



Mayor Oscar D. Montoya
Commissioner Joe Martinez
Commissioner Armando Garcia

Commissioner Dr. Jacob Howell
Mayor Pro-Tem Dr. Ruben Saldana
City Manager Alberto Perez

MERCEDES CITY COMMISSION
SPECIAL MEETING
NOVEMBER 7, 2024 – 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. **Presentations:**
 - a. Proclamation for the Children’s Bereavement Center
 - b. Presentation by Pastor Dave Dillon regarding NOMADS Projects for 2025
 - c. Presentation by Engie regarding industrial batteries
 - d. Presentation by TxDOT regarding the Municipal Maintenance Agreement
7. **Consent Agenda:**
 - a. Approval of Minutes for Meeting(s) held October 15, 2024
 - b. Approval of Second and Final Reading of Ordinance 2024-17 to rezone Lot 132, Block 112, South Campacuas Addition (3.475 Acres, Part of a called 28.56 Acres), from “N” Newly Annexed to Class “LI” Light Industrial
 - c. Approval of the Second and Final Reading of Ordinance 2024-18 regarding the voluntary annexation for North Valley Village
8. **Action Items:** *Present, discuss, consider and possibly take action regarding:*
 - a. Approval of Agreement for the Temporary Closure of State Right-of-Way for the Veterans Day Parade
 - i. Approval of Resolution 2024-29 for the Temporary Closure of State Right-of-Way
 - b. Approval of Agreement for the Temporary Closure of State Right-of-Way for the Christmas Parade
 - i. Approval of Resolution 2024-30 for the Temporary Closure of State Right-of-Way
9. **Ordinances/Resolutions:** *Present, discuss, consider and possibly take action regarding:*
 - a. Approval of First Reading of Ordinance 2024-19 to Increase All Business License New/Renewal Fees in City of Mercedes
 - b. Approval of First Reading of Ordinance 2024-20 regarding Vacation rental platform permits
 - c. Approval of First Reading of Ordinance 2024-21 regarding Tire disposal inventory
 - d. Approval of Resolution 2024-31 to update the authorized accountant user of the credit card
 - e. Approval of Resolution 2024-32 regarding the election of the Hidalgo County Appraisal District Board of Directors
 - f. Consideration and Approval of a Resolution requesting Financial Assistance from the Texas Water Development Board for constructing various public improvements to the City’s Utility System; authorizing the City’s Financial Advisors, Bond Counsel, and Engineers to Coordinate the submission of one or more applications to the Texas Water Development Board, and other matters in connection therewith (2024-33)
10. **Bids/Contracts:** *Present, discuss, consider and possibly take action regarding:*
 - a. Approval to solicit RFQ’s for Municipal Court Judge Services (Comm. Dr. Howell & Comm. Martinez)
 - b. Approval of Interlocal Agreement for Urban County Workplan for Fiscal Year 2024-2025

11. 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. Discussion with City Manager regarding personnel matters – Section 551.074
- b. Consultation with Attorney regarding update on litigation -Section 551.071
- c. Consultation with Attorney regarding contracts – Section 551.071
- d. Consultation with Attorney regarding Economic development – Section 551.074 & 551.087

12. Open Session:


- a. Possible Action pertaining to executive session item a
- b. Possible Action pertaining to executive session item b
- c. Possible Action pertaining to executive session item c
- d. Possible Action pertaining to executive session item d

13. Adjournment

Notice is hereby given that the City Commissioners of the City of Mercedes, Texas will meet in a *Special Meeting* on Thursday, November 7, 2024 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 1st DAY OF NOVEMBER, 2024.

ATTEST:



Joselynn Castillo, City Secretary
Time of Posting: 4:20 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.

ADDENDUM

NOTICE is hereby given that the City Commission of the City of Mercedes, Texas will meet in a **SPECIAL** Meeting on Thursday, November 7, 2024 at 6:30 P.M. in the Commission Chambers of the Mercedes City Hall located at 400 S. Ohio Avenue, Mercedes, Texas and in addition to the items already posted for the aforementioned meeting, the following will be under consideration:

6. PRESENTATIONS

e.) Presentation by Perdue Brandon Fielder Collins & Mott, LLP of the Collection Report October 1, 2023 – September 30, 2024

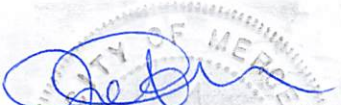
9. ORDINANCES/RESOLUTIONS:

g.) Approval of Resolution 2024-34 authorizing the Resale of Foreclosed Real Estate Properties for failure to pay ad valorem taxes

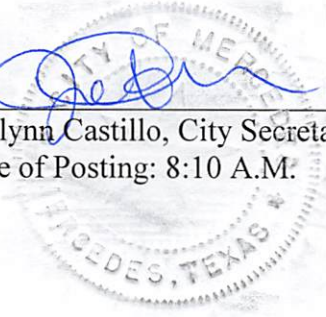
This notice is given in accordance with Texas Government Codes, Section 551.001 at.seq.

WITNESS MY HAND AND SEAL OF THE CITY, THIS THE 4TH DAY OF NOVEMBER, 2024.

ATTEST:



Joselynn Castillo, City Secretary
Time of Posting: 8:10 A.M.



Office of the MAYOR



Proclamation

WHEREAS, grief is a natural response to loss, yet children often face unique challenges in navigating their feelings and experiences of grief; and

WHEREAS, the Children’s Bereavement Center of the Rio Grande Valley plays a vital role in supporting grieving children and their families, providing essential resources and programs to help them through their healing journeys; and

WHEREAS, it is crucial to raise awareness about the impact of grief on children’s mental and emotional well-being, fostering a compassionate community that understands and supports their needs; and

WHEREAS, by designating November as Children’s Grief Awareness Month and November 21, 2024, as Children’s Grief Awareness Day, we acknowledge the importance of creating strong support systems for grieving children within our schools, families, and organizations; and

WHEREAS, planned observances, including a Candlelight Vigil on November 21, the encouragement of community members to wear blue as a symbol of solidarity, and an awareness campaign featuring workshops and social media efforts, will promote understanding and empathy for children navigating loss;

NOW, THEREFORE, I OSCAR D. MONTOYA, Mayor of the City of Mercedes, Texas by virtue of the authority vested in me and on behalf of City Commissioners Dr. Ruben J. Saldana, Dr. Jacob C. Howell, Joe Martinez, and Armando Garcia, do hereby proclaim the month of November as Children’s Grief Awareness Month and November 21, 2024, as

“Children’s Grief Awareness Day”

In the City of Mercedes.

I urge all citizens to participate in the planned observances and to support the vital work of the Children’s Bereavement Center of the Rio Grande Valley in fostering a compassionate community for our children facing grief.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mercedes to be affixed this 7th day of November, 2024.

CITY OF MERCEDES

ATTEST:

**JOSELYNN CASTILLO,
CITY SECRETARY**

**OSCAR D. MONTOYA SR.,
MAYOR**

WHEN EXPERIENCE, REPUTATION AND PERFORMANCE MATTER



PERDUE BRANDON
FIELDER COLLINS & MOTT LLP

ATTORNEYS AT LAW

CITY OF MERCED FISCAL YEAR 2023-2024 COLLECTION REPORT

Submitted by: *Hiram A. Gutierrez & Janelle V. Caso*

November 2024

www.pbfc.com



COLLECTION PROGRAM

October 2023 – September 2024

The following is a brief overview of the collection activities of Perdue Brandon Fielder Collins and Mott, LLP for the **City of Merced** for delinquent tax collections for the period of October 1, 2023 through September 30, 2024.

PRE-LITIGATION

October 2023 - September 2024



Phone Contacts

2,204



Letters Mailed

1,639



Address Updates

303

PRE-LITIGATION

October 2023 - September 2024



Field Inspections

178



Payment Agreements

26 Delinquent Taxpayers

\$39,537 Base Tax

LITIGATION

October 2023 - September 2024



Original Petitions/Interventions

89

\$328,467 Base Tax



Tax Warrants

3

\$7,017 Base Tax



Federal Court Representation

8

Bankruptcy
\$11,152 Base Tax

TAX SALES

October 2023 – September 2024

TOTAL COLLECTED: \$67,527

8

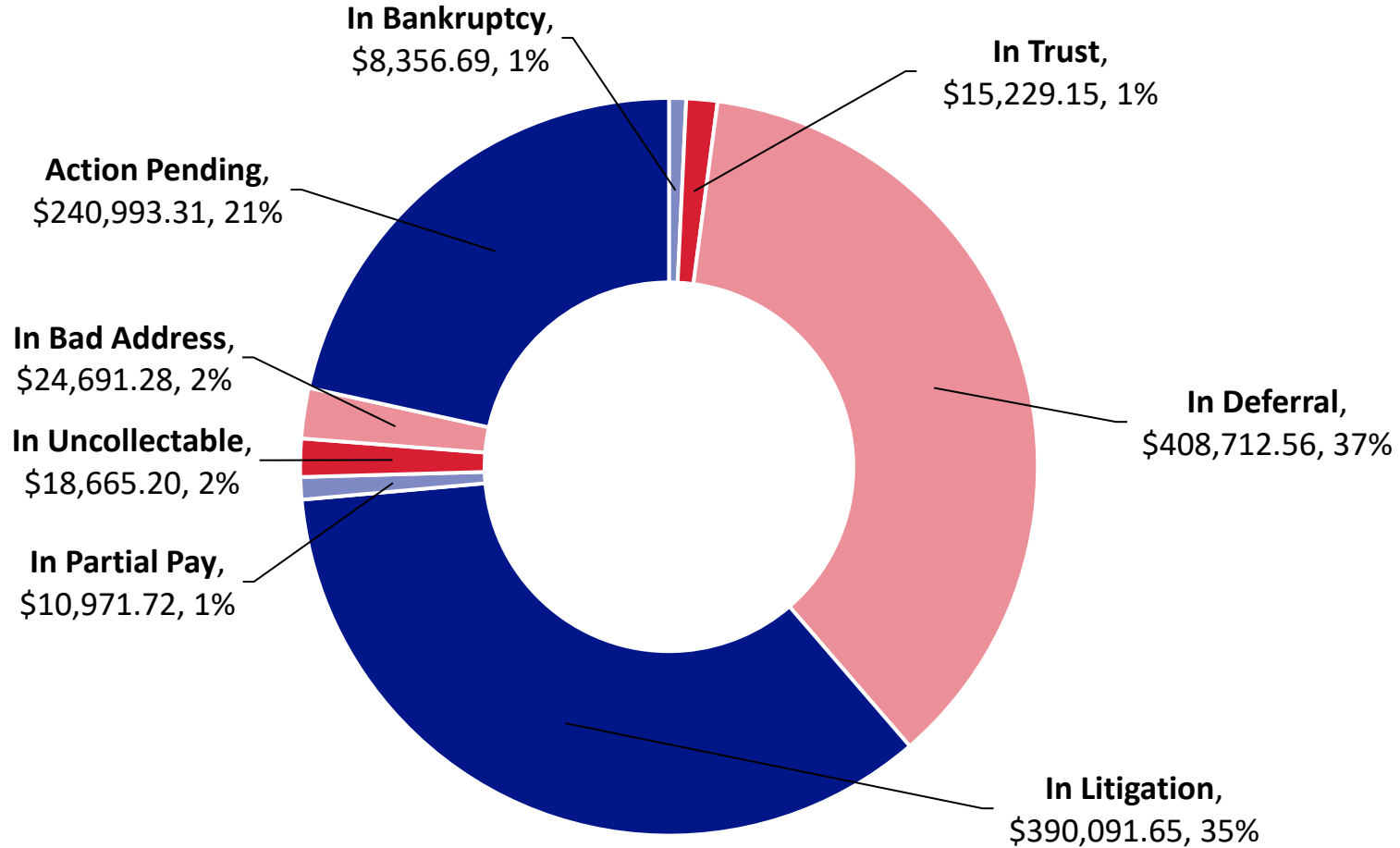
Tax Sale
Properties

- *3 Sold: \$55,495*
- *4 Payment Agreements/Paid In Full: \$12,032*
- *1 Struck-Off*



ACCOUNT BREAKDOWN CHART

As Of 10/29/2024 - Total Base Tax: \$1,117,712

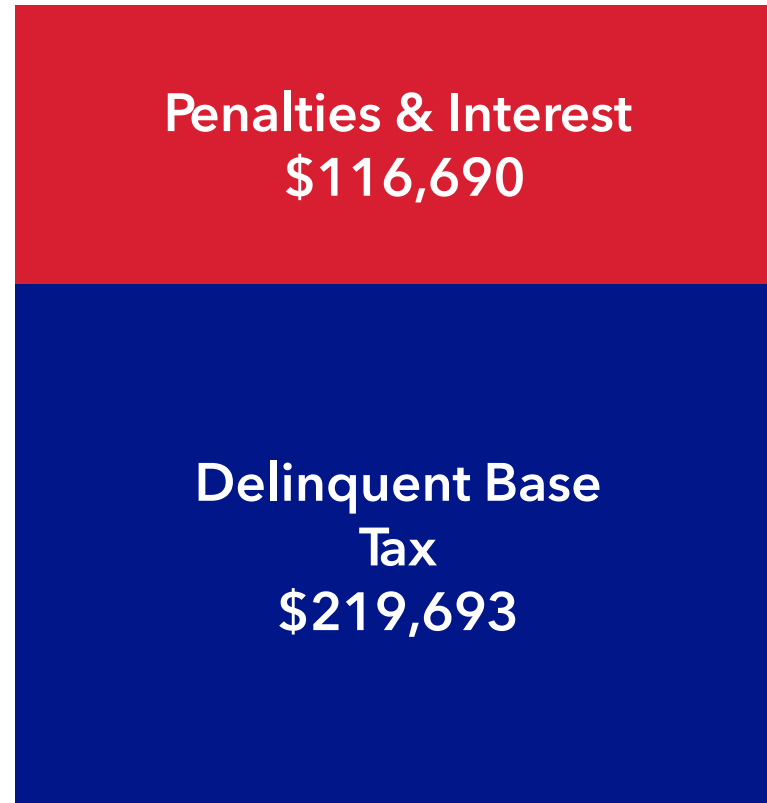


Source: Perdue Brandon System & Hidalgo County Tax Office

TAX COLLECTIONS

October 2023 - September 2024

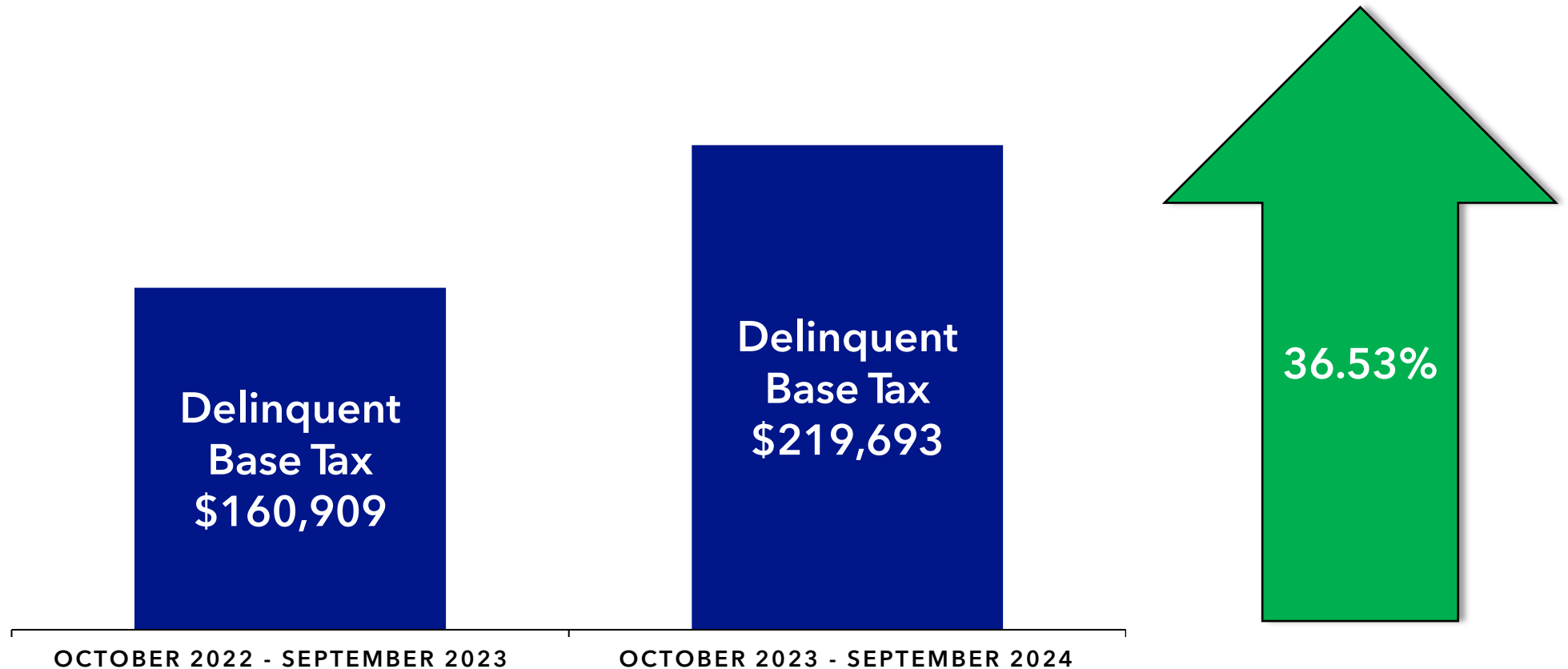
TOTAL COLLECTED: \$336,383



TAX COLLECTIONS

Fiscal-Year Comparison

INCREASED: \$58,784



Source: Hidalgo County Tax Office



COLLECTION PROGRAM

October 2023 – September 2024

The following is a brief overview of the collection activities of Perdue Brandon Fielder Collins and Mott, LLP for the **City of Mercedes** for delinquent court fines and fees for the period of October 1, 2023 through September 30, 2024.

