contract among the parties hereto, and each party acknowledges that no other party has made (either directly or indirectly 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. This Agreement supersedes any and all agreements by and between the parties hereto. All previous agreements concerning the subject matter hereof between the parties are terminated as of the date of this Agreement.

**9.4 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.

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

If to Entity                      Mercedes Fire Department  
City Secretary/Fire Chief  
400 S. Ohio  
Mercedes Tx, 78570

If to County:                      County of Hidalgo  
County Judge's Office  
100 E. Cano St. 2<sup>nd</sup> Floor, Edinburg, Texas 78539 or  
P.O. Box 1356, Edinburg, Texas 78540

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 of 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.

**9.6     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.

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

**9.8     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.

**9.9     GENDER and NUMBER.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine, or neutral gender, and the singular shall include the plural whenever and as often as may be appropriate.

**9.10    AUTHORITY TO EXECUTE.** The execution and performance of this Agreement by each of the parties hereto has been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and the Agreement constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

**9.11    PERFORMANCE of GOVERNMENT FUNCTIONS.** 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.

**9.12    IMMUNITIES.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of

the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

**9.13 COMMITMENT of CURRENT REVENUES.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. The County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the County.

**9.14 MUTUAL INDEMNIFICATION.** Without waiving its sovereign immunity, and to the extent provided by law, each party shall indemnify and hold harmless each other, its officers, officials, and employees from and against all claims and liabilities of any nature or kind, including costs and expenses for or on account of any claims, damages, losses, or expenses of any character whatsoever resulting in whole or in part from the negligent performance or omission of either party's employees or representatives connected with the activities described herein.


**WITNESS THE HANDS OF THE PARTIES**

**In duplicate originals effective on the day both parties' signatures are executed.**

<b>ENTITY: City of Mercedes</b>	
_____	_____
<b>By:</b>	<b>Date</b>
<b>ATTEST:</b>	
_____	
<b>City Secretary</b>	

COUNTY OF HIDALGO

Richard Cortez 12/21/21  
Richard Cortez, County Judge Date  
ATTEST:  
Arturo Guajardo, Jr.  
Arturo Guajardo, Jr., County Clerk



Approved as to Form:

Office of Criminal District Attorney's Office  
Ricardo Rodriguez, Jr.

By: VM Garza  
Victor M. Garza, Assistant District Attorney

APPROVED BY  
COMMISSIONERS COURT  
ON: 12/14/21 708

# EXHIBIT "A"

## Hidalgo County Rural Emergency Service Incident Report

(FORM MUST BE COMPLETED IN INK OR TYPED ON ALL INCIDENTS FOR REIMBURSEMENT) (Exhibit A)

DEPARTMENT: _____		COUNTY INCIDENT: _____	
DATE : _____	ALARM TIME : _____	ARRIVAL TIME: _____	DEPART TIME: _____
SITUATION REPORTED: _____		SITUATION FOUND: _____	
MUTUAL AID: _____ GIVEN: _____ RECEIVED: _____ DEPARTMENT: _____			
_____ NON-APPLICABLE		DEPARTMENT: _____	
CALLER NAME: _____		REQUESTING PERSON: _____	
CALLER NAME: _____			
CALLER ADDRESS: _____		OTHER: _____	PHONE: _____
CALLER PHONE: _____		WALK-IN: _____	
INCIDENT LOCATION: _____			
OCCUPANT NAME: _____		OWNER NAME: _____	
OWNER ADDRESS: _____			
OWNER PHONE #: _____		OCCUPANT PHONE #: _____	
INCIDENT CAUSE: _____			
TYPE OF ACTION TAKEN: _____			
UNITS RESPONDING: _____		UNITS COMMITTED: _____	
# OF PERSONNEL: _____		MILEAGE (ROUND TRIP): _____ ADVISED COUNTY FIRE MARSHAL: YES _____ NO: _____	
COMMENTS: _____ _____ _____			
INCIDENT COMMANDER: _____		REPORT PREPARED BY: _____	
ESTIMATED \$ LOSS: _____		ATTEST: _____ FIRE CHIEF	

REIMBURSEMENT REQUESTED:   \$433.00                   \$921.00                   \$1,858.00

HCFMO Approval Amount:       \$433.00                   \$921.00                   \$1,858.00



## EXHIBIT "B"

NEW Reimbursement

PAY OUT PLAN:			
	2022	2023	2024
CATEGORY I	\$ 1,858	\$ 1,892	\$ 1,926
CATEGORY II	\$ 921	\$ 938	\$ 955
CATEGORY II	\$ 433	\$ 441	\$ 449