ACTIVITIES

October 2023 - September 2024



Phone Contacts

2,018



Letters Mailed

4,655



Address Updates

389

COURT COLLECTIONS

October 2023 - September 2024

TOTAL LIQUIDATED: \$55,566

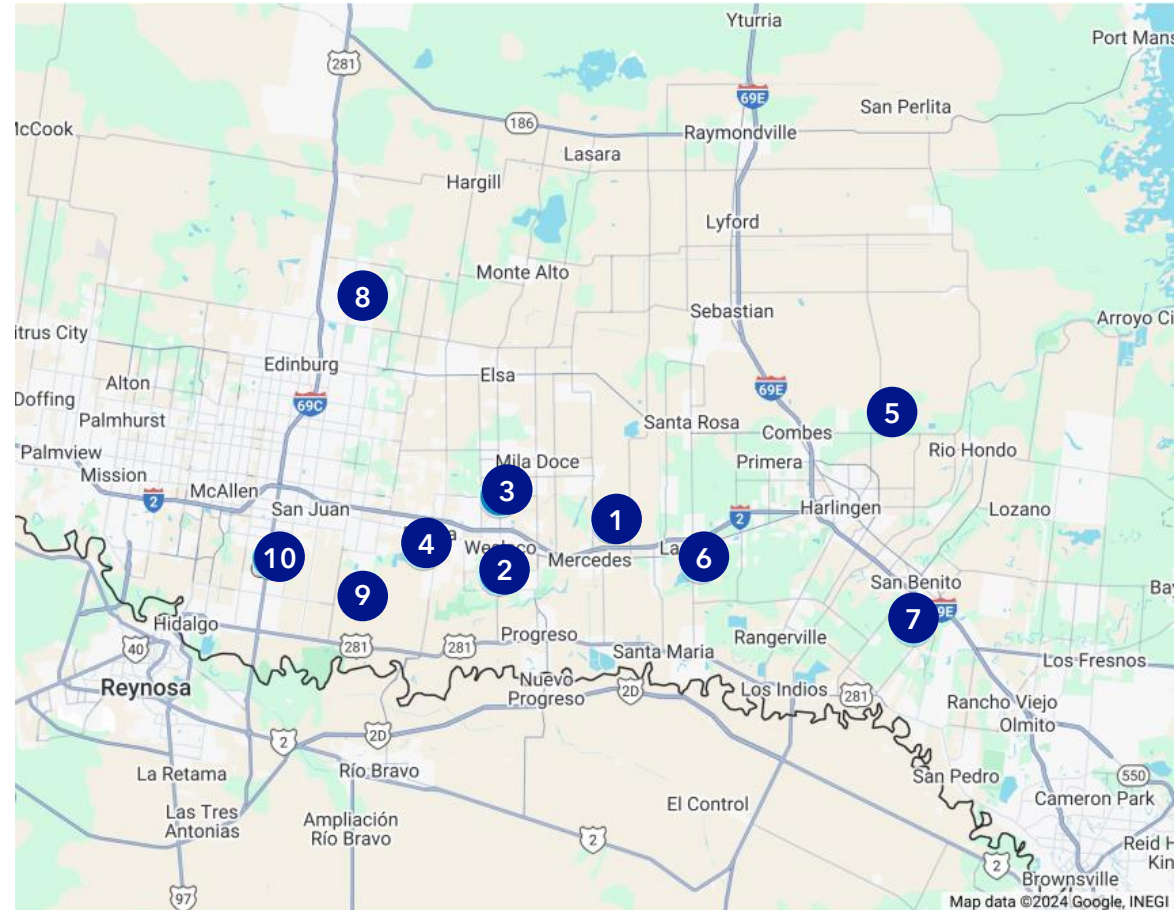


Source: City Of Mercedes Collections Based On Invoiced Accounts Including Collection Fees

TOP 10 ZIP CODES BY DEBTORS

October 2023 – September 2024

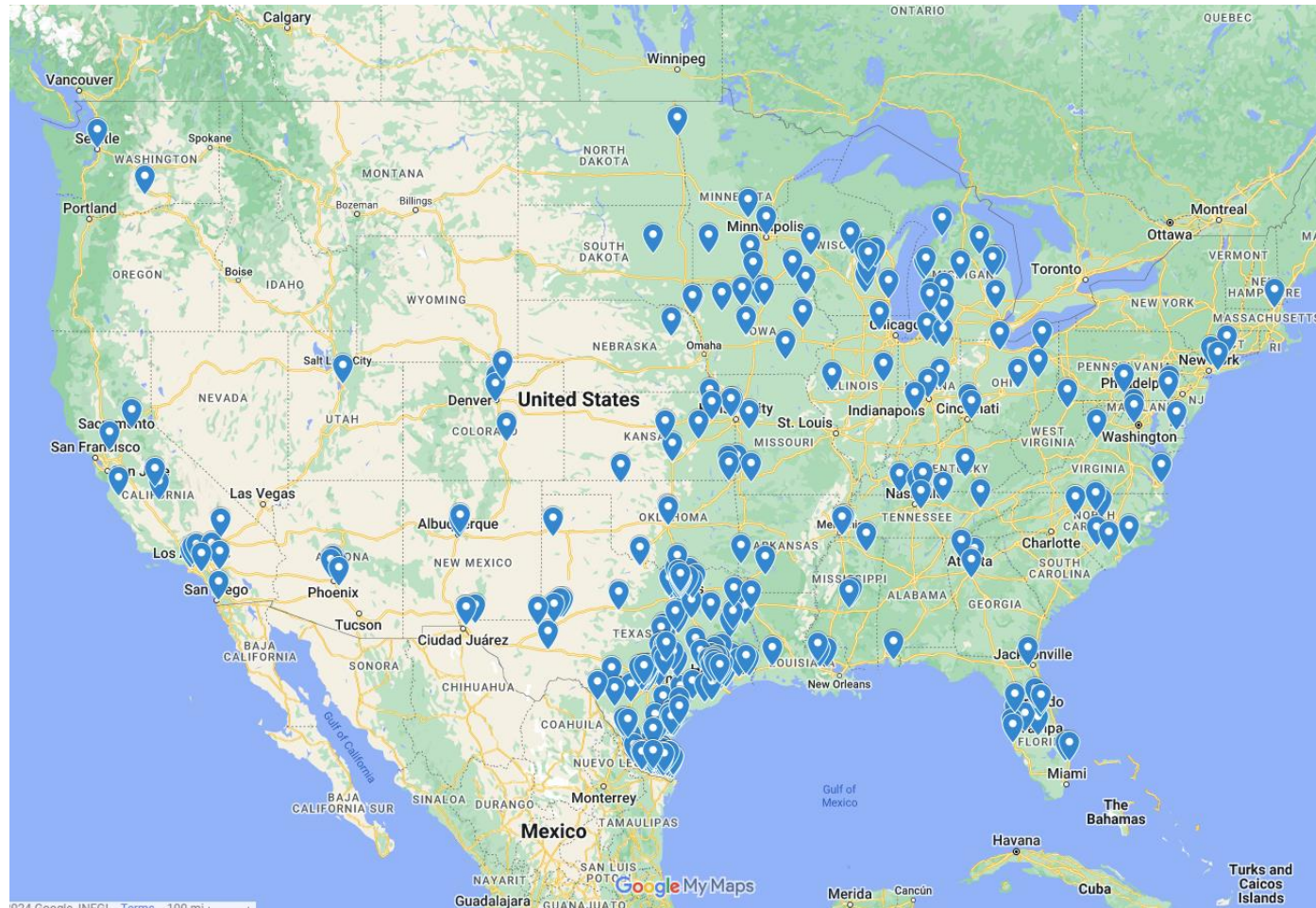
1	78570	• \$964,952 (1,844)
2	78596	• \$197,811 (472)
3	78599	• \$73,815 (158)
4	78537	• \$58,083 (130)
5	78550	• \$42,070 (97)
6	78559	• \$36,851 (87)
7	78586	• \$20,524 (58)
8	78542	• \$21,263 (51)
9	78516	• \$21,387 (48)
10	78577	• \$15,468 (48)





ALL ACCOUNTS

October 2023 – September 2024



COURT COLLECTIONS

August 2016 - September 2024

TOTAL LIQUIDATED: \$582,108



Source: City Of Mercedes Collections Based On Invoiced Accounts Including Collection Fees



PERDUE BRANDON
FIELDER COLLINS & MOTT LLP

ATTORNEYS AT LAW

THANK YOU

**MERCEDES CITY COMMISSION
REGULAR MEETING
OCTOBER 15, 2024 – 6:30 P.M.
MERCEDES CITY HALL – COMMISSION CHAMBERS**

MEMBERS PRESENT:	Oscar D. Montoya Sr. Dr. Ruben J. Saldana Dr. Jacob C. Howell Joe Martinez Armando Garcia	Mayor Mayor Pro-Tem Commissioner Commissioner Commissioner
STAFF PRESENT:	Alberto Perez Martie Garcia-Vela Joselynn Castillo Patrico R. Avila Juan Vasquez Meredith Hernandez Adrian Perez Tomas Villagomez Richard Morin Marisol Vidales Kristine Longoria	City Manager City Attorney City Secretary Asst. City Manager I.T Specialist Interim Finance Director Planning Director Public Works Director Rec. Center Director Library Director Human Resources

OTHERS PRESENT: Ms. Ester Medrano, Ms. Josie De La Cerda, Denisse Hernandez,

1. CALL MEETING TO ORDER

Mayor Montoya welcomed everyone and called the meeting to order at 6:30 p.m.

2. ESTABLISH QUORUM

Four members of the Commission were present which constitutes a quorum. Commissioner Martinez arrived during the Proclamation for Catholic Daughters of the Americas.

3. INVOCATION

Invocation by Ms. Ester Medrano from Catholic Daughters of the Americas.

4. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was said by Commissioner Garcia.

5. OPEN FORUM-

There were no comments from the public.

6. PRESENTATIONS:

a. **Proclamation for Catholic Daughters of the Americas celebrating “CDA Sunday”**

Mayor Montoya read the proclamation for Catholic Daughters of the Americas. Ms. Josie De La Cerda thanked the commission for the recognition.

b. **Presentation by planning regarding the Subdivision Map**

City Planner Denisse Hernandez presented to the Commission a google earth live stream they have implemented to map the subdivisions, their current zoning district, how many lots they have and how many acres of land. The map is only for internal use and it is not available to the public.

7. CITY MANAGER COMMENTS:

a. **Introduction of the Assistant City Manager**

Mr. Perez introduced Mr. PR Avila who is coming from the County. Mr. Avila stated he is here to work along with Mr. Perez and provided a brief background of his work history with other cities. The Commission welcomed Mr. Avila to the team.

b. **Introduction of the Code Enforcement Officer**

Mr. Perez introduced the new Code Enforcement Officer. Mr. Luis Estrada informed the commission of his background as a code enforcement officer. He stated the main goal is to have compliance. He stated he felt

welcomed by staff and thanked the commission for the opportunity. The commission welcomed Mr. Estrada to the team.

8. CONSENT AGENDA:

- a. **Approval of Minutes for Meeting(s) held October 1, 2024**
- b. **Approval of Second and Final Reading of Ordinance 2024-14 repealing Ordinance 2010-13 establishing a conditional use permit for a convent or monastery in various residential districts**
- c. **Approval of Second and Final Reading of Ordinance 2024-15 to rezone Redstone Subdivision**
- d. **Approval of Second and Final Reading of Ordinance 2024-16 to Rezone Dollar General**

Commissioner Martinez motioned to approve items A, C and D and pull out item B. Commissioner Garcia seconded. Upon a called vote, the motion passed unanimously.

9. ACTION ITEMS: *Present, discuss, consider and possibly take action regarding:*

- a. **Second Public Hearing for the Voluntary Annexation of North Valley Village**
Mayor Montoya opened the Public Hearing at 6:49 p.m. There were no comments from the Public. Mayor Montoya closed the Public Hearing at 6:52 p.m.
 - i. **Approval of First Reading of Ordinance 2024-18 regarding the voluntary annexation for North Valley Village**

Commissioner Martinez motioned to approve and forego the reading. Commissioner Howell seconded. Upon a called vote, the motion passed unanimously.

- b. **Public Hearing on Needs Assessment for Urban County Workplan Year 2025**

Mayor Montoya opened the Public Hearing at 6:52 p.m.

Ms. Jesusa Vidales with Amigos Del Valle requested \$15,000 from Urban County CDBG Funds FY 25-26. The funds will be used to deliver meals to residents for meals on wheels for senior citizens. Commissioner Martinez stated he sits on the board and will be speaking to the board about the funding for Amigos Del Valle.

Mr. Joe Garcia with Nuestra Clinica Del Valle requested \$15,000 from Urban County CDBG Funds FY 25-26. The funds will serve 125 patients, both adult and kids. They serve people that are uninsured for medical services in the community.

Mayor Montoya closed the public hearing at 6:59 p.m. Commissioner Howell requested that the city research to see how the city can assist both agencies.

- c. **Approval to accept the Voluntary Annexation Petition filed for Gregoria Rodriguez**

Mayor Pro-Tem Saldana motioned to approve. Commissioner Martinez seconded. Upon a called vote, the motion passed unanimously.

- d. **Approval to accept the Voluntary Annexation Petition filed for William Leggett**

Commissioner Martinez motioned to approve. Mayor Pro-Tem Saldana seconded. Mr. Leggett stated the property is on Mile 2 East and North of Mile 9 North. Upon a called vote, the motion passed unanimously.

10. BIDS/CONTRACTS: *Present, discuss, consider and possibly take action regarding:*

- a. **Approval of the Municipal Maintenance Agreement between the City of Mercedes and the Texas Department of Transportation (TxDOT)**

Commissioner Martinez motioned to approve. Commissioner Garcia seconded. Mayor Pro-Tem Saldana suggested that someone from TxDOT be present. Upon a called vote, the motion passed unanimously.

- b. **Approval to Renew the contract with Texas Mutual Insurance**

Ms. Longoria addressed the Commission to continue with Texas Mutual Insurance. Commissioner Martinez motioned to approve. Commissioner Garcia seconded. Upon a called vote, the motion passed unanimously.

11. ORDINANCES/RESOLUTIONS: *Present, discuss, consider and possibly take action regarding:*

- a. **TABLED: Approval of First Reading of Ordinance 2024-17 to rezone Lot 132, Block 112, South Campacuas Addition (3.475 Acres, Part of a called 28.56 Acres), from “N” Newly Annexed to Class “LI” Light Industrial**

Mr. Perez stated this area is by the street heading to Llano Grande. Mr. Avila contacted the engineers and will be contacting AEP to see what the impact would be during weather events. Mr. Ruben Perez the civil engineer assisting with the property. The property was a 10-acre property and the three acres were not incorporated in the original ordinance. Engie will be operating and maintaining the site. This is to get the

zoning changed but they will still need to provide construction plans in the future. Mr. Perez asked what the risks are to have the batteries in the city. Mr. Ruben Perez stated the batteries are regulated and certified by ERCOT. Commissioner Howell motioned to postpone for further information. At a question, Mr. Ruben stated the 10 acres were already approved but the three acres were left out of the ordinance so this is a formality to have the remaining three acres rezoned. Mr. Anthony Hall was in attendance virtually. Commissioner Howell rescinded his motion to postpone. Mayor Pro-Tem Saldana moved to approve and forego the reading. Commissioner Martinez seconded. Upon a called vote, the motion passed unanimously. Commissioner Howell recommended having a second location as a possibility for the site. At a question, Mr. Ruben Perez stated this is also proposed in Mission and Edinburg.

b. **Approval of Resolution 2024-28 authorizing the City Manager to serve as the authorized signatory for the Municipal Maintenance Agreement between the City of Mercedes and the Texas Department of Transportation (TxDOT)**

Commissioner Martinez motioned to approve. Commissioner Garcia seconded. Upon a called vote, the motion passed unanimously.

12. MONTHLY DEPARTMENTAL REPORTS

a. **Rec Center, I.T Dept, City Sec/HR, Planning, Library, Fire, PD**

Mayor Pro-Tem Saldana stated he enjoyed the Recreation Department, Planning Department, Library, Fire. He commended staff regarding the animal cruelty story and added that he appreciated the public works department report. Mayor Pro-Tem Saldana stated there are still homes on Maryland St. that are still on septic tanks. At a question, Ms. Hernandez stated the city is still on track with the budget.

Commissioner Martinez motioned to go into executive session. Commissioner Howell seconded. Upon a called vote, the motion passed unanimously at 7:24 p.m.

13. 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. **Discussion with City Manager regarding personnel matters – Section 551.074**

b. **Consultation with Attorney regarding update on litigation -Section 551.071**

c. **Consultation with Attorney regarding contracts – Section 551.071**

14. OPEN SESSION:

Mayor Montoya called the meeting back to order at 8:04 p.m.

a. **Possible Action pertaining to executive session item a**

No Action

b. **Possible Action pertaining to executive session item b**

No Action

c. **Possible Action pertaining to executive session item c**

No Action

15. ADJOURNMENT

Commissioner Howell motioned to adjourn. Commissioner Martinez seconded. Upon a called vote, the motion passed unanimously at 8:04 p.m.

ORDINANCE NO. 2024-17

AN ORDINANCE CHANGING THE CLASSIFICATION FOR ZONING PURPOSES OF THE FOLLOWING TRACT OF LAND: LOT 132, BLOCK 112, SOUTH CAMPACUAS ADDITION (3.475 ACRES, PART OF A CALLED 28.56 ACRES), FORM “N” NEWLY ANNEXED TO CLASS “LI” LIGHT INDUSTRIAL; PROVIDING FOR A SAVINGS AND REPEAL CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 12th day of September, 2022 a public hearing was held for the purpose of hearing any objections as to why: **LOT 132, BLOCK 112, SOUTH CAMPACUAS ADDITION (3.475 ACRES, PART OF A CALLED 28.56 ACRES)**, Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class “N” Newly Annexed to a Class “LI” Light Industrial.

WHEREAS, the City Commission at its Regular Meeting of October 1st, 2024, 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: **LOT 132, BLOCK 112, SOUTH CAMPACUAS ADDITION (3.475 ACRES, PART OF A CALLED 28.56 ACRES)** Mercedes, Hidalgo County, Texas, should be rezoned and classified as follows: from a Class “N” Newly Annexed to a Class “LI” Light Industrial.

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 Director 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 1ST DAY OF OCTOBER 2024.

PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE 15TH DAY OF OCTOBER 2024.

CITY OF MERCEDES

Oscar D. Montoya, Sr., Mayor

ATTEST:

APPROVED AS TO FORM:

Joselynn Castillo
City Secretary

Martie Garcia Vela
City Attorney

ORDINANCE NO 2024-18

AN ORDINANCE PROVIDING FOR THE VOLUNTARY ANNEXATION OF 40 ACRES, MORE OR LESS, OUT OF LOT 5, BLOCK 26, CAPISSALLO DISTRICT SUBDIVISION, VOLUME P, PAGE 226-227, HIDALGO COUNTY MAP RECORDS, AS REQUESTED BY PREMIER PARTNERSHIP LLC, ON BEHALF OF JAVIER HERNANDEZ, SAID PROPERTY LYING ADJACENT TO AND ADJOINING THE PRESENT BOUNDARY LIMITS OF THE CITY OF MERCEDS, TEXAS; AND PROVIDING FOR THE EXTENSION OF THE CITY'S BOUNDARIES AND EXTRA-TERRITORIAL JURISDICTION, THEREBY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, on September 17, 2024, the City Council accepted a petition from City of Mercedes, for voluntary annexation of the above described property and adjoining roadways of said property, more particularly described herein in Exhibits "A" proposed to be annexed by the City of Mercedes; and

WHEREAS, the City of Mercedes seeks to annex the above described property, more particularly described herein in Exhibits "A" and "B"; and

WHEREAS, the property hereinafter described adjoins, lies adjacent to, or is within the extraterritorial jurisdiction of the City of Mercedes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MERCEDS, TEXAS, THAT:

SECTION I: AUTHORITY OF LAW: All requirements of the law have been met in the passing of this Ordinance.

SECTION II: The land described in Exhibits "A", attached hereto and made a part hereof for all purposes, being territory adjacent to and adjoining the City of Mercedes, Texas, is hereby added and annexed to the City of Mercedes, Texas, and said property therein described shall be included within the boundary limits of such city, and the present boundary limits of such city, at the various points contiguous to the areas hereinafter described, are altered and amended so as to include said areas within the corporate limits.

SECTION III: The herein described property and the area to be annexed shall be a part of the City of Mercedes, Texas, and the property so added hereby shall bear its pro rata share of the taxes levied by the City of Mercedes, Texas. The inhabitants hereof shall be entitled to all of the rights and privileges of citizens of the City of Mercedes, Texas, in areas having similar characteristics of topography, land utilization and population density, and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Mercedes, Texas.

SECTION IV: The extraterritorial jurisdiction of the City of Mercedes shall expand in conformity with this annexation and shall comprise an area around the new corporate limits of the City, consistent with state law.

SECTION V: Upon annexation of the herein described property, the acreage within the City limits of Mercedes will be increased by 40 acres, more or less, out of lot 5, block 26, Capisallo District Subdivision, volume p, page 226-227 Hidalgo County Map Records, City of Mercedes, Texas, which does not exceed the statutory limitations as set out in Section 43.055, Tex. Local Gov't C. (Vernon 1988 and Vernon Supp. 1994).

SECTION VI: The requirement of three separate readings of this Ordinance is hereby dispensed with by a vote of not less than a majority of the members of the City Council present.

SECTION VII: Upon final passage, this Ordinance shall be published in the official newspaper of the City of Mercedes, Texas, as provided by law, and shall be and remain in full force and upon passage.

SECTION VIII: If any part, phrase or sentence of this Ordinance is held void or unconstitutional by a court of competent jurisdiction, or if any tract of land or portion of any tract of land hereby annexed shall be held to be ineligible for annexation or wrongfully annexed, the remaining portions of this Ordinance and the remaining tracts so annexed shall be considered severable and shall remain in full force and effect.

SECTION IX: In accomplishing the annexation of the property herein described the City of Mercedes has strictly followed the provisions of the Charter of the City of Mercedes, and the state statutes as they apply to annexations and any possible deviation from these provisions was unintentional and not material to the accomplishment of this annexation.

READ, PASSED AND APPROVED on this 15th day of October, 2024.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the City Commission of the City of Mercedes, Texas, on the 5th day of November, 2024.

CITY OF MERCEDES

Oscar D. Montoya, Sr., Mayor

ATTEST:

APPROVED AS TO FORM:

Joselynn Castillo
City Secretary

Martie Garcia Vela
City Attorney

CONSENT ITEM: YES

DATE: November 5, 2024**FROM:** Orlando Diaz, Lieutenant Mercedes Police Department**ITEM:** Approval of Agreement for the Temporary Closure of State Right-of-Way

BACKGROUND INFORMATION: The Mercedes Police Department respectfully requests the approval of Agreement for the Temporary Closure of State Right-of-way in order to aid with traffic control during the Veterans Day Parade.

BOARD REVIEW/CITIZEN FEEDBACK: N/A**ALTERNATIVES/OPTIONS:** N/A**FISCAL IMPACT:****Proposed Expenditure/(Revenue):**

\$ (To Be Determined)

Account Number(s):01-522-1011

Finance Review by:**LEGAL REVIEW:****ATTACHMENTS:**

1. Agreement for the Temporary Closure of State Right-of-way
2. Road Closure & Map
3. Resolution
4. Traffic Control Agreement

DRAFT MOTION:

Mayor

City Manager

Commissioners

Good evening,

As an agreement made between TXDOT and The City of Mercedes Police Department is requesting that this resolution be passed for a temporary road closure permit for the Veterans Day Parade which will be held on Saturday, November 9, 2024 at 10:00 A.M. Road closures will start at 08:00 AM and end at approximately 12:00 PM. It will start at the 600 Block of South Texas Avenue and will go north on Texas up to the Rio Grande Valley Livestock Show located at 1000 N. Texas Ave.

(20) Officers will be assigned to specific areas of concern:

- | | |
|---|---|
| Assigned Post: Public Works Department | N. Texas Ave. / Hill St. (East & West) |
| Assigned Post: Public Works Department | N. Texas Ave. / Webb St. (East & West) |
| Assigned Post: Public Works Department | N. Texas Ave. / Duval St. (East & West) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / FM 491 (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / Anacuitas St. (West) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / WB Frontage Rd. (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / EB Frontage Rd. (West) |
| Assigned Post: Public Works Department | N. Texas Ave. / Starr St. (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / Cameron St. (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / Cameron St. (West) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / Hidalgo St. (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / Hidalgo St. (West) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / W. First. St. (East) |
| Assigned Post: Mercedes Police Department | N. Texas Ave. / W. First. St. (West) |
| Assigned Post: Public Works Department | S. Texas Ave. / Railroad St. (East & West) |
| Assigned Post: Mercedes Police Department | S. Texas Ave. / W. Business 83 (East) |
| Assigned Post: Mercedes Police Department | S. Texas Ave. / W. Business 83 (West) |
| Assigned Post: Mercedes Police Department | S. Texas Ave. / W. Third St. (East & West) |
| Assigned Post: Mercedes Police Department | S. Texas Ave. / W. Fourth St. (East & West) |
| Assigned Post: Public Works Department | S. Texas Ave. / W. Fifth St. (East & West) |
| Assigned Post: Mercedes Police Department | S. Texas Ave. / W. Sixth St. (East & West) |



27

STATE OF TEXAS §

COUNTY OF §

AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT-OF-WAY

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City Of Mercedes, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "City."

WITNESSETH

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Mercedes, in Hidalgo, County; and

WHEREAS, the City has requested the temporary closure of (Texas Ave.), from 600 Block of S. Texas Ave. to the 1000 Block of N. Texas Ave. for the purpose of The Veteran's Day Parade, as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

WHEREAS, the Event will be located within the City's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right-of-way will be performed within the State's requirements; and

WHEREAS, on the 5th day of November of 2024, the City Commission of the City of Mercedes, Texas passed Resolution / Ordinance No. _____, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the City to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The description of the Event, including the proposed schedule of start and stop times,

approximate number of people attending the Event, and equipment involved shall be attached hereto and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

- A. The City shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.
- B. The City shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right-of-way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State.
- C. The City will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.
- D. The City will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right-of-way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The City will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the City shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.
- E. The City hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the City's traffic control plan.
- F. The City will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right-of-way and restore or repair the State's right-of-way, including roadway and drainage structures, signs, and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural environment, including landscape features.

Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the City will remain the property of the City. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use.

Article 5. TERMINATION

- A. This agreement may be terminated by any of the following conditions:
 - (1) By mutual written agreement and consent of both parties.
 - (2) By the State upon determination that use of the State's right-of-way is not feasible or is not in the best interest of the State and the traveling public.
 - (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
 - (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and City under this agreement. If the potential termination of this agreement is due to the failure of the City to fulfill its contractual obligations as set forth herein, the State will notify the City that possible breach of contract has occurred. The City must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the City does not remedy the breach to the satisfaction of the State, the City shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right-of-way, the City and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the City and/or its contractors are encroaching upon the State right-of-way.

B. In the event the City is a self-insured entity, the City shall provide the State proof of its self-insurance. The City agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

Article 9. AMENDMENTS

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the City and the State.

Article 10. COMPLIANCE WITH LAWS

The City shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right-of-way.

Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City:	State:
<u>City of Mercedes</u>	Texas Department of Transportation
<u>400 South Ohio Avenue, Mercedes, TX</u>	_____
<u>78570</u>	_____
_____	_____
_____	_____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF MERCEDES

Executed on behalf of the City by:

By _____ 

Date: November 5, 2024

Typed or Printed Name and Title: Orlando Diaz
Lieutenant

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation and Mercedes for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

By _____ Date _____
Director of Maintenance

Exhibit A

(SEE ATTACHED ROUTE MAP AND ROAD CLOSURES)



MERCEDDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

Francisco J. Sanchez
Chief of Police

Tuesday, November 5, 2024

To: Texas Department of Transportation

From: Lieutenant Orlando Diaz

Re: Agreement for the Temporary Closure of State Right-of-Way

Exhibit A

ROAD CLOSURE EVENT NAME AND DATE

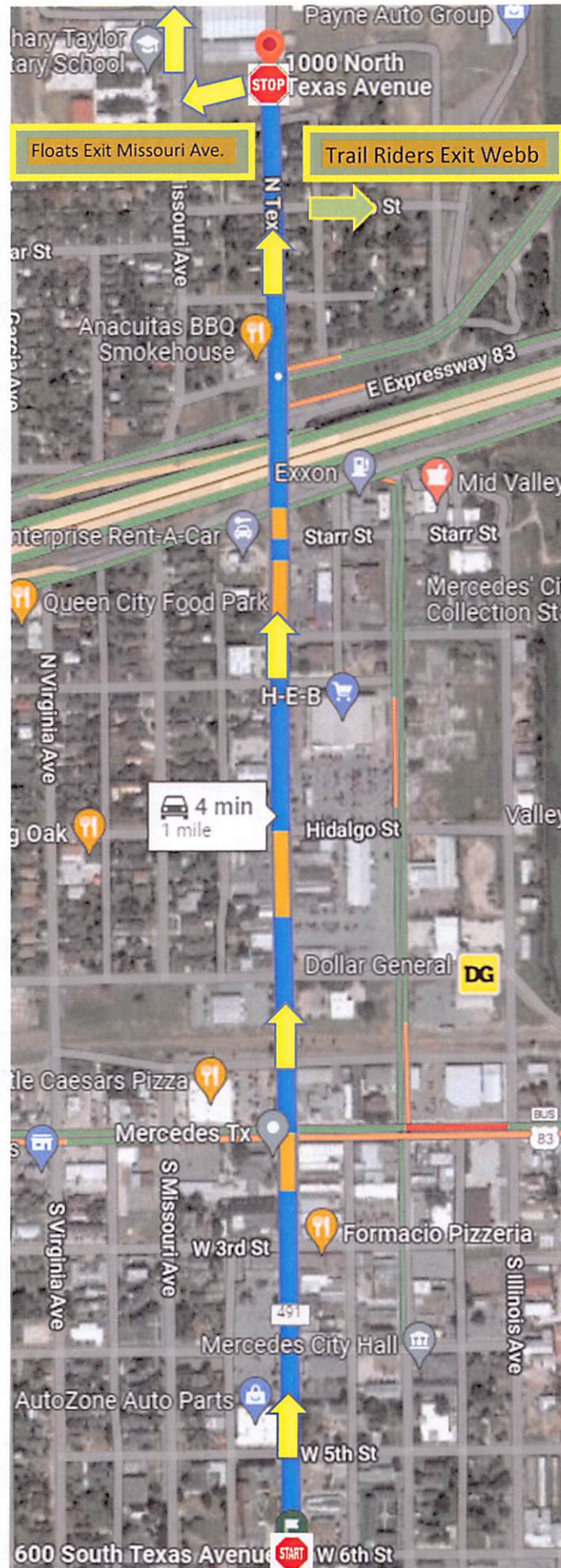
NAME: VETERANS DAY PARADE

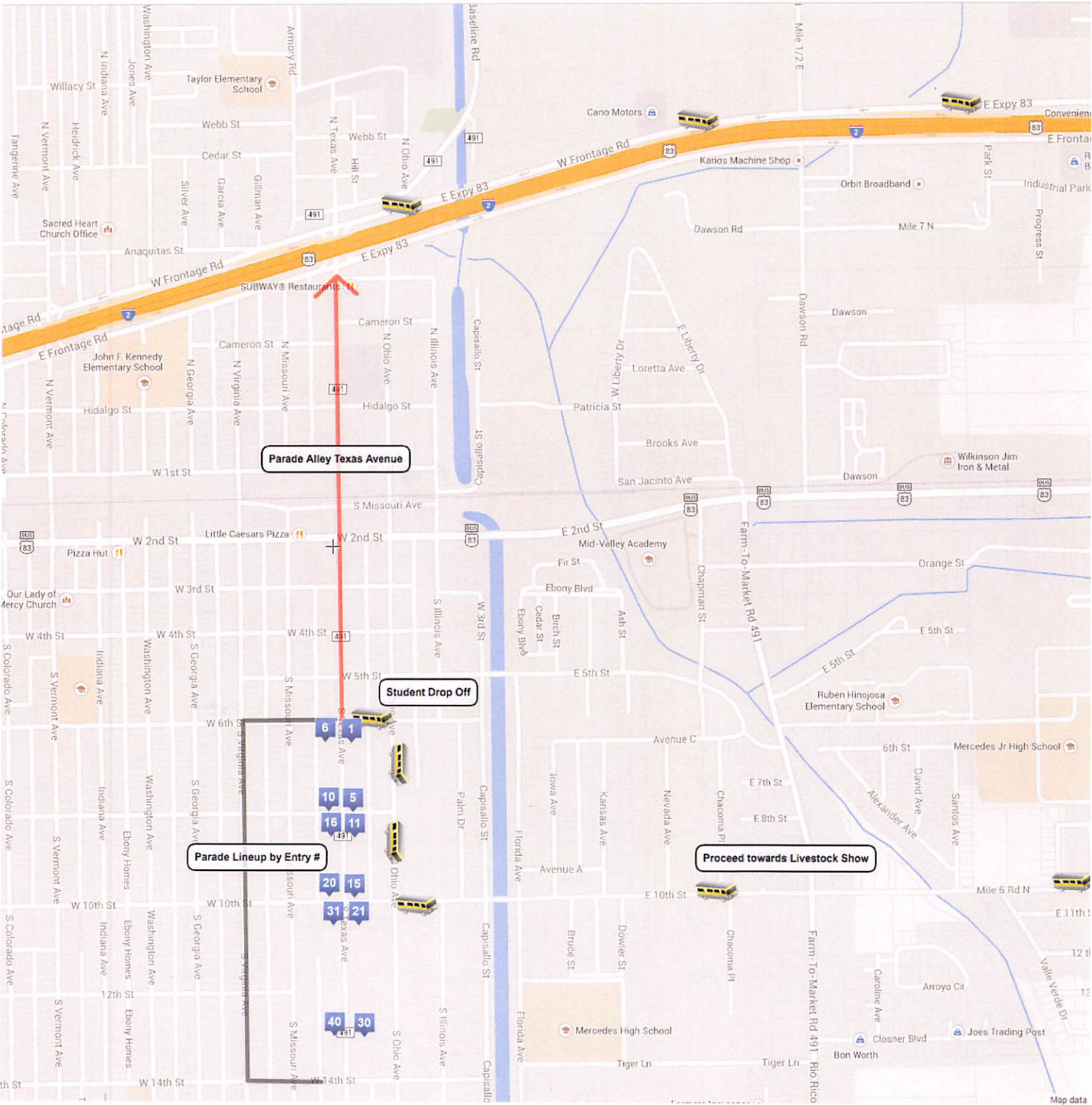
DATE OF CLOSURE: SATURDAY, NOVEMBER 9, 2024

TIME OF CLOSURE: 8:00 A.M. – 12:00 P.M.

Lt. Orlando Diaz

Veterans Day Parade – Map Route





The Veterans Day Parade

Saturday, November 9, 2024

(Traffic Control)

08:00 AM – 12:00 PM

	INTERSECTION: (West of Roadway)	DEPARTMENT:	DEPARTMENT:	INTERSECTION: (East of Roadway)
	ROVER	Mercedes PD	Mercedes PD	
	N. Missouri Ave. / RGVLS Exit	Mercedes PD		
	RGVLS Entrance (Student TC)	Mercedes PD		
1.	N. Texas Ave. / Hill St.	PUBLIC WORKS	PUBLIC WORKS	N. Texas Ave. / Hill St.
2.	N. Texas Ave. / Webb St.	PUBLIC WORKS	Mercedes PD	N. Texas Ave. / Webb St.
3.	N. Texas Ave. / Duval St.	PUBLIC WORKS	PUBLIC WORKS	N. Texas Ave. / Duval St.
4.	N. Texas Ave. / Anacuitas St.	Mercedes PD	Mercedes PD	N. Texas Ave. / N. 491
5.	N. Texas Ave. / WB Frontage Rd.		Mercedes PD Public Works (Cones)	N. Texas Ave. / WB Frontage Rd.
6.	N. Texas Ave. / EB Frontage Rd.	Mercedes PD Public Works (Cones)		N. Texas Ave. / EB Frontage Rd.
7.			PUBLIC WORKS	N. Texas Ave. / Starr St.
8.	N. Texas Ave. / Cameron St. (Fred Loya)	Mercedes PD	PUBLIC WORKS	N. Texas Ave. / Cameron St. (Juanito's Rest.)
9.	N. Texas Ave. / W. Hidalgo St.	Mercedes PD	Mercedes PD	N. Texas Ave. / W. Hidalgo St.
10.	N. Texas Ave. / W. First St.	Mercedes PD	Mercedes PD	N. Texas Ave. / W. First St. MPD Oscar Lopez
11.	S. Texas Ave. / Railroad St.	PUBLIC WORKS	PUBLIC WORKS	S. Texas Ave. / Railroad St.
12.	S. Texas Ave. / W. Bus. 83	Mercedes PD Mercedes PD	Mercedes PD Mercedes PD	S. Texas Ave. / W. Bus. 83
13.	S. Texas Ave. / W. Third St.	PUBLIC WORKS	PUBLIC WORKS	S. Texas Ave. / W. Third St.
14.	S. Texas Ave. / W. Fourth St.	PUBLIC WORKS	PUBLIC WORKS	S. Texas Ave. / W. Fourth St.
15.	S. Texas Ave. / W. Fifth St.	PUBLIC WORKS	PUBLIC WORKS	S. Texas Ave. / W. Fifth St.
16.	S. Texas Ave. / W. Sixth St.	Mercedes PD PUBIC WORKS	Mercedes PD PUBIC WORKS	S. Texas Ave. / W. Sixth St.

Exhibit B

(SEE ATTACHED RESOLUTION)

RESOLUTION: 2024-29

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS TO ENTER INTO AN AGREEMENT WITH THE STATE OF TEXAS THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE TEMPORARY CLOSURE OF THE INTERSTATE 2 FROM 600 S. TEXAS AVE. TO 1000 N. TEXAS FOR ACTIVITIES ASSOCIATED WITH THE VETERANS DAY PARADE.

WHEREAS, the City Commission of the City of Mercedes wishes to cooperate with the State of Texas for the safety and convenience of the traveling public; and

WHEREAS, the City of Mercedes requests the temporary closure of the following highway on NOVEMBER 9, 2024 for activities associated with Veterans Day Parade from 8:00 AM until 12:00 PM.

WHEREAS, the events will be located within the City of Mercedes incorporated area and the closure will be performed in accordance with the State's requirements;

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

That at the regular meeting of the City Commission held on the 5th of November 2024, this resolution was adopted in accordance with Chapter 43, Texas Administrative Code, Section 22.12, and to comply with the rules and procedures established by said chapter and section, and the City Manager is hereby authorized to sign the temporary right of way closure agreement with the State of Texas. This resolution is adopted so that THE VETERANS DAY PARADE may be conducted on November 9th, 2024 in the Agreement for the Temporary Closure of State Right of Way (43 TAC, Section 22.12).

Passed and approved on this the 5th Day of November, 2024.

Oscar Montoya, Mayor

ATTEST:

Joselynn Castillo, City Secretary

Exhibit C

(SEE ATTACHED TRAFFIC CONTROL AGREEMENT)



MERCEDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

Francisco J. Sanchez
Chief of Police

Tuesday, November 5, 2024

To: Texas Department of Transportation

From: Lieutenant Orlando Diaz

Re: Agreement for the Temporary Closure of State Right-of-Way

Exhibit C

The Mercedes Public Safety Department will be providing law enforcement personnel to conduct traffic control for the Veterans Day Parade. The parade is being held on Saturday, November 9, 2024 and is scheduled to begin at 10:00 A.M.

Traffic traveling Southbound on Texas Ave. will be rerouted west at all nearing intersections.

Traffic traveling Northbound on Texas Ave. will be rerouted east at all nearing intersections.

Traffic traveling both eastbound & westbound Frontage Road will be rerouted using the turnaround as to not impede the flow of traffic and may get back on to the Expressway on Vermont Ave. & Mile 1 East Rd.

Traffic traveling both eastbound & westbound on Business 83 will be rerouted to the largest nearing intersection of Vermont Ave. & Mile 1 E. Rd. as to not impede the flow of traffic and may get back on to the Expressway.

Lt. Orlando Diaz

MERCEDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

CONSENT ITEM: YES

DATE: November 5, 2024

FROM: Orlando Diaz, Lieutenant, Mercedes Police Department

ITEM: **Approval of Agreement for the Temporary Closure of State Right-of-Way**

BACKGROUND INFORMATION: The Mercedes Police Department respectfully requests the approval of Agreement for the Temporary Closure of State Right-of-way in order to aid with traffic control during the Christmas Parade.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure/(Revenue):

Account Number(s):

\$ (To Be Determined)

01-522-1011

Finance Review by:

LEGAL REVIEW:

ATTACHMENTS:

1. Agreement for the Temporary Closure of State Right-of-way
2. Road Closure & Map
3. Resolution
4. Traffic Control Agreement

DRAFT MOTION:

STATE OF TEXAS §

COUNTY OF §

AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT-OF-WAY

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City Of Mercedes, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "City."

WITNESSETH

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Mercedes, in Hidalgo, County; and

WHEREAS, the City has requested the temporary closure of (Texas Ave.), from 600 Block of S. Texas Ave. to the 1000 Block of N. Texas Ave. for the purpose of The Christmas Parade, as described in the attached "Exhibit A," hereinafter identified as the "Event:" and

WHEREAS, the Event will be located within the City's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right-of-way will be performed within the State's requirements; and

WHEREAS, on the 5th day of November of 2024, the City Commission of the City of Mercedes, Texas passed Resolution _____ / Ordinance No. _____, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the City to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The description of the Event, including the proposed schedule of start and stop times,

approximate number of people attending the Event, and equipment involved shall be attached hereto and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

- A. The City shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.
- B. The City shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right-of-way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State.
- C. The City will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.
- D. The City will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right-of-way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The City will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the City shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.
- E. The City hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the City's traffic control plan.
- F. The City will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right-of-way and restore or repair the State's right-of-way, including roadway and drainage structures, signs, and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural environment, including landscape features.

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Upon completion or termination of this agreement, all documents prepared by the City will remain the property of the City. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use.

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- A. This agreement may be terminated by any of the following conditions:
 - (1) By mutual written agreement and consent of both parties.
 - (2) By the State upon determination that use of the State's right-of-way is not feasible or is not in the best interest of the State and the traveling public.
 - (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
 - (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and City under this agreement. If the potential termination of this agreement is due to the failure of the City to fulfill its contractual obligations as set forth herein, the State will notify the City that possible breach of contract has occurred. The City must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the City does not remedy the breach to the satisfaction of the State, the City shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right-of-way, the City and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the City and/or its contractors are encroaching upon the State right-of-way.

B. In the event the City is a self-insured entity, the City shall provide the State proof of its self-insurance. The City agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

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Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the City and the State.

Article 10. COMPLIANCE WITH LAWS

The City shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right-of-way.

Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City:	State:
<u>City of Mercedes</u>	<u>Texas Department of Transportation</u>
<u>400 South Ohio Avenue; Mercedes, TX</u>	_____
<u>78570</u>	_____
_____	_____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT

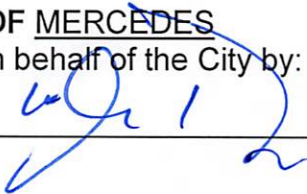
This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF MERCEDES

Executed on behalf of the City by:

By _____



Date: November 5, 2024

Typed or Printed Name and Title: Orlando Diaz

Lieutenant

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation and Mercedes for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____

District Engineer

Date _____

By _____

Director of Maintenance

Date _____

Exhibit A

(SEE ATTACHED ROUTE MAP AND ROAD CLOSURES)



MERCEDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583

Francisco J. Sanchez
Chief of Police

Tuesday, November 5, 2024

To: Texas Department of Transportation

From: Lieutenant Orlando Diaz

Re: Agreement for the Temporary Closure of State Right-of-Way

Exhibit A

ROAD CLOSURE EVENT NAME AND DATE

NAME: THE CHRISTMAS PARADE

DATE OF CLOSURE: FRIDAY, DECEMBER 6, 2024

TIME OF CLOSURE: 4:00 P.M. – 08:00 P.M.

Lt. Orlando Diaz

Exhibit A

Directions from 600 South Texas

Ave, Mercedes, Texas 78570 to

1000 North Texas Ave. Mercedes Texas



Christmas Parade 2024

Friday, December 6, 2024

(Traffic Control)

04:00 PM – 08:00 PM

	INTERSECTION: (West of Roadway)	DEPARTMENT:	DEPARTMENT:	INTERSECTION: (East of Roadway)
	N. Missouri Ave. / RGVLS Exit			
1.	N. Texas Ave. / Hill St.	PUBLIC WORKS	PUBLIC WORKS	N. Texas Ave. / Hill St.
2.	N. Texas Ave. / Webb St.	PUBLIC WORKS	PUBLIC WORKS	N. Texas Ave. / Webb St.
3.	N. Texas Ave. / Duval St.	PUBLIC WORKS	PUBLIC WORKS	N. Texas Ave. / Duval St.
4.	N. Texas Ave. / Anacuitas St.	Public Works Mercedes PD	Public Works Mercedes PD	N. Texas Ave. / N. 491
5.	N. Texas Ave. / WB Frontage Rd.		Public Works (Cones) Mercedes PD	N. Texas Ave. / WB Frontage Rd.
6.	N. Texas Ave. / EB Frontage Rd.	Public Works (Cones) Mercedes PD		N. Texas Ave. / EB Frontage Rd.
7.			PUBLIC WORKS	N. Texas Ave. / Starr St.
8.	N. Texas Ave. / Cameron St. (Fred Loya)	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	N. Texas Ave. / Cameron St. (Juanito's Rest.)
9.	N. Texas Ave. / W. Hidalgo St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	N. Texas Ave. / W. Hidalgo St.
10.	N. Texas Ave. / W. First St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	N. Texas Ave. / W. First St.
11.	S. Texas Ave. / Railroad St.	PUBLIC WORKS	PUBLIC WORKS	S. Texas Ave. / Railroad St.
12.	S. Texas Ave. / W. Bus. 83	Mercedes PD	Mercedes PD	S. Texas Ave. / W. Bus. 83
13.	S. Texas Ave. / W. Third St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	S. Texas Ave. / W. Third St.
14.	S. Texas Ave. / W. Fourth St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	S. Texas Ave. / W. Fourth St.
15.	S. Texas Ave. / W. Fifth St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	S. Texas Ave. / W. Fifth St.
16.	S. Texas Ave. / W. Sixth St.	PUBLIC WORKS Mercedes PD	PUBLIC WORKS Mercedes PD	S. Texas Ave. / W. Sixth St.

Mayor

City Manager

Commissioners

Good evening,

As an agreement made between TXDOT and The City of Mercedes Police Department is requesting that this resolution be passed for a temporary road closure permit for The Christmas Parade which will be held on Friday, December 6, 2024, at 06:00 P.M. Road closures will start at 04:00 PM and end at approximately 08:00 PM. It will start at the 600 Block of South Texas Avenue and will go north on Texas up to the Rio Grande Valley Livestock Show located at 1000 N. Texas Ave.

(16) Officers will be assigned to specific areas of concern:

Assigned Post: Public Works Department	N. Texas Ave. / Hill St. (East & West)
Assigned Post: Public Works Department	N. Texas Ave. / Webb St. (East & West)
Assigned Post: Public Works Department	N. Texas Ave. / Duval St. (East & West)
Assigned Post: Mercedes PD	N. Texas Ave. / FM 491 (East)
Assigned Post: Mercedes PD	N. Texas Ave. / Anacuitas St. (West)
Assigned Post: Mercedes PD / Public Works	N. Texas Ave. / WB Frontage Rd. (East)
Assigned Post: Mercedes PD / Public Works	N. Texas Ave. / EB Frontage Rd. (West)
Assigned Post: Public Works Department	N. Texas Ave. / Starr St. (East)
Assigned Post: Mercedes PD	N. Texas Ave. / Cameron St. (East)
Assigned Post: Mercedes PD	N. Texas Ave. / Cameron St. (West)
Assigned Post: Mercedes PD	N. Texas Ave. / Hidalgo St. (East)
Assigned Post: Mercedes PD	N. Texas Ave. / Hidalgo St. (West)
Assigned Post: Mercedes PD	N. Texas Ave. / W. First. St. (East)
Assigned Post: Mercedes PD	N. Texas Ave. / W. First. St. (West)
Assigned Post: Public Works Department	S. Texas Ave. / Railroad St. (East & West)
Assigned Post: Mercedes PD	S. Texas Ave. / W. Business 83 (East)
Assigned Post: Mercedes PD	S. Texas Ave. / W. Business 83 (West)
Assigned Post: Mercedes PD / Public Works	S. Texas Ave. / W. Third St. (East & West)
Assigned Post: Mercedes PD / Public Works	S. Texas Ave. / W. Fourth St. (East & West)
Assigned Post: Mercedes PD / Public Works	S. Texas Ave. / W. Fifth St. (East & West)
Assigned Post: Mercedes PD / Public Works	S. Texas Ave. / W. Sixth St. (East & West)

Exhibit B

(SEE ATTACHED RESOLUTION)

RESOLUTION: 2024-30

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS TO ENTER INTO AN AGREEMENT WITH THE STATE OF TEXAS THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE TEMPORARY CLOSURE OF THE INTERSTATE 2 FROM 600 S. TEXAS AVE. TO 1000 N. TEXAS FOR ACTIVITIES ASSOCIATED WITH THE CHRISTMAS PARADE.

WHEREAS, the City Commission of the City of Mercedes wishes to cooperate with the State of Texas for the safety and convenience of the traveling public; and

WHEREAS, the City of Mercedes requests the temporary closure of the following highway on DECEMBER 6, 2024 for activities associated with The Christmas Parade from 4:00 PM until 08:00 PM.

WHEREAS, the events will be located within the City of Mercedes incorporated area and the closure will be performed in accordance with the State's requirements;

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

That at the regular meeting of the City Commission held on the 5TH of November 2024, this resolution was adopted in accordance with Chapter 43, Texas Administrative Code, Section 22.12, and to comply with the rules and procedures established by said chapter and section, and the City Manager is hereby authorized to sign the temporary right of way closure agreement with the State of Texas. This resolution is adopted so that THE CHRISTMAS PARADE may be conducted on December 6, 2024 in the Agreement for the Temporary Closure of State Right of Way (43 TAC, Section 22.12).

Passed and approved on this the 5th Day of November, 2024.

Oscar Montoya, Mayor

ATTEST:

Joselynn Castillo, City Secretary

Exhibit C

(SEE ATTACHED TRAFFIC CONTROL AGREEMENT)

MERCEDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583



Francisco J. Sanchez
Chief of Police

Tuesday, November 5, 2024

To: Texas Department of Transportation

From: Lieutenant Orlando Diaz

Re: Agreement for the Temporary Closure of State Right-of-Way

Exhibit C

The Mercedes Public Safety Department will be providing law enforcement personnel to conduct traffic control for the Christmas Parade. The parade is being held on Friday, December 6, 2024 and it is scheduled to begin at 06:00 P.M.

Traffic traveling Southbound on Texas Ave. will be rerouted west at the nearest intersection.

Traffic traveling Northbound on Texas Ave. will be rerouted east at the nearest intersection.

Traffic traveling eastbound & westbound on Frontage Road will be rerouted using the turnaround as to not impede the flow of traffic. Vehicle traffic may get back on to the Expressway at the nearest On-Ramp of Vermont Ave. & Mile 1 East.

Traffic traveling eastbound & westbound on Business 83 will be rerouted to the nearest intersection as to not impede the flow of traffic. Vehicle traffic may get back on to the Expressway at the nearest intersection of Virginia Ave. & Ohio Ave.

Lt. Orlando Diaz

A handwritten signature in blue ink, appearing to read "Orlando Diaz", is written over the typed name.

MERCEDES POLICE DEPARTMENT

316 S. Ohio Ave.
Mercedes, Texas 78570
(956) 565-3102 Fax (956) 565-2583



Chief of Police

Ordinances/Resolution

DATE: November 5, 2024**FROM:** Adrian Perez, Planning Director**ITEM:** **Increase of All Business Licenses New/Renewal Fees in City of Mercedes**

BACKGROUND INFORMATION:

As of this year, the City of Mercedes charges \$25.00 for new business licenses and \$25.00 for their business license renewal fees. We have an estimated 330 businesses here in the city, which many of these did not have a business license posted at their establishments, some do but they are expired, and some are current. The city is losing a lot of revenue by maintaining these fees along with not keeping up with all businesses to ensure they do have their licenses. In addition, given inflation and the cost of office supplies to print these business licenses, we are proposing an increase of these fees for both new businesses and annual renewal from \$25.00 to a minimum of \$80.00 to a maximum of \$100.00. This increase will generate more revenue for the city and department that will help fund future staff, purchase equipment/supplies, and other necessities the department and city may need.

ATTACHMENTS A, B, C, & D:

- A. City of Alton ordinances regarding annual business license renewal/inspection
- B. City of Palmview city website page regarding annual business license renewal/inspection
- C. Sample invoice of what the City of Mercedes currently charges for new business license
- D. Revue breakdown by the numbers

Staff Recommendation: Approval.

ORDINANCE NO 2024-19

AN ORDINANCE REGARDING THE REGULATION OF ALL BUSINESS ESTABLISHMENTS TO INCLUDE FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, TEMPORARY FOOD ESTABLISHMENTS, MOBILE FOOD UNITS AND ROADSIDE VENDORS.

Section 1. Adoption of Food Establishment Rules

A. The City of Mercedes, Hidalgo County, Texas adopts by reference the provisions of the current rules as amended by the Board of Health found in 25 Texas Administrative Code, Chapter 229, and Section 161 through 171, and 173 through 174 regarding the regulation of Food Establishment in this jurisdiction.

B. Definitions

- a. The words “Authorized Agent or Employee” mean the employees of the regulatory authority.
- b. The words “Business Establishment” mean a food service establishment, a retail food store, a temporary food establishment, and a mobile food unit and/or roadside food vendor.
- c. The words “Municipality of Mercedes” in this ordinance shall be understood to refer to the City of Mercedes Hidalgo County, Texas.
- d. The words “State Rules” mean the state rules found at 25 Texas Administrative Code, Chapter 229, Section 161 through 171 and Sections 173 through 175. These rules are also known as the (TFER) Texas Food Establishment Rules.
- e. The words “Regulatory Authority” mean the Health Department of the City of Mercedes, Hidalgo County, Texas.

Section 2. Permits and Exemptions

- A.** A person may not operate a food establishment without a permit issued by the Regulatory Authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this Ordinance. A valid permit must be posted in or on every Business Establishment regulated by this Ordinance.
- B.** A Business Establishment operated solely by a Non-Profit Organization is exempt from the permitting requirements of this Ordinance, but is not exempt from compliance with State Rules. The Regulatory Authority may require any information necessary to determine whether an Organization is Non-Profit for purposes of this exemption.

Section 3. Application for permit and fees

- A.** Any person desiring to operate a Business Establishment must make a written application for a permit on forms provided by the Regulatory Authority. The

application must contain the name and address of each applicant, the location and type of the proposed Business Establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. Renewals of permit are required on an annual basis and the same information is required for a renewal permit as for an initial permit.

- B.** Prior to the approval of an initial permit or the renewal of an existing permit, the Regulatory Authority shall inspect the proposed Business Establishment to determine compliance with State Laws and Rules. A Business Establishment that does not comply with State Laws and Rules will be denied a permit or the renewal of a permit.

- C.** The following fee schedule applies to permits issued under this ordinance.
 - 1. Health Inspection - \$ 250.00 initial and \$50.00 annual
 - 2. Fire Inspection - \$ 30.00 initial and annual
 - 3. Facility Inspection - \$ 30.00 initial and annual
 - 4. Business License - \$ 100.00 initial and \$80.00 to \$100.00 annual renewal
 - 5. Vendors permit - \$ 30.00 initial and annual

Section 4. Review of Plans

- A.** Whenever a Business Establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a Business Establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Regulatory Authority for review before work is begun (20% or greater of the area of the Business Establishment). The plans and specifications shall indicate the proposed layout, equipment arrangements, mechanical plans and construction materials of work area, and the type and model of proposed fixed equipment and facilities. The Regulatory Authority will approve the plans and specifications if they meet the requirements of the rules adopted by this Ordinance. The approved plans and specifications must be followed in construction, remodeling or conversion.
- B.** Failure to follow the approved plans and specifications will result in a permit denial, suspension or revocation.

Section 5. Suspension of Permit

- A.** The Regulatory Authority may without warning, notice or hearing suspend any permit to operate a Business Establishment if the operation of the Business establishment constitutes an imminent hazard to the public. Health suspension is effective upon service of the notice required by paragraph (5)(B) of this Ordinance. When a permit is suspended, all business operations shall be immediately ceased. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.

- B.** Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The Regulatory Authority may end the suspension at any time if reason for suspension no longer exists.

Section 6. Revocation of Permit

- A.** The Regulatory Authority may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the Regulatory Authority in the performance of its duties. Prior to revocation, the Regulatory Authority shall notify the holder of the permit or the person in charge, in writing of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the Regulatory Authority by the holder of the permit within such ten-day period.
- B.** If no request for hearing is filed within the ten days period, the revocation of the permit becomes final.

Section 7. Administrative Process

- A.** A notice as required in these rules is properly served when it is delivered to the holder of, the permit or the person in charge or when it is sent by registered or certified mail, returned receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Regulatory Authority.
- B.** The Regulatory Authority shall conduct the hearing provided for in these rules at a time and place designated by it. Based upon the recorded evidence of such hearing, the Regulatory Authority shall make final findings, and shall sustain, modify or rescind any notice or the Regulatory Authority shall furnish order considered in the hearing decision to the holder of the permit.

Section 8. Remedies

- A.** Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a Business Establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than \$ 200.00 dollars.
- B.** The Regulatory Authority may seek to enjoin violations of these rules.

Section 9. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 10. Effective Date

This Ordinance shall take effect and be enforced in accordance with the City Charter of the City of Mercedes, Texas and the State of Texas.

READ, PASSED, AND APPROVED ON FIRST READING THIS THE 7TH DAY OF NOVEMBER, 2024.

PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE 19TH DAY OF NOVEMBER, 2024.

ATTEST:

Oscar D. Montoya Sr., Mayor

Joselynn Castillo, City Secretary

Martie Garica-Vela, City Attorney

ORDINANCE 2024-13-0924

Amending Ordinance 2023-20-0828, 2022-05-0823, 2021-13-0914, 2019-12-0813, 2019-10, 2018-02, 2016-02, 2013-09

AN ORDINANCE AMENDING AND ADOPTING VARIOUS STANDARD CODES RELATING TO INSPECTION OF CONSTRUCTION WITHIN THE CITY OF ALTON, HIDALGO COUNTY, TEXAS; AND PROVIDING FOR THE ENFORCEMENT OF PROVISIONS PROVIDED IN SAID CODES; ADOPTING VARIOUS FEES RELATING TO INSPECTIONS, ZONING, PLAN REVIEW, AND ADMINISTRATIVE OVERSIGHT WITHIN THE CITY OF ALTON, HIDALGO COUNTY, TEXAS; WAIVING SECOND AND THIRD READING AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Alton is a Home Rule municipality;

WHEREAS, this Ordinance amends Ordinance 2023-20-0828, 2022-04-0823, 2021-13-0914, 2019-12-0813, 2019-10, 2018-02, 2016-02 and 2013-09;

WHEREAS, it is the desire of the City of Alton to adopt, in all respects, the various National and International Codes relating to building, gas, mechanical, electrical, plumbing, fire; and;

WHEREAS, the adoption of these Codes and Fees will facilitate proper inspection, zoning, plan review, and administrative oversight by the City of Alton staff, the collection of all due fees will insure public safety, health, and the general welfare of the citizens of Alton;

NOW, THEREFORE BE IT RESOLVED AND ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALTON, TEXAS, THAT:

SECTION 1: The following standard codes are hereby adopted by reference as though they were copied herein fully:

- International Existing Building Code – 2021 Edition
- International Swimming Pool and Spa Code – 2021 Edition
- International Building Code – 2021 Edition
- International Residential Code for One & Two-Family Dwellings – 2021 Edition
- International Plumbing Code – 2021 Edition
- International Fuel Gas Code – 2021 Edition
- International Fire Code – 2021 Edition
- International Energy Conservation Code – 2021 Edition
- National Electrical Code – 2017 Edition
- International Mechanical Code – 2021 Edition
- International Private Sewage Disposal Code – 2021 Edition
- International Wild Land Urban Interface Code – 2021 Edition
- International Property Maintenance Code – 2021 Edition

(All codes above shall be effective January 1, 2022)

Commercial Construction	\$96.00
Residential Additions/Remodeling	\$50.00 plus .12 X Sq Ft
Compliance Letter	\$20.00
Permit Renewal	Based on Percentage
Foundation (Steel) Inspection	\$40.00
Rough Inspection (Frame)	\$40.00
Infiltration Inspection.....	\$40.00
Insulation Inspection.....	\$40.00
Nail Pattern Inspection.....	\$40.00
Final Inspection for all trades	\$40.00
1 st Re-inspection for all trades	\$40.00
2 nd Re-inspection for all trades	\$80.00 (each subsequent re-
.....	inspection is an add. \$40.00)
After hours inspection for all trades.....	\$75.00
Working without a permit (all trades).....	\$150.00 plus permit fee
Certificate of occupancy	\$25.00
Construction plan review	\$100.00 per hour (min. 1
.....	hour for multi-family &
.....	commercial review)
Demolition permit-building	\$200.00 plus notification &
.....	asbestos report for both
.....	residential and commercial
Storage room moving fee.....	\$100.00
Manufactured home/house inspection fee	\$45.00 inside city limits &
.....	\$45.00 plus mileage
.....	(\$0.55/mile) outside city
.....	limits
House moving permits	\$125.00
Sign	\$150.00 unless otherwise
.....	stated in the sign ordinance
Pools residential	\$125.00
Pools commercial.....	\$250.00
Occupational registration	\$50.00
Facility review	\$35.00
Business license inspection.....	\$100.00/\$80.00 renewal
Driveway permits.....	\$0.20 X Sq Ft plus \$40.00
.....	inspection fee
Porches, patios, gazebos	\$0.15 X Sq Ft plus \$40.00
.....	inspection fee
Fence permits	\$45.00 (includes final
.....	inspection fee)
Re-roofing	\$50.00 plus bond
.....	(only refundable if receipt
.....	from approved landfill site
.....	provided)
Solar Panel-Residential.....	\$200.00 plus \$40 inspection

ATTACHMENT "B"



CITY OF PALMVIEW
TEXAS

REQUIREMENTS TO OPEN A BUSINESS

Fees

New Business		Annual Renewal	
Application	\$100.00	Business License	\$80.00
Health Inspection	\$100.00	Health Inspection	\$50.00
Fire Inspection	\$100.00	Fire Inspection	\$50.00

Can be paid with a money order, credit, or debit card.