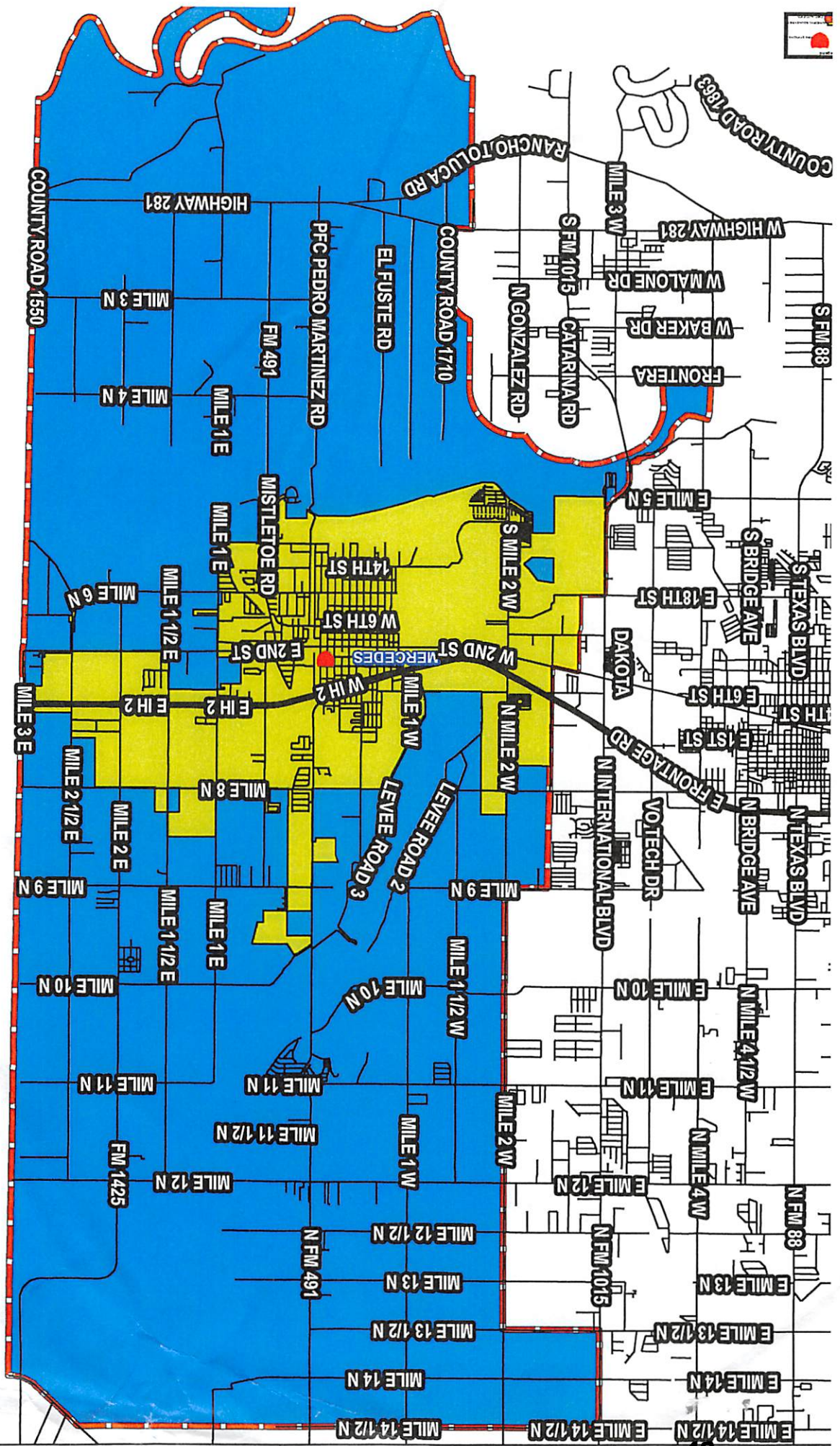
## EXHIBIT "B"

Previous Reimbursement

	PAY OUT PLAN:		
	2019	2020	2021
CATEGORY I	\$ 1,490	\$ 1,650	\$ 1,825
CATEGORY II	\$ 725	\$ 825	\$ 905
CATEGORY II	\$ 330	\$ 385	\$ 425

# **EXHIBIT “C”**





MERCEDDES RURAL RESPONSE AREA