Documents needed to register a business with the City of Palmview

- **Lease Agreement** – Contract or a notarized letter from owner. (Property’s Deed if you are the owner)
- **Valid ID**
- **Water Bill**
- **Site Plan** – Including parking lot
- **DBA** - Register business with the courthouse.
Hidalgo County Court House
100 N. Closner
Edinburg, Texas 78540
(956) 318-2100
- **Sales Tax Permit** – Register for sale tax. Can be obtained at the comptroller’s office.
State Comptroller’s Office Chase Tower Bank On 3rd Floor
200 s. 10th Street, Ste 301
McAllen, TX 78501
(956) 687-9227 fax (956) 668-1470

Health Requirements – for a food establishment.

- Food Handlers Certificate
- Copy of menu or listing of food to be served
- First Aid Choke Saving Instruction Chart
- Thermostat Inside refrigerator
- 3 Compartment Sink
- Running Hot Water

Fire Inspection Requirements – for all businesses

- Exit signs with emergency lights in every exit
- Minimum of one fire extinguisher at every exit
- Smoke detectors
- Address needs to be visible in front of the building.
Once power has been connected, set up fire inspection at 956-432-0300

Trash Collection – for all businesses

- Commercial dumpsters must be placed within an enclosed and approved location within the property
- For small commercial bins Contact City Hall at 956-432-0300
- For Dumpster Contact Republic Services at 1-800-432-7316

Sign Requirements – for all businesses

- Signs constructed, erected, altered, installed, relocated, or renovated will require a permit
- Temporary signs are allowed for 30 consecutive days
- **No Signs allowed in the Right of Way**

**This is a general listing of requirements.
Depending on the business other requirements may be needed.**

ATTACHMENT "C"



Please make payment to:

City of Mercedes
 400 S Ohio Ave
 P.O. Box 837
 Mercedes, TX 78570

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-00028	10/02/2024	11/01/2024

AERIE #2574
 5001 E EXPWAY 83 STE 1114
 MERCEDES TX 78570

INVOICE NUMBER	AMOUNT DUE	AMOUNT ENCLOSED
202410020047	\$25.00	

----- Important: Return this portion -----

----- Retain this portion for your records -----

City of Mercedes
 400 S Ohio Ave
 P.O. Box 837
 Mercedes, TX 78570
 956-565-3114
 Fax: 956-565-2209
 www.cityofmercedes.com

INVOICE NUMBER
202410020047

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-00028	10/02/2024	11/01/2024

ITEM DESCRIPTION	UNITS	TYPE	PRICE	AMOUNT
BUSINESS LICENSE	N/A		N/A	25.00
BUSINESS LICENSE				
TOTAL				65 \$25.00

REVENUE BREAKDOWN

If all businesses in the City of Mercedes had their business permits and paid their annual renewals fees the revenue it would generate (keep in mind there are approximately 330 businesses in the city):

330 X \$25.00 (current fee)- \$8,250.00 per year

330 X \$80.00 (minimum fee) - \$26,400.00 per year

330 X \$100.00 (maximum fee) - \$33,000.00 per year

ORDINANCE NO.: 2024 -20

AN ORDINANCE ESTABLISHING SHORT TERM RENTAL REQUIREMENTS FOR THE CITY OF MERCEDES, TEXAS, ESTABLISHING REGULATIONS FOR SHORT TERM RENTALS; ESTABLISHING THE TYPES OF RENTAS, REGISTRATION REQUIREMENTS; PROVIDING FOR PENALTIES AND FEES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, COUNTY OF HIDALGO, STATE OF TEXAS, THAT:

SECTION I. AUTHORITY

This Ordinance is adopted under the authority of the Constitution and the Laws of the States of Texas and is hereby incremented as part of the Code of ordinance of the City of Mercedes, Texas.

SECTION II. PURPOSE

- a. This article regulates short-term rentals (STRs) to ensure compliance with hotel occupancy tax laws. STRs are residential units or accessory buildings rented for less than 30 days. STRs do not include non-owner-occupied properties with multiple rooms.
- b. The property owner must appoint an operator (agent or representative) to adhere to these regulations. The owner remains liable for violations, regardless of who commits them.
- c. This article does not override any private conditions or restrictions on property use.

SECTION III. TYPES OF SHORT-TERM RENTAL

Type 1: Owner-occupied rentals or rentals associated with an owner-occupied unit.

- a. Conditions:
 - i) Only entire units can be rented unless it includes a sleeping room and shared bathroom.
 - ii) The owner must be present during rental, only one partial unit can be rented at a time, and rentals are limited to a single party.
- b. Restrictions:
 - i) Must be licensed
 - ii) Must notify renters
 - iii) And cannot include units in duplexes or secondary apartments.

Type 2: Rentals not associated with owner-occupied units and not part of multifamily properties.

- a. Conditions:
 - i) Only entire units can be rented. If there are violations affecting health or safety, the property must be inspected every three years.
- b. Restrictions:
 - i) Must be licensed, notify renters, and cannot be within 1,000 feet of another Type 2 rental unless certain conditions are met.

Type 3: Rentals within multifamily residential properties.

- a. Conditions:
 - i) Only entire units can be rented.
- b. Restrictions:
 - i) Must be licensed and notify renters.

SECTION IV. REGISTRATION REQUIREMENTS:

- a. The Environmental Health and Code Compliance Department handles STR registration and fees.
- b. Owners/operators must register with the department at 400 S. Ohio, Mercedes, TX, and provide:
 - 1. Contact details for the owner/operator and a 24-hour local contact person.
 - 2. The number of bedrooms and occupancy limits.
 - 3. Property Deed
 - 4. Proof of insurance
 - 5. Sales Tax (for each property)
 - 6. Compliance with city codes
 - 7. Any other required information.
- c. The registration fee is \$350 per rental unit. Each property needs a separate registration.

SECTION V. ISSUANCE AND RENEWAL:

- a. Licenses are valid for one year and non-transferable.
- b. They can be renewed annually if certain conditions are met, including no outstanding violations and payment of renewal fees.
- c. The renewal fee is \$300

SECTION VI. MINIMUM STANDARDS OF CONDUCT AND SAFETY

- a. Owners must provide renters with information on basic conduct standards. Information Packet must be provided to renter and posted in rental units.
- b. Properties must have functioning smoke detectors in sleeping areas and display emergency exit maps.
- c. local contact must be available within two hours if the licensee does not reside in Mercedes.
- d. Restrictions on noise levels and use of sound equipment apply.
- e. Limits are set for the number of adults and unrelated individuals. Assemblies are restricted based on the time of day.

SECTION VII. PENALTIES

- a. Owners/operators must comply with all relevant laws and submit monthly hotel occupancy tax reports.
- b. Non-compliance may result in a notice of violation and citations. Violations are Class C misdemeanors, with fines up to \$500 per offense, and each day of non-compliance counts as a separate offense.

- c. Penalties are additional to other enforcement remedies available under city ordinances and state law.
- d. Violation of regulations may result in denial of renewal or new applications.
- e. Additional fees apply if violations occur or if applications are submitted after receiving a notice of violation.
- f. Certain advertising and visual inspections serve as prima facie evidence of violations and can lead to citations.

2. SEVERABILITY PROVISION

By the adoption of this ordinance, should there be any word, sentence, phrase, and/or expression that may be deemed by a court of competent jurisdiction to be invalid, or legally deleted from the content of his ordinance, it is declared that the remaining portion or portions of this ordinance shall remain fully enabled, active and in full force.

3. CUMULATIVE PROVISION

Should there be any existing ordinance, regulation, policy, and/or guideline that may be in conflict with the established regulations of this zoning ordinance, whether in whole or in part, the terms of this ordinance shall be controlling and override any such existing conflict.

4. EFFECTIVE DATE

This Ordinance shall become effective in accordance with the City Charter of the City of Mercedes, Texas and the laws of the State of Texas

READ, DISCUSSED, AND APPROVED ON THIS THE 19TH DAY OF NOVEMBER, IN THE YEAR OF OUR LORD, 2024.

1st Reading: November 7, 2024

2nd Reading: November 19, 2024

CITY OF MERCEDES:

Oscar D. Montoya, Mayor

ATTEST:

Joselynn Castillo
City Secretary

APPROVED AS TO FORM:

Martie Garcia Vela
City Attorney

City of Mercedes, Texas

Ordinance No. 2024-21

AN ORDINANCE OF THE CITY COMMISSION OF MERCEDES, TEXAS, AND BY CREATING A NEW ARTICLE OF CHAPTER 6 OF THE CODE OF ORDINANCES, MERCEDES, TEXAS, RELATING TO STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES; PROVIDING FOR A SAVINGS AND REPEAL CLAUSE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFORE; DECLARING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY

* * * * *

WHEREAS, Chapter 6 of the City of Mercedes Code of Ordinances contains the City's measures to be implemented to address solid waste and litter control; and

WHEREAS, the Solid Waste Management Department (SWMD) is responsible for collecting, transporting and disposing of solid waste within the City and planning for ways to address the region's future needs; and

WHEREAS, the illegal disposal of scrap tires is a significant health and safety problem in the City of Mercedes, because these tires provide breeding grounds for mosquitoes and other organisms that can carry disease, and have an adverse effect on the health of its citizens; and

WHEREAS, the City Commission finds that it is appropriate to recover the City's costs of administering the scrap tire program established by the Ordinance through the assessment of application and other fees; and

WHEREAS, the City Commission finds that the Department of Solid Waste Management has analyzed the costs of administering the program, and related those costs to the types of application fees issued by the City; and

WHEREAS, the City Commission finds that the fees are reasonably related to the cost of administering the program;

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

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. Definitions.

The following words, terms and phrases, when used in this article shall have the meanings in this section, except where the context clearly indicates a different meaning:

Driver means an individual who operates a permittee's truck pursuant to the permit.

Elements of nature means rainfall, snow, sleet, hail or other natural precipitation.

Permit means a written grant of approval issued by the director for the transportation of tires pursuant to this article.

Permittee means a person who holds a valid permit issued by the director pursuant to this article.

Registrant means a person who holds a valid registration issued by the director pursuant to this article.

Registration means a written grant of approval issued by the director to tire facilities pursuant to this article.

Scrap tire means a tire that a tire generator has rendered unusable; or a tire that can no longer be used for its original intended purpose because it has:

- (1) Tire tread less than one-sixteenth inch deep;
- (2) Chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent material; or
- (3) Exposed tire cords or belting material as a result of damage to the tire.

The term "scrap tire" shall not include any tire that has been shredded, ground or cut up into pieces one quarter or less the size of the whole tire from which they were derived.

Store means to place, collect or accumulate tires that are not for sale or resale as tires, whether the tires are directly on the ground, in roll-off containers or otherwise.

Tire means any covering for a wheel, whether new, used, or scrap, made wholly or partially of rubber that was manufactured for use on any vehicle propelled by a motor (including vehicles pushed or pulled by a vehicle propelled by a motor), regardless of whether such vehicle is intended for use on a public street, provided that such tire is not mounted upon a wheel or rim and in service upon or carried as a component spare part of a vehicle.

Tire disposer means any person who, in compliance with all applicable state, federal and local laws, rules and regulations, disposes of or converts tires to another purpose including, without limitation, persons who:

- (1) Landfill, incinerate or otherwise dispose of tires as waste or as fuel; or
- (2) Shred, grind, chemically treat or use other means to reduce tires into basic components for oil, steel, carbon black, rubber, road paving or other marketable salvage materials; or
- (3) Convert tires into other useful items such as doormats and sandal soles.

Tire facility means any business or establishment where 100 or more tires per year are collected, repaired, processed, recycled, scrapped, sold, bought, and/or stored. For purposes of this article a tire facility does not include a business or establishment owned or operated by a governmental entity.

Tire generator means a fleet operator, an automotive dismantler, or a retailer, wholesaler, manufacturer, recapper, or retreater of new or used tires.

Tire transporter means a person who is responsible for causing tires to move along a public street from one location to another within the city.

Truck means a vehicle operated by a permittee's driver for the transport of tires pursuant to a permit issued pursuant to this article.

Used tire means a tire, including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

Vector control means any method to limit or eradicate organisms capable of transporting infectious agents.

Section 3. Duties.

The Planning department and the employees assigned to the department shall:

- (1) Supervise and be responsible for the collection, transportation, and disposal of solid waste.
- (2) Carry out the policies of the mayor and city Commission in the overall planning effort to develop a reliable and efficient method for solid waste disposal.
- (3) Administer and enforce this chapter and related laws.
- (4) Have such other duties and responsibilities as may be assigned by the City Manager.

Section 4. Open storage of tires prohibited; nuisance.

It shall be unlawful for any person to store any tire in the city in such a manner that the tire is exposed to the elements of nature, and this action is hereby declared to be a nuisance, subject to abatement at the expense of the owner of the premises where the tire is stored as provided by law and this Code.

Section 5. Storage; precautions; reports; affirmative defense.

(a) All persons having any tires in their possession shall keep tires secure at all times that such persons, their agents or employees are not physically present on the premises where the tires are stored. If tires are not stored in a building or enclosed container that is capable of being secured, then those persons having tires in their possession shall monitor the tires at least once every two weeks for vector control, and the tires themselves must be secured by passing a heavy bar or chain made of steel not less than three-eighths of one inch in thickness through the center of the tire and locking the bar or chain to a fixture; provided, the director may upon written request grant permission for an alternate method of storage. The proposed alternative storage method must comply with all applicable federal, state and local laws and regulations and provide equivalent security from theft and vector control.

(b) All tires for sale shall be stacked, sorted, classified and arranged in an organized manner.

(c) Each theft of any tire shall be reported to the director in writing within five days after the theft or its discovery. The report shall include the number of tires stolen and a description thereof. The report shall be made regardless of whether such theft is also reported to the police department.

(d) It is an affirmative defense to prosecution under subsection (a) that a person having tires in his possession stores them in a manner consistent with an alternate use such as, but not limited to, a swing, planter, stabilizing platform for sports equipment, etc.

Section 6. Actions authorized to enforce article.

(a) The city, acting through the city attorney or the city attorney's designee, the designee, is hereby authorized to file an action in a court of competent jurisdiction to:

- (1) Enjoin any person from violating the terms, conditions and restrictions of any registration or permit issued under this article;
- (2) Enjoin the violation of the provisions of this article;
- (3) Recover civil penalties for violation of the terms, conditions and restrictions of any registration or permit issued under this article; Recover civil penalties for violation for the provisions of this article; or
- (4) Recover damages from the owner of a tire facility in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with this article.

This authority is in addition to all provisions of this Code relative to the definition of offenses and the provision of penalties for violations of such ordinances.

(b) The city, acting through the city attorney or the city attorney's designee, is hereby authorized to enter into agreements in lieu of litigation to achieve compliance with the terms, conditions and restrictions of any registration or permit issued under this article.

Section 7. Criminal sanctions.

A violation of any of the provisions of this article constitutes a misdemeanor that shall be punishable, upon conviction, by a fine of not less than \$250.00 nor more than \$2,000.00, and each day that any violation continues shall constitute a separate offense; provided, however, that an offense provided in this article which also constitutes an offense under state law shall be punishable as provided in the applicable state law.

Section 8. Fees.

There are hereby established and the director shall charge and collect fees for each permit (includes one truck) or registration application and for each additional truck to be covered by a permit. Fees shall be as stated for this provision in the city fee schedule. Payment of any applicable fees when due is a condition of the processing of any application under this article.

Section 9. Annual registration required.

It shall be unlawful for any person to own or operate a tire facility where tires will

be stored without having a registration issued annually by the director.

Section 10. Annual permit required.

It shall be unlawful for any person to transport tires upon any public street within the city unless such person is acting pursuant to a permit issued annually by the director. It is an affirmative defense to prosecution under this section that the cargo transported by such person:

- (1) Contains five or fewer tires; or
- (2) Contains five percent or less tires by volume and is part of a general cargo of "municipal solid waste" as that term is defined by Chapter 361 of the Texas Health and Safety Code; or

Originated outside of the city and is destined for transport outside of the city, provided that no tires are loaded or unloaded within the city.

Section 11. Tire generators; disposal of tires; records.

It shall be unlawful for any tire generator to cause or allow any tire to be transported upon any public street other than by a permittee. Each tire generator shall maintain daily records of the numbers of tires generated at each premises under his control and his disposition. A receipt showing the number of tires, the names of the tire generator and permittee and the permit number of the permittee shall be obtained by a permittee for each consignment of tires. Each receipt shall be issued at least in duplicate and signed by both parties with one copy thereof to be retained by the tire generator and one copy to be retained by the permittee. Tire generators who are also permittees shall maintain internal trip tickets in lieu of receipts for tires that they transport. For purposes of this article, TCEQ form 10304, entitled "Whole Used or Scrap Tire Manifest," or any successor form, is a sufficient receipt.

Section 12. Registrants and permittees; disposal of tires; records.

It shall be unlawful for any registrant or permittee to dispose of any tire transported by the registrant or permittee other than by the delivery of the tire to a tire disposer. Each registrant and permittee shall maintain daily records of the number of tires received and delivered. Each registrant and permittee shall obtain a receipt showing the number of tires, the names of the registrant, permittee and tire disposer and the registration or permit number of the registrant and permittee for all tires delivered. Each receipt shall be issued at least in duplicate and signed by both parties with one copy to be retained by the tire disposer and one copy to be retained by the registrant and permittee. Tire disposers who are also registrants or permittees shall maintain internal trip tickets in lieu of the receipts for tires that they transport. Permittees shall maintain records of the name and residence address of each driver (including the permittee if the permittee intends to act as a driver under the permit) who will be authorized to drive the permittee's trucks, and their respective driver's license numbers.

Section 13. Inspection of records.

The records required by this article shall be retained for three years from their creation. Registrants and permittees shall maintain the records at the address designated in their applications. All records shall be made available during regular business hours for inspection, audit, or copying by the director, police department, and the city attorney or the city attorney's designee as often as may be necessary to ensure compliance with this article.

Section 14. Applications for registration; permit.

(a) Each person desiring to own or operate a tire facility shall apply for a registration in a form acceptable to the director, which shall include at a minimum all of the following:

- (1) The person's name;
- (2) The person's business address, including a facsimile number or email address;
- (3) The physical address within the county at which the records required in this article will be maintained;
- (4) The person's principal business or occupation; and
- (5) The person's state registration number, if applicable.

(b) Each person desiring a tire transporter's permit shall apply in a form acceptable to the director, which shall include at a minimum all of the following:

- (1) The person's name;
- (2) The person's business address, including a facsimile number or email address;
- (3) The physical address within the county at which the records required in this article will be maintained;
- (4) The person's principal business or occupation;
- (5) A description of each truck that the applicant will use for the transport of tires including the manufacturer, gross weight, license number, color, vehicle identification number, year of manufacture and its registered owner; and
- (6) The person or business's certificate of insurance for each vehicle;

(7) A statement that the applicant has not had a permit revoked under this article within the immediately preceding period of three years.

(c) Each application shall be accompanied by an application fee and a fee for each truck described in an application under this section.

Section 15. Issuance, duration and amendment.

(a) The director shall issue a permit to the applicant designating the trucks authorized pursuant thereto unless the director has a reasonable basis to believe that:

- (1) Any statement on the application was incomplete or false;
- (2) The applicant has committed any offense involving the unlawful disposal, storage, or theft of tires within the immediately preceding period of three years; or
- (3) The applicant has had a permit revoked under this article in the immediately preceding period of three years.

(b) In addition to the permit itself, the director shall issue one or more identification plates, stickers or decals to be attached by the permittee in such places and manner as the director may administratively direct to each truck covered thereby. Failure to properly display a required plate, sticker or decal shall be a violation of this article. Permits and registrations issued under this article shall be valid for one year from the date of issuance unless sooner revoked.

Section 16. Transfer of permit or registration prohibited; reporting.

(a) Permits, registrations, stickers or decals issued under this article are personal to the applicant and may not be transferred, leased, assigned, given away or sold in any manner or under any circumstances.

(b) It shall be the duty of each registrant and permittee to advise the director in writing within ten business days of any change to any item for which a representation or response was made in its application for registration or permit

Section 17. Authorized trucks.

It shall be unlawful for a permittee to allow any truck to be used for the transport of tires except those trucks designated in his permit. The permittee shall ensure that, at all times, each truck bears the identification plates, stickers or decals issued by the director.

Section 18. Basis for revocation of registration or permit.

Any registration or permit issued under this article may be revoked in accordance with these procedures if the director determines there is a reasonable basis to believe that:

- (1) The registrant or permittee has violated any of the provisions of this article;
- (2) The registrant or permittee violates any state or municipal law or ordinance involving the unlawful disposal, storage or theft of tires;
- (3) The registrant or permittee violates any provision of Chapter 37 of the Texas Penal Code relating to the records required to be kept under this article;
- (4) Any truck bearing a decal or sticker issued pursuant to this article is used for the commission of any violation of any state or municipal law or ordinance involving the unlawful disposal, storage or theft of tires; or

Any statement made in the application for the permit or registration or any amendment thereto was known to be false.

Section 19. Investigation; notice.

The director, in consultation with the police department, shall investigate the facts underlying an allegation that there is a reasonable basis for revocation of a registration or permit. If the director determines that there is a reasonable basis for revocation of a registration or permit, the director shall give written notice to the registrant or permittee by personal service, by facsimile, or by certified mail, return receipt requested, which notice shall include, at a minimum:

- (1) The specific grounds upon which the registration or permit may be revoked;
- (2) That there will be a hearing before the director in which the city will seek to revoke the registration or permit;
- (3) The date, time and place of the hearing; and That the permittee or registrant may appear in person and may be represented by an attorney.

Section 20. Revocation hearing.

- (a) All hearings shall be held by the director or a designated representative. Such

officer shall be referred to as the "hearing officer."

(b) All hearings shall be conducted under rules consistent with the nature of the proceedings, and the registrant or permittee shall have the burden of proof; provided, however, that the following rules shall apply to such hearings:

- (1) Each party shall have the right to representation by a licensed attorney, though an attorney is not required.
- (2) Each party may present witnesses in its own behalf.
- (3) Each party has the right to cross-examine all witnesses.
- (4) The hearing officer shall consider only the evidence presented at the hearing in rendering an order.

Section 21. Failure to appear at revocation hearing.

If the registrant or permittee fails to appear at the hearing at the date and time specified, the hearing officer may enter an order revoking the registration or permit.

Section 22. Findings of hearing officer after revocation hearing.

After completion of the presentation of evidence by all parties appearing, the hearing officer shall determine whether there is a reasonable basis to revoke the registration or permit. If there is a reasonable basis the hearing officer shall make written findings that specify the facts upon which the determination was based, and shall render a written order to revoke the registration or permit; provided, the hearing officer may exercise discretion to take other lesser actions such as a temporary suspension or revision of a registration or permit. A copy of the hearing officer's order shall be personally delivered, sent by facsimile or mailed by certified mail, return receipt requested, to the registrant or permittee.

Section 23. No refund offered after revocation.

In the event any registration or permit is revoked, suspended or revised by the hearing officer, the city shall not be liable to any person for any refund of any part of the registration or permit fee.

Section 24. Surrender of permit, plates, decals upon revocation or suspension.

It shall be the duty of each person whose registration or permit has been revoked or suspended to return the permit to the director, as well as any identification plates, stickers or decals issued therewith.

Section 25. That the City Commission hereby approves the fees applicable to this Ordinance, in the amounts set forth in the schedule attached hereto and incorporated herein as Exhibit 1.

Section 26. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Commission in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 27. That there exists a public concern requiring that this Ordinance be passed finally on the date of its introduction; therefor, this Ordinance be passed finally on such date and shall take effect in accordance with the City Charter.

**SCHEDULE OF FEES FOR
STORAGE, TRANSPORTATION, AND DISPOSAL OF TIRES**

Section	Description	Amount
10	Tire transporter permit (includes one truck), annual	\$175.00
10	Tire transporter permit (each additional truck), annual	\$45.00
9	Tire generator registration (one time)	\$65.00

PASSED AND APPROVED ON FIRST READING this 7th day of November, 2024.

PASSED, APPROVED AND ADOPTED ON SECOND READING this 19th day of November, 2024.

ATTEST:

Oscar D. Montoya Sr., Mayor

Joselynn Castillo, City Secretary

Martie Garcia-Vela, City Attorney

AGENDA ITEM NO. 9D**CONSENT ITEM:**

DATE: 10/29/2024
FROM: Meredith Hernandez, Interim Finance Director
ITEM: Replace CC from Colleen Blanchard to Carlos Vasquez

BACKGROUND INFORMATION:

Ms. Blanchard is no longer employed with the City and the card needs to be replaced. Since we do not have an Asst. Finance Director, the next in line will be the Accountant, Mr. Carlos Vazquez

BOARD REVIEW/CITIZEN FEEDBACK:**ALTERNATIVES/OPTIONS:****FISCAL IMPACT:**

Proposed Expenditure/(Revenue):	Account Number(s):

Finance Review by:**LEGAL REVIEW:****ATTACHMENTS:****DRAFT MOTION:**

RESOLUTION # 2024-31

WHEREAS, The City of Mercedes, Texas, like other cities, uses a credit card to facilitate the process of typical city business, events, and other administrative operations; and

WHEREAS, The City of Mercedes, Texas, uses a credit card from the Texas National Bank that mandates a city staff member that is currently employed to be listed on the credit card.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Mercedes, Texas that the City Commission authorizes Accountant Carlos Vazquez to be the official staff person ‘named’ on the City of Mercedes credit card as issued by Texas National Bank.

BE IT FURTHER RESOLVED THAT, Texas National Bank (TNB) of Mercedes, Texas is hereby authorized and instructed to honor TNB financial processes as signed by and countersigned by the above listed official until such time as Texas National Bank is otherwise instructed.

DISCUSSED, PASSED, AND APPROVED on this the ____ day of _____, In The Year of Our Lord, _____.

ATTEST:

Oscar D. Montoya Sr., Mayor
City of Mercedes, Texas

Joselynn Castillo, City Secretary

RESOLUTION NO. 2024-32

WHEREAS, The Chief Appraiser of Hidalgo County Appraisal District has called for the election of the Hidalgo County Appraisal District Board of Directors; and,

WHEREAS, The City of Mercedes, Texas is entitled to cast a total of 30 votes in said election; and

WHEREAS, ballots must be returned by December 15, 2024, which is the deadline for accepting votes.

NOW THEREFORE BE IT RESOLVED by the City of Mercedes that the City does hereby cast 30 votes for the following candidates for Hidalgo County Appraisal Board of Directors for 2025-2027.

- Betancourt, Eddy _____ Votes
- Cardenas, Albert _____ Votes
- Castillo, Fernando _____ Votes
- Castillo, Yolanda _____ Votes
- Garcia, Pete _____ Votes
- Garza, Richard A. _____ Votes
- Jaramillo, Christina _____ Votes
- Olivarez, Joe D. _____ Votes
- Requenez, Amador..... _____ Votes

READ, PASSED, AND APPROVED at a special meeting by the City Commissioners of the City of Mercedes, on this 7th day of November, 2024.

Oscar D. Montoya Sr., Mayor

ATTEST:

Joselynn Castillo, City Secretary

October 31, 2024

Via E-Mail

Norton Rose Fulbright US LLP
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
United States

Mr. Alberto Perez
City Manager
City of Mercedes, Texas
400 South Ohio Street
Mercedes, Texas 78570

Stephanie Leibe
Partner
Direct line +1 512 536 2420
stephanie.leibe@nortonrosefulbright.com

Tel +1 512 474 5201
Fax +1 512 536 4598
nortonrosefulbright.com

Re: City of Mercedes, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Series 2025

Dear Mr. Perez:

I enclose as Exhibit A to this letter the agenda item to be utilized in preparing the agenda for the November 7, 2024 special meeting of the City Commission. Thank you for ensuring that this agenda item is posted in accordance with the provisions of the Texas Open Meetings Act. I also enclose as Exhibit B the suggested motion for this item.

I also enclose a draft copy of the Resolution for inclusion in the City Commission's agenda packets. Please send any comments to this Resolution to me as soon as possible so that it may be finalized.

Lastly, I enclose Exhibit A and Exhibit B in Word format for your convenience.

Thank you, in advance, for your prompt attention to this matter. If I can provide any additional assistance concerning this matter, please do not hesitate to contact me.

Very truly yours,



Stephanie V. Leibe

SVL/lc

Enclosures

cc: Ms. Meredith Hernandez (City of Mercedes, Texas)
Ms. Joselynn Castillo (City of Mercedes, Texas)
Mr. Don Gonzales (Estrada Hinojosa & Company, Inc.)
Mr. Bobby Villarreal (Estrada Hinojosa & Company, Inc.)
Mr. Matt Lujan (Estrada Hinojosa & Company, Inc.)
Mr. Matthew A. Lee (Firm)
Mr. Chris Guevara (Firm)

EXHIBIT A

CONSIDERATION AND APPROVAL OF A RESOLUTION REQUESTING FINANCIAL ASSISTANCE FROM THE TEXAS WATER DEVELOPMENT BOARD FOR CONSTRUCTING VARIOUS PUBLIC IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM; AUTHORIZING THE CITY'S FINANCIAL ADVISORS, BOND COUNSEL, AND ENGINEERS TO COORDINATE THE SUBMISSION OF ONE OR MORE APPLICATIONS TO THE TEXAS WATER DEVELOPMENT BOARD; AND OTHER MATTERS IN CONNECTION THEREWITH

EXHIBIT B

I MOVE THAT THE CITY COMMISSION ADOPT A RESOLUTION REQUESTING
FINANCIAL ASSISTANCE FROM THE TEXAS WATER DEVELOPMENT BOARD

RESOLUTION NO. 2024-23

A RESOLUTION REQUESTING FINANCIAL ASSISTANCE FROM THE TEXAS WATER DEVELOPMENT BOARD WATER DEVELOPMENT FUND FOR CONSTRUCTING VARIOUS PUBLIC IMPROVEMENTS TO THE CITY'S UTILITY SYSTEM; AUTHORIZING THE CITY'S FINANCIAL ADVISORS, BOND COUNSEL, AND ENGINEERS TO COORDINATE THE SUBMISSION OF THE APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Mercedes, Texas (the *City*) deems it necessary to apply to the Texas Water Development Board (the *Board*) for financial assistance; and

WHEREAS, in accordance with the rules and regulations of the Board, which govern the procedures in making such an application, the governing body of the City is required to pass a resolution to accompany such application; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MERCEDES, TEXAS THAT:

1. It is hereby found and determined that the City cannot reasonably finance the proposed project without the financial assistance of the Board in the amount requested.

2. The City hereby requests that the Board grant financial assistance to the City in the amount not to exceed \$30,000,000 (as a loan or by the purchase of obligations of the City and the receipt of the largest amount of grant funds lawfully available from the Board) for constructing improvements to the City's utility system, as designed by the City's consulting engineer, and the purchase of the necessary land and rights-of-way relating to this project. These obligations may be issued by the City in one or more series.

3. The Mayor of the City is hereby authorized to execute and submit to the Board the application for such financial assistance, and the Mayor of the City, together with the bond counsel, financial advisors and consulting engineers named in such application, are authorized to appear before the Board in support of such application.

4. The Mayor of the City is further specifically authorized to make the required assurances to the Board in accordance with the rules, regulations, and policies of the Board.

5. A certified copy of this resolution (the *Resolution*) shall be attached to the application for financial assistance herein authorized to be prepared and submitted to the Board, and the City Secretary of the City is authorized and directed to prepare and certify such number of copies of this Resolution as may be required for purposes of supporting the submission of such application to the Board.

6. The City Commission authorizes the Mayor or Mayor Pro Tem of the City Commission, the City Attorney, or the City Secretary of the City, or the designee of any of the foregoing, to take all actions necessary to execute any necessary financial advisory contract with

Estrada Hinojosa & Company, Inc., San Antonio, Texas, as the financial advisor to the City (the *Financial Advisor*) and Freese and Nichols, Inc., San Antonio, Texas, as the engineer to the City (the *Engineer*). The City Commission understands that under applicable federal securities laws and regulations that the City must have a contractual agreement with its Financial Advisor relating to the sale, issuance, and delivery of the Bonds. In addition, the City Commission also authorizes the Mayor or Mayor Pro Tem of the City Commission, the City Attorney, or the City Secretary of the City, or the designee of any of the foregoing, to take all actions necessary to execute any necessary engagement agreement with the Engineer and with Norton Rose Fulbright US LLP, as the bond counsel to the City (*Bond Counsel*). Execution of such engagement agreements also constitute a prerequisite to the City's filing of its application with the Board.

7. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City.

8. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

9. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

10. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Resolution would have been enacted without such invalid provision.

11. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

12. This Resolution shall be in full force and effect from and after its passage on the date shown below.

[The remainder of this page intentionally left blank]

PASSED, APPROVED, AND ADOPTED on the 7th day of November, 2024.

CITY OF MERCEDES, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)



PERDUE BRANDON
FIELDER COLLINS & MOTT LLP

ATTORNEYS AT LAW

City of Mercedes Proposed Tax Resale Properties

*Submitted By: Hiram A. Gutierrez & Janelle V. Caso
November 2024
www.pbfc.com*

RESOLUTION 2024-34 OF THE CITY
COMMISSION, CITY OF MERCEDES,
TEXAS

On the 7th day of November, 2024, at the regularly scheduled meeting of the City Commission, City of Mercedes, Texas, a motion was duly made and seconded for the City of Mercedes to resell the properties described on Exhibit “C” attached hereto, which was acquired through tax foreclosure proceedings. City of Mercedes requests that Sheriff J.E. “Eddie” Guerra conduct such sale in accordance with Section 34.05 (a), (c) and (d), Texas Property Tax Code, and that such sale be held at the earliest available date in accordance with the laws of the State of Texas; further, that City of Mercedes notify Sheriff J.E. “Eddie” Guerra that it would not object to a sale price of such properties in the sums set forth on Exhibit “C”; **and further, in the event that any taxing unit communicates by written communication to the Tax Assessor-Collector an offer to purchase a listed property or in cases where the Hidalgo County Appraisal District has double-assessed a listed property or there is a potential error with property descriptions or some other error, then and in that event, the Tax Assessor-Collector is authorized to notify the Sheriff to pull or delete that property from the public sale listing, and the Sheriff is authorized in such case to pull/delete that property from the public sale.**

Discussion was then conducted, and upon completion of same, Mayor Oscar D. Montoya, Sr. called for a vote on the motion, and the same was passed by majority. Now therefore:

BE IT RESOLVED that the City of Mercedes offer for resale, in accordance with Section 34.05 (a), (c) and (d), Texas Property Tax Code, the properties described on Exhibit “C” and that Sheriff J.E. “Eddie” Guerra, is hereby requested to conduct such sale in accordance with such statutes at the earliest possible date and further, that a minimum acceptable sale price for such properties is as set forth on Exhibit “C”; **and further, in the event that any taxing unit communicates by written communication to the Tax Assessor-Collector an offer to purchase a listed property or in cases where the Hidalgo County Appraisal District has double-assessed a listed property or there is a potential error with property descriptions or some other error, then and in that event, the Tax Assessor-Collector is authorized to notify the Sheriff to pull or delete that property from the public sale listing, and the Sheriff is authorized in such case to pull/delete that property from the public sale.**

SIGNED AND ENTERED on this 7th day of November, 2024.

Oscar D. Montoya, Sr., Mayor
City of Mercedes, Texas

Attest:

Joselynn Castillo, City Secretary
City of Mercedes, Texas

City of Mercedes Tax Resale Exhibit "C"

EXHIBIT "C"

Item:	Cause No: Style of Case:	Legal Description:	Current Market Value (HCAD):	Estimated Minimum:	Account Number:
1.	T-1157-22-D CITY OF MERCEDES vs. JAVIER HERNANDEZ	1.41 ACRES, MORE OR LESS, OUT OF A 3.72 ACRE TRACT OF LAND OUT OF THE SOUTH 31.91 ACRES OUT OF LOT 10, BLOCK 66, CAPISALLO DISTRICT, HIDALGO COUNTY, TEXAS, MORE PARTICULARLY DESCRIBED IN DOC. NO. 2011-2168398, OFFICIAL RECORDS, HIDALGO COUNTY, TEXAS.	\$73,715.00	\$10,000.00	C140000066001012



Property No. 1

T-1157-22-D

This notice and the materials provided herein are for informational purposes only and do not constitute any legal advice. No reader should rely on, act, or refrain from acting on the basis of any information contained in this notice and the materials provided herein without seeking their own legal or other professional advice. Perdue, Brandon, Fielder, Collins, & Mott. L.L.P. [DOES NOT WARRANT](#) the quality or completeness of the information provided herein.

BID ANALYSIS

Cause No.: T-1157-22-D

Legal Description:

1.41 ACRES, MORE OR LESS, OUT OF A 3.72 ACRE TRACT OF LAND OUT OF THE SOUTH 31.91 ACRES OUT OF LOT 10, BLOCK 66, CAPISALLO DISTRICT, HIDALGO COUNTY, TEXAS, MORE PARTICULARLY DESCRIBED IN DOC. NO. 2011-2168398, OFFICIAL RECORDS, HIDALGO COUNTY, TEXAS.

Account No.: C1400-00-066-0010-12
Estimated Tax Resale Costs: \$2,437.00
Current Appraised Value Total: \$73,715.00
Proposed Minimum Bid Amount: **\$10,000.00**
Estimated Disbursement To Entities: \$7,563.00

Entity Name	Judgment Amount Due Each Entity	Percentage To Be Received	Estimated Amount Received
CITY OF MERCEDES (2019-2022)	\$3,576.04	25.3340%	\$1,916.01
HIDALGO COUNTY (2019-2022)	\$2,710.16	19.1998%	\$1,452.08
HIDALGO COUNTY DRAINAGE DISTRICT #1 (2019-2022)	\$529.43	3.7507%	\$283.66
SOUTH TEXAS INDEPENDENT SCHOOL DISTRICT (2019-2022)	\$231.91	1.6429%	\$124.26
MERCEDES INDEPENDENT SCHOOL DISTRICT (2019-2022)	\$6,267.18	44.3991%	\$3,357.90
SOUTH TEXAS COLLEGE (2019-2022)	\$800.85	5.6735%	\$429.09
		0.0000%	\$0.00
		0.0000%	\$0.00
	\$14,115.57	100.0000%	\$7,563.00

Property Details

Account		
Property ID:	724193	Geographic ID: C1400-00-066-0010-12
Type:	Real	Zoning:
Property Use:		
Location		
Situs Address:	MERCEDES, TX	
Map ID:	CMC VOL P PG 226	Mapsc0:
Legal Description:	CAPISALLO BNG AN IRR TR N367.94'-S1050'-E199.53'-W319.53' LOT 10 BLK 66 1.41 AC	
Abstract/Subdivision:	C140000 - CAPISALLO DISTRICT - SMC	
Neighborhood:	C140000	
Owner		
Owner ID:	1186675	
Name:	HERNANDEZ JAVIER	
Agent:		
Mailing Address:	2517 MORENO SR EDINBURG, TX 78541-5424	
% Ownership:	100.00%	
Exemptions:	For privacy reasons not all exemptions are shown online.	

Property Values

Improvement Homesite Value:	\$0 (+)
Improvement Non-Homesite Value:	\$0 (+)
Land Homesite Value:	\$0 (+)
Land Non-Homesite Value:	\$73,715 (+)
Agricultural Market Valuation:	\$0 (+)

Market Value:	\$73,715 (=)
Agricultural Value Loss: ⓘ	\$0 (-)
Appraised Value:	\$73,715 (=)
HS Cap Loss/Circuit Breaker: ⓘ	\$0 (-)
Assessed Value:	\$73,715
Ag Use Value:	\$0

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

Property Land

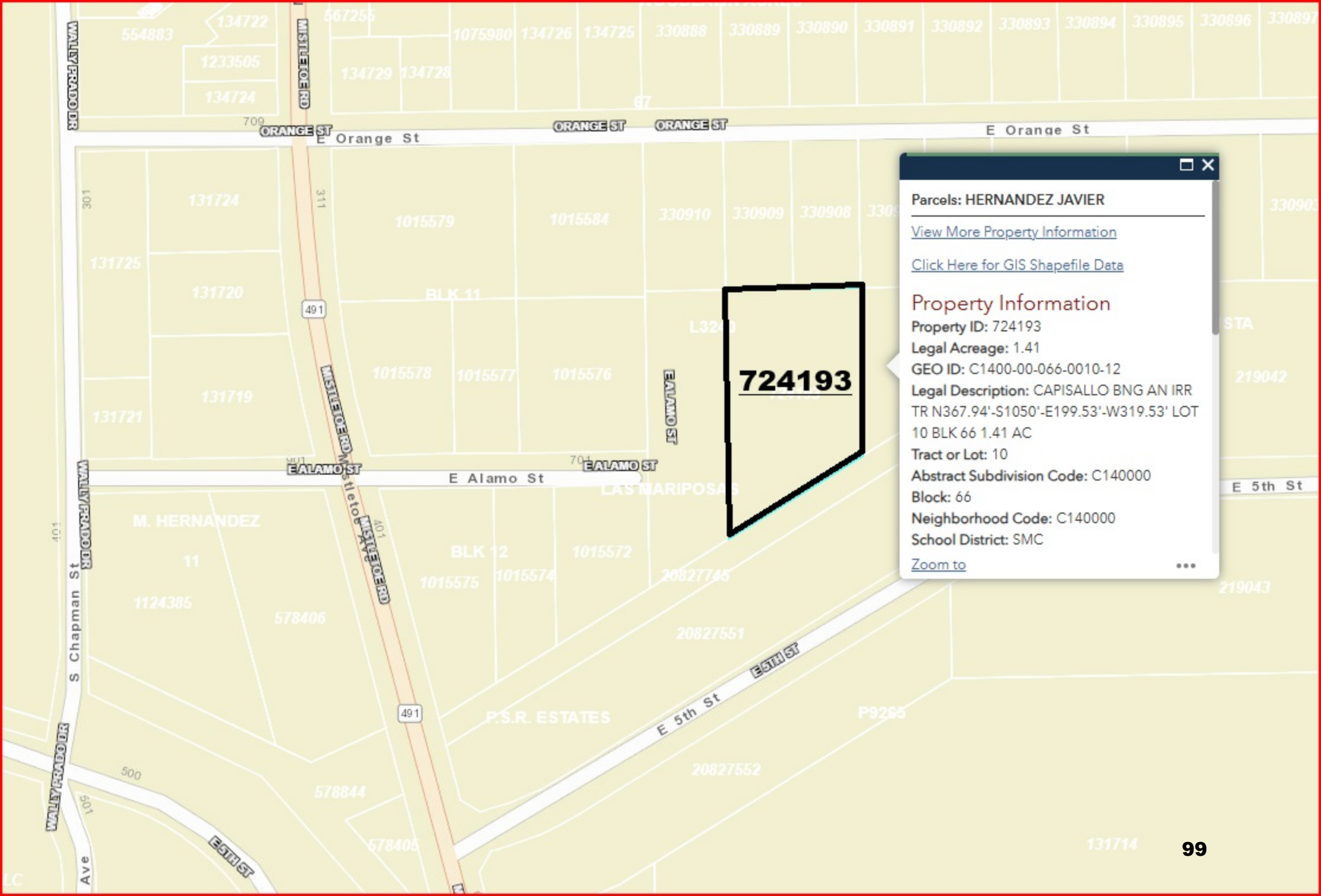
Type	Description	Acreage	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
AC	ACREAGE	1.41	61,419.60	0.00	0.00	\$73,715	\$0

Property Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap Loss	Assessed
2025	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2024	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2023	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2022	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2021	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2020	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2019	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2018	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2017	\$0	\$73,715	\$0	\$73,715	\$0	\$73,715
2016	\$0	\$36,858	\$0	\$36,858	\$0	\$36,858
2015	\$0	\$36,858	\$0	\$36,858	\$0	\$36,858
2014	\$0	\$36,858	\$0	\$36,858	\$0	\$36,858
2013	\$0	\$36,858	\$0	\$36,858	\$0	\$36,858

Property Deed History

Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Number
1/25/2021	SHD	SHERIFF'S DEED	CASTANEDA JOEL & REVINA S	HERNANDEZ JAVIER			3186652
1/7/2011	GWD	GEN. W/D	CASTANEDA RUBEN	CASTANEDA JOEL & REVINA S			2168398
4/24/2008	WDV	WARRANTY DEED/VENDORS LIEN	HINOJOSA ATANACIO JR & GLORIA	CASTANEDA RUBEN			1882842



Parcels: HERNANDEZ JAVIER

[View More Property Information](#)

[Click Here for GIS Shapefile Data](#)

Property Information

Property ID: 724193

Legal Acreage: 1.41

GEO ID: C1400-00-066-0010-12

Legal Description: CAPISALLO BNG AN IRR TR N367.94'-S1050'-E199.53'-W319.53' LOT 10 BLK 66 1.41 AC

Tract or Lot: 10

Abstract Subdivision Code: C140000

Block: 66

Neighborhood Code: C140000

School District: SMC

[Zoom to](#) ...

724193



724193

NOTICE
(RFQ # 2024-022)

The City of Mercedes is soliciting sealed Requests for Qualifications (RFQ) from qualified applicants to serve as Municipal Court Judge. Qualified applicants are invited to submit qualifications and proposals for the provision of these services. In order to be considered, proposals must address each of the requests for information included in this document.

All addenda, notices, additional information, etc. will be posted on the City of Mercedes website at www.cityofmercedes.com.

One (1) original copy of the proposal and one (1) electronic copy must be sealed and returned to the City of Mercedes, City Hall, no later than 3:00 p.m. CST on Wednesday, November 27, 2024, to the attention of:

City Manager
Mercedes City Hall
400 S. Ohio Ave.
Mercedes, TX 78570

All proposals must be clearly marked with “RFQ 2024-022 – Municipal Judge Services.” Proposer is responsible for delivery of response by the date and time set for the closing of the proposal acceptance. Responses received after the date and time set for the closing will not be considered.

The City of Mercedes reserves the right to reject any and all proposals and waive informalities in proposals received.

All inquiries concerning the RFQ must be made in writing and addressed to the address or email address listed below, with e-mail being the preferred method.

City of Mercedes
Joselynn Castillo
City Secretary
400 S. Ohio Ave.
Mercedes, TX 78570
Phone: 956-565-3114
Email: jcastillo@cityofmercedes.com

Joselynn Castillo
City Secretary

**CITY OF MERCEDES
REQUEST FOR QUALIFICATIONS**

RFP NUMBER # 2024-022

RFP TITLE: MUNICIPAL JUDGE SERVICES

DATE DUE: NOVEMBER 27, 2024

DUE NO LATER THAN 3:00 P.M.

RFQs will be opened at the CITY OF MERCEDES CITY HALL, 400 S. Ohio Ave. Mercedes, Texas. on November 27, 2024 at 3:00 p.m. (as per City Secretary’s time clock) on deadline due date.

RFQs received later than the date and time above will not be considered.

Please return RFQ **ORIGINAL (marked “ORIGINAL”)** and an **electronic (PDF format file only)** of your proposal for review by evaluation committee in a sealed envelope. Be sure that return envelope shows the RFP Number, Description and is marked “RFQ 2024-022 – Municipal Judge Services”.

RETURN RFP TO:
by U.S. mail or delivered to the office of the City Manager.,
Mercedes City Hall
400 S. Ohio Ave.,
Mercedes, Texas 78570.

For additional information, clarifications and/or questions or to request addendum please contact: Joselynn Castillo at jcastillo@cityofmercedes.com.

YOU MUST SIGN BELOW IN INK. FAILURE TO SIGN WILL DISQUALIFY THE OFFER. All prices must be typewritten or written in ink.

Company Name: _____

Company Address: _____

City, State, Zip Code: _____

Telephone No. _____ Fax No. _____ e-mail _____

Historically Underutilized Business (State of Texas) Certification VID Number: _____

Print Name: _____ Signature: _____

How did you find out about this RFQ? _____ (ex: Newspaper, Web, Mail)

Is Proposer’s principal place of Business within CITY OF MERCEDES? Yes - No

(Your signature attests to your offer to provide the goods and/or services in this RFQ according to the published provision of this bid. When an award letter is issued, this RFQ becomes the contract. If an RFQ required specific Contract is to be utilized in addition to this RFQ, this signed RFQ will become part of that contract. When an additional Contract is required, an RFQ award does not constitute a contract award and RFQ / Contract is not valid until contract is awarded by City Commission (when applicable), signed by City Manager and purchase order is issued.)

**City of Mercedes
Request for Qualifications
Municipal Judge Services
Instructions to Interested Respondent**

1. Scope of Services

a. General

The Mercedes Municipal Court is currently not a court of record. The court has jurisdiction over all statutory Class C misdemeanors and violations of city ordinance occurring within the City's corporate limits. The Office of Presiding Municipal Court Judge is established by City Charter, and the Presiding Judge is appointed by the City Commission for a two (2) year term. The Presiding Judge is an independent service provider and not an employee of the City. Currently, the Municipal Court is held every Wednesday. Court session includes appearance docket, pre-trial docket, bench trial docket, jury trial docket, juvenile court docket and show cause docket. Court is held in session until all court business has been concluded. The Judge performs magistrate duties as authorized by state law including issuance of warrants and summons; authorizing arrest, search, and seizure warrants, advising persons in custody of their constitutional rights; and set bonds.

2. Statement of Qualification

Proposals will be accepted from both applicants qualified to serve as a judge of a municipal court not of record. And by licensed attorneys who are qualified to serve as a judge of a municipal court of record. License attorneys may include proposals for both courts of record and courts not of record.

a. Municipal Courts Not of Record Qualifications

- i. Must be a resident of the State of Texas
- ii. Must be 21 years of age or older.
- iii. Must have completed the mandatory judicial educational requirements prescribed in Rule 5 of the Rules of Judicial Education.
- iv. Must have prior experience as a municipal court or justice court judge.
- v. Must be bondable.

b. Municipal Court of Record: Must meet all qualification stated in subsection a above and be an attorney licensed by the Texas Bar and eligible to practice law in the State of Texas.

3. Appointment

The presiding judge is appointed by the City Commission as per City of Mercedes City Charter. An agreement shall address the terms and conditions of appointment including compensation as agreed by the appointee and City Commission.

4. Description of the Government

The City of Mercedes is a home rule municipality. In accordance with its charter, the City operates as a council/city manager form of government. The City Commission consists of four (4) members and a mayor, elected at large for a term of three years. The City Manager is hired by and reports the City Commission and directs all City operations. The City of Mercedes provides the following services as authorized by its charter: Police, Fire and Emergency Services, Public Utilities, Streets and Parks, Code Compliance, Development Services, and Municipal Administrative Services. The City of Mercedes services an area of over 11.8 square miles with a population of approximately 16,700.

5. Proposal Requirements

a. Requested Information

- i. Cover Letter
- ii. Statement of Qualifications
- iii. Texas Bar Number
 1. Release authorizing city to access all Texas Bar Association disciplinary investigations or actions.
- iv. Three professional references with addresses and phone numbers

- b. Proposed fee Schedule: Please provide a proposed fee schedule for services to be provided. Respondents proposing to serve as a Court of Record should include fees for each court session, jury trial and magistrate fee(s), if applicable, and any other fee information the applicant believes will be helpful in evaluating the applicant's response.



HIDALGO COUNTY URBAN COUNTY PROGRAM

October 30, 2024

All City Managers,
Hidalgo County

Re: 2024-2025 Fiscal Year Interlocal Agreement

To All City Managers:

Attached is the Interlocal Agreement for the 2024-2025 Urban County Program fiscal year that must be approved by your city council. Please return Interlocal Agreement to the Urban County Program office no later than **Friday, November 29, 2024**. In addition, minutes reflecting city council's approval of the Interlocal Agreement are also required. The UCP will accept signed and stamped excerpts of minutes in lieu of official certified minutes not being ready before the due date. Please see guidelines below:

Codes of Conduct - In addition to various Exhibits in the Agreement, the Agreement contains Exhibit A-I, the Code of Conduct Certifications. The Code of Conduct must be signed by each city council member, the city secretary, and city manager. Note that there are only five (5) copies of the Code of Conduct included in your Agreement; make additional copies for signature as needed.

Signing the Codes of Conduct - In **BLUE INK**, is required for all original signatures.

Failure to submit the Interlocal Agreement - The Interlocal Agreement is due every fiscal year for cities participating in the Urban County Program. **Failure to submit approved Interlocal Agreement by November 29, 2024 will result in forfeiture of funds.**

Please note that once the agreement has been returned to UCP with approval certification and signatures, the agreements will then be submitted to Commissioner's Court to complete the required approval process. A completely signed copy will be forwarded to each city for your administration files. Should you have any questions or concerns, please do not hesitate to contact Anita Jenny, CDBG Division Manager III or myself at 956-787-8127.

Respectfully,

Nellie Flores, Finance Manager III
Urban County Program

NF/mg

Enclosure: Interlocal Agreement with Exhibits.

1916 TESORO STREET □ PHARR, TEXAS 78577 □ (956) 787-8127 FAX: (956) 318-2988
E-mail: ucp@co.hidalgo.tx.us

**Equal Housing Opportunity
Equal Employment Opportunity Employer**

105

INTERLOCAL AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This Interlocal Agreement, made and entered into by and between the County of Hidalgo, a political subdivision of the State of Texas, hereafter referred to as the “County” and the [City of Mercedes](#), a municipal corporation under the laws of the State of Texas, hereafter referred to as “City”.

WITNESSETH

WHEREAS, the Department of Housing and Urban Development made a Determination of Essential Powers on November 16, 1987 which depicts Hidalgo County as having the “essential powers” to carry out community renewal and lower income housing assistance in the County, and

WHEREAS, the Department of Housing and Urban Development formally allocated [\\$7,507,970.00](#) of Fiscal Year [2024](#) Community Development Block Grant (CDBG) Funds under Grant No. [B-24-UC-48-0501](#) to County, and

WHEREAS, the City and County have entered into a Cooperation Agreement which allows the County to use the City’s population as the basis for qualification as an Urban County, and

WHEREAS, both the County and the City need to set out basic administrative understandings for the proper expenditure of CDBG funds as set out in 24 CFR.570 and other related federal rules and regulations as they apply to Subrecipients.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the County and the City do mutually agree as follows:

SECTION I
Rules and Regulations

The City agrees to cooperate with the County in respect to the implementation of CDBG activities to be carried out in the City’s jurisdiction as per 24 CFR 570 and other rules, regulations and decisions as may be made by the Department of Housing and Urban Development or any other federal or state agency that may legally exercise its jurisdiction over expenditures of CDBG funds. Both City and County agree and understand that the County is the grantee for the CDBG funds and the City is subject to all rules and regulations governing Subrecipients under 24 CFR 570.

SECTION II
Applicability of Uniform
Administrative Requirements

The County understands that it is responsible for the maintenance, retention, accessibility and public disclosure of all records, expenditures and files as may be promulgated for the administration of CDBG funds and as may be required by 24 CFR 570 and the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments.” (24 CFR Part 85) or any variation as may be approved by HUD The City agrees to work with the County to make available all data, information and records as may be necessary for the proper accounting of all CDBG expenditures and activities. A description of City

and County responsibilities can be found in Exhibit B Matrix. City agrees to make all records available to the County and shall not be the custodian of any official records or information.

City agrees to comply with 2 CFR Part 200 and with the following sections of 24 CFR Part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government”:

- (1) Section 85.3, “Definitions”;
- (2) Section 85.6, “Exceptions”;
- (3) Section 85.12, Special grant or subgrant conditions for “high-risk “grantees”;
- (4) Section 85.20, “Standards for financial management systems,” except paragraph (a);
- (5) Section 85.21, “Payment,” except as modified by SS570.513;
- (6) Section 85.22, “Allowable costs”;
- (7) Section 85.26, “Non-federal audits”
- (8) Section 85.32, “Equipment,” except in all cases in which the equipment is sold, the proceeds shall be program income;
- (9) Section 85.33, “Supplies”;
- (10) Section 85.34, “Copyrights”;
- (11) Section 85.35, “Sub-awards to debarred and suspended parties”;
- (12) Section 85.36, “Procurement,” except paragraph (a);
- (13) Section 85.37, “Subgrants”;
- (14) Section 85.40, “Monitoring and reporting program performance,” except paragraphs (b)-(d) and (f);
- (15) Section 85.41, “Financial Reporting.” except paragraphs (a), (b), and (e);
- (16) Section 85.42, “Retention and access requirements for records”;
- (17) Section 85.43, “Enforcement”;
- (18) Section 85.44, “Termination for convenience”;
- (19) Section 85.51, “Later disallowances and adjustments”; and
- (20) Section 85.52, “Collection of amounts due.”

the City agrees to submit a yearly Certified City Financial Audit regardless of the dollar amount expended in that fiscal year in the time and manner prescribed by the County.

SECTION III Other Program Requirements

The City agrees to comply with “Other Program Requirements” as listed in Exhibit D (24 CFR 570.600-611) except for the environmental responsibilities outlined at 24 CFR 570.604 and the review process under Executive Order 12372.

SECTION IV Allocation

The City understands that the Urban County allocation has been set at [\\$7,507,970.00](#) for [Fiscal Year 2024](#) and that City’s allotment has been set at [\\$255,774.00](#). The City agrees to cooperate with the county in the expenditure of these funds for the activities so described in Exhibit A of this Agreement and that Exhibit A is an integral part of this Agreement.

The City further agrees to inform the County on any changes in scope, funding or location of the activities listed on Exhibit A prior to executing any change. Any changes proposed by City must be approved by the County in reference to eligibility, program compliance and citizen participation requirements.

City and County mutually agree that the City shall have four (4) fiscal years to properly expend or cause to be expended, according to all applicable rules and regulations, all funds allocated to it in **Fiscal Year 2024**. In consideration for the same, the City agrees not to have more than 1.5 times its annual allocation in its line of credit by **April 30, 2025**; Funds in excess of the 1.5 standards shall be subject to the Recapture by the Urban County Program, and/or any applicable Redistribution & Recapture Policy. The County shall recapture any and all unobligated funds that a City fails to expend or obligate, by **June 30, 2025** and shall expend such funds at the discretion of the Hidalgo County Commissioners' Court. The Hidalgo County Commissioners' Court may take any type of remedial action, including but not limited to Recapture, at any time to comply with any and all rules, regulations and decisions, and timeliness requirements as may be made by the Department of Housing and Urban Development or any other federal or state agency that may legally exercise its jurisdiction over expenditures of CDBG funds.

SECTION V Access

The City and County both agree to give the Department of Housing and Urban Development, the Inspector General, the Comptroller General of the United States, or any of its authorized representatives, access to and the right to examine, excerpt and transcribe all books, accounts, records, reports, files and other papers, things, or property belonging to or in use by the City or County for a period as such records are legally required to be maintained by the City or County.

SECTION VI Monitoring

The County reserves the right to carry out regular and periodic field inspections to ensure compliance with the requirements of this Agreement. City shall attend a compliance seminar after the award of funds and prior to the first draw. After each monitoring visit, County shall provide City with a written report of the monitor's inspection. If the monitoring report finds deficiencies in City's performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by City. Failure by City to take action as specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section XIV of this Agreement.

SECTION VII Conflict of Interest

In compliance with 24 CFR 611, the City and County both covenant that no member of their respective governing bodies nor any staff member who exercises influence on the decision making process, presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed on Exhibit A or will receive federal assistance from any activity.

The City and County both agree that no person who is an elected official, employee, consultant, or agent of the City or County shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Exhibit A during their tenure or for a period of one year thereafter.

No City or County employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described on Exhibit A.

Code of Conduct Certification attached to this agreement must be signed by elected officials, employees, consultants, or agents to the City. (See attachment A-1)

SECTION VIII
Religious Activities

The City and County both agree that none of the funds expended or activities undertaken shall be used in support of any sectarian or religious activity, nor shall any building or structure funded under this program be used for sectarian or religious activities.

SECTION IX
Real and Property Assets

The City and County agree that any property, real or personal, duly acquired with CDBG funds allocated to City shall become property of the City and shall be afforded the same maintenance and protection as other City property. City and County further agree that any real or personal property acquired shall be done in accordance with 24 CFR 570.606, 24 CFR 85 and/or any other federal rules or regulations as may apply.

City agrees not to purchase any real or personal assets unless so permitted by the County and such procurement shall be done in accordance with 24 CFR 570.606, 24 CFR 85 and/or any other federal rules or regulations as may apply.

The City agrees to maintain any real or personal asset in a prudent manner so as to ensure its useful life and to protect the federal government's interest in such real or personal asset from the perils of fire, storm, flood or theft through insurance coverage in the amount as may be deemed prudent by County. Failure to secure such protection shall be cause for termination of this agreement.

Any asset acquired or improved in part or in whole with CDBG funds must be used in an activity that is eligible and meets one of the national objectives listed in 24 CFR 570.208. Any asset acquired or improved in part or in whole with CDBG funds in excess of \$ 25,000 must be used for the CDBG activity so planned including the beneficiaries of such use. Any change in use or beneficiaries must be subject to the citizen participation requirements and approved by the County.

Should any use of an asset not qualify as meeting one of the national objectives or is not an eligible use under 24 CFR 570.200, the City shall reimburse the County the amount of the current fair market value of the asset less any portion thereof attributable to expenditures of non-CDBG funds in the acquisition or improvement of the asset.

The above requirements attributed to assets over \$25,000 shall remain in force for a period of five years after the final closeout of the County's participation in the Urban County Program. The disposition of any asset improved or acquired in part or in whole with CDBG funds by the City must be done with prior approval of the County and the County shall be reimbursed for the asset, if sold, in the full amount of the disposed value of the asset. The County may, at its option, request that such asset be transferred to the County if the asset is no longer being used to meet one of the national objectives or in any case where the City no longer uses the asset for its intended use.

SECTION X
Jurisdiction

The City and County agree to accept the jurisdiction of the Department of Housing and Urban Development in matters relating to the proper administration of programs and the proper expenditure of CDBG funds.

The City and County agree that the County is responsible for the proper administration of programs and the proper expenditure of CDBG funds and recognize that the County will be responsible for audit or programmatic findings or exceptions made by the HUD or any other agency that may exercise jurisdiction over HUD or any other agency that may exercise jurisdiction over HUD funds or programs.

In cases of an audit finding or exception based on action or inaction, representation or misrepresentation of the City, the City agrees to resolve such audit finding or exception for and on behalf of the County. Remedial actions that may be taken for the resolution of an audit finding or exception are defined in 24 CFR 570.910 and include the withholding of funds to the City for any outstanding finding(s) or exception(s). (See Exhibit-E)

The City understands and agrees this Interlocal Agreement shall remain in full force and effect until the Department of Housing and Urban Development has closed this Program Year [\(B-24-UC-48-0501\)](#) and accepted any resolutions to any and all audit or programmatic finding(s) or concern(s).

SECTION XI
Payment Requests and Program Income

The City agrees to follow administrative directions from the County in the areas of documenting and processing payment requests. The City further agrees to allow the County to make all payments and to account for all program income from any of its CDBG activities that may generate program income as outlined in this Section.

The City and County agree that program income generated from any approved CDBG project shall be retained by the City as long as such City provides the County by the 15th of each month, an accounting as may be required by the County of program income earned, retained, and expended by the City. The City shall be allowed to use the program income for the same or similar activities as generated the program income. Failure of the City to report program income as required shall cause the County to require all program income to be recovered by the County.

SECTION XII
Section 108 Loan Guarantee

County and City both agree that they may implement certain eligible activities as outlined in 24 CFR 570.703 with loan funds from the Section 108 Loan Guarantee Program as described in 24 CFR 570.700-709 approved and adopted November 6, 1991 (Vol. 56, No. 215 Federal Register).

The County and City will be allowed to submit an application for such funds per funding year in an amount less than three times its current allocation. Should the City or County submit more than one application during any combination of years, the cumulative amount of loan funds requested shall not exceed the total amount of five years of the current allocation. The City agrees that it will bear the full expense of obtaining Section 108 financing for the period of the repayment of Section 108 funds.

The County and City agree that they will maintain a legal binding relationship with each other under the terms of this Agreement and all previously signed Cooperation Agreement if the City wishes to participate in the Section 108 Loan Guarantee Program for the full term of the Section 108 Loan Agreement. The City agrees to pledge its current and future CDBG allocation and other security consideration as may be required, depending on the project risk, as security for the Section 108 Loan and such security pledge shall not bind or affect other cities' allocation in the Urban County Program.

Such legal binding relationship and security pledge shall remain in full force and effect for the full term of the Section 108 Loan Guarantee agreement and this agreement shall survive for the term of the Section 108 Loan. Details of any current Section 108 loan are included herein as Exhibit C, if applicable.

**SECTION XIII
Legal Action**

The City agrees to notify the County when a problem arises that may lead to any legal action or claim against the City and/or County. The City agrees to furnish to the County any information with respect to such action or claim. The City agrees not to take any action with respect to any legal matter or claim sought against the City and/or County without advice and consent of the County.

**SECTION XIV
Suspension and Termination**

City understands that this agreement may be suspended or terminated in accordance with 24 CFR 85.43 if the City materially fails to comply with the provisions of this agreement or the provisions so listed on Exhibits A through E. Termination for convenience may be implemented in accordance to the provisions listed in 24 CFR 85.44.

**SECTION XV
Changes or Amendments**

The City agrees to notify the County on any changes or amendments that it may desire or need to carry out the CDBG program in its area. All changes or amendments must first obtain approval from the County prior to implementation. All changes or amendments must conform to all federal rules and regulations applicable to the CDBG program.

**SECTION XVI
Essential Powers**

The City agrees that the County has the essential powers to implement any aspect of those activities identified in the 2023-2027 Five-Year Consolidated Plan & Strategy inclusive of specific projects identified in the annual One-Year Action Plan and subsequent amendments. The City further agrees to allow the County the authority to initiate, undertake and implement said projects within its jurisdictional boundaries without further notice to City by County for all projects identified in the 2023-2027 Five-Year Consolidated Plan & Strategy, Annual Action Plan and subsequent amendments to the Plans herein incorporated by reference.

Approved and signed this _____ Day of _____, 2024.

ATTEST:

Arturo Guajardo, Jr.
County Clerk

Richard F. Cortez,
Hidalgo County Judge

ATTEST:

City Secretary

Mayor

APPROVED AS TO FORM
Hidalgo County Criminal District Attorney's Office
Toribio "Terry" Palacios

By: _____
Victor M. Garza, Asst. District Attorney

Date: _____

**The following Exhibits are incorporated into the
2024 Interlocal Agreement:**

Exhibit A	2024 Proposed Activities
Exhibit A-1	Code of Conduct Enforcement
Exhibit B	Urban County Program Matrix
Exhibit C	Section 108 Loan Guarantee Program
Exhibit D	CDBG Regulations and other Program Requirements
Exhibit E	Audit Finding or Exceptions

Exhibit A

2024 Proposed Activities

2024	MERCEDES	\$255,774.00
21A Exempt 58.34 (a) (3)	<p>GENERAL PROGRAM ADMINISTRATION Funds shall be used for expenses related to compliance with CDBG requirements including but not limited to advertisements, postings and coordinating eligible related projects.</p> <p>Location: 400 S. Ohio Avenue, Mercedes Texas , TX 78570</p>	\$3,000.00
<p>03K Environmental Assessment 58.36</p>	<p>STREET IMPROVEMENTS Project consists of street paving (overlay) and full reconstruction of streets to include but not limited adjacent/abutting streets within the same general vicinity. Other expenditure include professional engineering services, surveying, geotechnical and construction material testing fees, and advertisement as needed.</p> <p>Locations: 1. Mile 9 N. Rd. (from Mile 2 West going East to approximately 1400 ft.) 2. Washington Ave. (from 6th St. to 10th St.) Mercedes, TX 78570</p> <p>Census Data: 229.00 (3), 231.04 (1) National Objective: 60.36% LMA Goal Outcome Indicator: 3270 Beneficiary Type: People</p>	\$252,774.00

Exhibit A-1
Code of Conduct Certifications

CODE OF CONDUCT

No employee, officer or agent of the *County of Hidalgo-Urban County Program, sub-grantee or subrecipient* shall participate in selection or in the award or administration of a contract or conduct business with a vendor if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. *the employee, officer or any agent*
- B. *any member of his immediate family*
- C. *his or her partner*
- D. *an organization which employs or is about to employ, any of the above, has a financial or other interest in the firm selected for award.*

The *Urban County Program's , sub-grantee or subrecipient, officers, employees or agents* shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, or vendors or potential vendors. Depending on gravity, violation of this Code of Conduct could result in dismissal, probation or suspension of officers, employees or agents involved or termination of contractual agreements with subrecipients.

Non-disclosure Policy

No disclosure of verbal or written price quotations shall be made by any *Urban County Program* employee, sub-grantee or subrecipient. Violation of the nondisclosure policy shall be subject to disciplinary action as provided by the *County of Hidalgo* or termination of contractual agreements when a subrecipient/sub-grantee employee is involved.

Personal Interest

No member of the *Hidalgo County Commissioners or any officer or employee of the Urban County Program, sub-grantee or subrecipient* shall have a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract or in the sale to the *Urban County Program, sub-grantee or subrecipient* or to a contractor supplying the *Urban County Program, sub-grantee or subrecipient* of any land or rights or interest in any land, material, supplies, or services, or in any matter in which he acts for the *Urban County Program*. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the *Urban County Program, sub-grantee or subrecipient* found guilty shall thereby forfeit his or her office. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the *Urban County Program, sub-grantee or subrecipient* shall render the contract voidable by the *Urban County Director or the board of Commissioners*.

Employee, Officer, or Agent Acknowledgment

Print or Type Name and Position/Title

Entity/Organization Name

Date

CODE OF CONDUCT

No employee, officer or agent of the *County of Hidalgo-Urban County Program, sub-grantee or subrecipient* shall participate in selection or in the award or administration of a contract or conduct business with a vendor if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. *the employee, officer or any agent*
- B. *any member of his immediate family*
- C. *his or her partner*
- D. *an organization which employs or is about to employ, any of the above, has a financial or other interest in the firm selected for award.*

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Exhibit B

Urban County Matrix

Pre-Bid Activities

Development of Annual Workplan

This activity is a city responsibility with the county involvement only as is necessary to assure that the individual activities meet one of the three national objectives.

Revisions or Amendments to Annual Workplan

Same as above (only two amendments allowed per fiscal year)

Eligibility Test on Activities

This is a county responsibility working with the cities to assure all activities meet one of the three national objectives. The County will assure that the 51 percent benefit to low and moderate income persons can be verified and that the activities are eligible for funding. The county may request an eligibility determination from HUD should a difference of opinion arise between the City and the County.

Public Hearings

This responsibility will be a shared responsibility between the Cities and the County. In accordance with the adopted Citizen Participation Plan, the Cities will conduct a public hearing in their respective Cities after public notice. The County will then have a second public hearing at the County level on the county-wide workplan, after public notice.

Environmental Assessment

This is a County responsibility with concurrence and assistance by the Cities. The County will determine what level of clearance is needed and will do noise, hazard, historical, floodplain, etc. assessments as may be needed with as much city input as possible. The County Judge will consider the “do nothing” alternative after consultation with the respective Mayors. The County Judge and or UCP Staff will direct all mitigation efforts if necessary. The County Judge will sign all environmental assessment reviews and findings. (A County Signatory may be appointed: UCP Director)

Advertise for Professional Services

This is a County responsibility whereby the County will advertise once a year for all professional services through a statement of qualifications process. The County will provide all data concerning proposed activities and type of services needed. This list will be sent to all Cities so that the Cities may decide on the professional services as they see the need for the services. Should a city need services not available from the list (UC-1 List) of Professional Services, the City shall advertise for the service after consulting with the Urban County Program staff.

Selection of Professional Services Provider

This is a City and County shared responsibility, based on the Texas Local Government code and other applicable laws and regulations. County will make sure that the provider is not a contractor's debarred list by consulting with the System for Award Management (SAM) website (www.sam.gov), prior to recommendation for awarding a contractor to Hidalgo County Commissioner's Court.

Execute Professional Contracts

The City will negotiate the Professional Service Contract, and submit a Best and Final Offer (BAFO) along with Scope of Services, Project Cost Estimate, Certificate of Debarment, CIQ Form and IRS W-9 Form. The County will prepare the Professional Contract Agreement documents and submit to Hidalgo County Commissioner's Court for approval of contract. Any modifications to the County contracts require prior approval of the County Legal Department. Once approved, the County will forward the contracts to the Professional Service Provider for proper signatures, they will return to the County for the County's execution and County will issue Notice to Proceed.

Review of Preliminary Drawings

This is a city responsibility.

Solicit Davis-Bacon Wage Rates

This is a County responsibility. The County will obtain wage rates from HUD for specific projects and will forward wage rates to the respective Cities and the Professional Service Provider to include in the bid specification packages.

Review and Approval of Final Plans and Specifications

This is a City responsibility where by the Mayor's signature will be required on all plans and specifications prior to bidding. Final plans should be forwarded to Urban County Program office prior to bid advertisement for compliance check.

Advertise for Construction Bid

This is a County responsibility. The County will advertise for all construction projects and will instruct bidders as to the availability of plans and specs, (to be picked up at Professional Service Provider's choice of location), and will advise bidders as to who will accept bids. (Hidalgo County Purchasing Department – any given Wednesday at 9:30am)

Pre-Bid Conference

This is a County responsibility. County will conduct a pre-bid conference if necessary at the Urban County program Conference Room, accompanied by the Professional Service Provider and the project's respective City.

Bid Activities

Ten Day Wage Rate Check

This is a County responsibility. Ten days prior to any bid opening, the County will ascertain as to the applicability of the wage rate in the bid documents. Should the wage rate change all appropriate engineers will be notified and instructed to change wage rates.

Accept Construction Bids

This is a County Purchasing Department responsibility. The Hidalgo County Purchasing Department will accept bids as per the conditions set forth in the specification handbook.

Accept and Tabulate Bids

This is a County Purchasing Department responsibility with an Urban County, City, and Professional Service Provider representative at bid opening. The respective Professional Service Provider will review the bids received and make their recommendation to the Urban County Program.

Research Apparent Low Bidder

This is a shared responsibility. The respective Professional Service Provider will research and review apartment low bidder's past performances and their bids. The Urban County program will research the list of Debarred Contractor's and make a finding in the regard.

Bid Recommendation

This is a City responsibility. The respective Professional Service Provider will recommend the lowest and most responsible bid to the City. The city will send a recommendation to the County. County will request approval by Hidalgo County Commissioner's Court for approval of contract.

Contract Award

The County upon approval by Hidalgo County Commissioner's Court will prepare the contract documents and forward them to the approved Contractor for execution.

Pre-Construction Activities

Construction Contract and Bonds

This is a shared responsibility. The Professional Service Provider will coordinate the execution of construction contracts to include Insurance, Payment and Performance Bonds. Once they receive four (4) original set of construction contracts they will submit to the County for execution. Any modifications to the construction contracts require prior review by Legal Department and approval by Hidalgo County Commissioner's Court.

Pre-Construction Conference

The Urban County Program will conduct a Pre-construction conference to inform the contractor of the various federal regulations such as Affirmative Action, Section 3 Compliance, and Davis-Bacon Wage Compliance. The Pre-construction conference will be held at the Urban County Program

Conference Room, with the city and professional service provider representatives present. Once contracts are signed, County will prepare and issue a Notice to Proceed.

Document Posting and Construction Signs

This is a shared responsibility. The city and Professional Service Provider will ensure itself that the appropriate documents are posted at the site and that the construction sign is erected.

Construction Activities

Davis-Bacon Compliance

This is a shared responsibility. The City may be asked to conduct wage rate employee interviews. The County will conduct wage rate interviews and review wage rates on payroll reports submitted with request for payments.

Periodic Project Inspections

This is a shared responsibility. The City, County, and Professional Service Providers will conduct periodic site inspections of the project site.

Payment Request Approval

This is a shared responsibility. The Professional Service Provider will review and sign off on request for payments and forward RFP to the City for signature and approval, and forward the final RFP to the County for review and approval of payment.

Change Orders

This is a shared responsibility. Professional Service Provider will recommend any change orders after negotiating said change order with the contractor. All change orders must have City's approval prior to submission to County for review and approval.

Contract Amendment

This is a shared responsibility. The City will recommend any contract amendments to the County. County will consider and take appropriate action to approve or deny the contract amendment if necessary.

Final Payment Approval

This is a shared responsibility. The City and Professional Service Provider will conduct final project site inspections to ensure that construction has been completed as per plans and specifications prior to submitting final request for payment recommendation to the County. County will ensure that all applicable laws and regulations have been complied with. County will review wage rate compliance, release of liens, certification of construction completion, warranty certification and other pertinent documents.

Exhibit C

Section 108 Loan Guarantee Program

Introduction

Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. This makes it one of the most potent and important public investment tools that HUD offers to local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects that can renew entire neighborhoods. Such public investment is often needed to inspire private economic activity, providing the initial resources or simply the confidence that private firms and individuals may need to invest in distressed areas. Section 108 loans are not risk-free, however; local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations to cover the loan amount as security for the loan.

Regulations governing the Section 108 program may be found at [24 CFR 570](#), Subpart M, Loan Guarantees.

Eligible Applicants

Eligible applicants include the following public entities:

- metropolitan cities and urban counties (i.e. CDBG entitlement recipients);
- nonentitlement communities that are assisted in the submission of applications by States that administer the CDBG program; and
- nonentitlement communities eligible to receive CDBG funds under the HUD-Administered Small Cities CDBG program (Hawaii). The public entity may be the borrower or it may designate a public agency as the borrower.

Eligible Activities

Activities eligible for Section 108 financing include:

- economic development activities eligible under CDBG;
- acquisition of real property;
- rehabilitation of publicly owned real property;
- housing rehabilitation eligible under CDBG;
- construction, reconstruction, or installation of public facilities (including street, sidewalk, and other site improvements);
- related relocation, clearance, and site improvements;
- payment of interest on the guaranteed loan and issuance costs of public offerings;
- debt service reserves;
- public works and site improvements in colonias; and
- in limited circumstances, housing construction as part of community economic development, Housing Development Grant, or Nehemiah Housing Opportunity Grant programs.

For purposes of determining eligibility, the CDBG rules and requirements apply. As with the CDBG program, all projects and activities must either principally benefit low- and moderate-income persons, aid in the elimination or prevention of slums and blight, or meet urgent needs of the community.

Maximum Commitment Amount

Commitments are limited as follows:

1. Entitlement public entities. An entitlement public entity may apply for up to five times the public entity's latest approved CDBG entitlement amount, minus any outstanding Section 108 commitments and/or principal balances of Section 108 loans.
2. State assisted public entities. A nonentitlement public entity may apply for up to five times the latest approved CDBG amount received by its State, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans for which the State has pledged its CDBG funds as security.
3. Nonentitlement public entities eligible under the HUD administered Small Cities Program. For a public entity in Hawaii, the maximum commitment amount is five times the public entity's latest grant under 24 CFR 570, Subpart F, minus any outstanding Section 108 commitments and/or principal balances on Section 108 loans.

Loan Details

Security: The principal security for the loan guarantee is a pledge by the applicant public entity or the State (in the case of a nonentitlement public entity) of its current and future CDBG funds. Additional security will also be required to assure repayment of guaranteed obligations. The additional security requirements will be determined on a case-by-case basis, but could include assets financed by the guaranteed loan.

Repayment: The maximum repayment period for a Section 108 loan is twenty years. HUD has the ability to structure the principal amortization to match the needs of the project and borrower. Each annual principal amount will have a separate interest rate associated with it.

Financing Source: Section 108 obligations are financed through underwritten public offerings. Financing between public offerings is provided through an interim lending facility established by HUD.

Interest Rates: Interest rates on interim borrowing are priced at the 3 month London Interbank Offered (LIBO) rate plus 20 basis points (0.2%). Permanent financing is pegged to yields on U.S. Treasury obligations of similar maturity to the principal amount. A small additional basis point spread, depending on maturity, will be added to the Treasury yield to determine the actual rate.

Default: To date, there has been no default under Section 108 resulting in a repayment by HUD. In the event of default requiring a payment, HUD would continue to make payments on the loan in accordance with its terms. The source of payments by HUD pursuant to its guarantee would almost always be pledged CDBG funds. However, HUD does have borrowing authority with the U.S. Treasury if the pledged funds are insufficient.

For More Information visit www.hud.gov

Source: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/108

Exhibit D

CDBG Regulations and Other Program Requirements

Subpart A—General Provisions

SOURCE: 53 FR 34437, Sept. 6, 1988, unless otherwise noted.

§ 570.1 Purpose and primary objective.

(a) This part describes policies and procedures applicable to the following programs authorized under title I of the Housing and Community Development Act of 1974, as amended:

- (1) Entitlement grants program (subpart D);
- (2) Nonentitlement Funds: HUD-administered Small Cities and Insular Area programs (subpart F);
- (3) State program: State-administered CDBG nonentitlement funds (subpart I);
- (4) Special Purpose Grants (subpart E);
- (5) Urban Development Action Grant program (subpart G); and
- (6) Loan Guarantees (subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term “*CDBG funds*”, as defined in § 570.3, shall mean the grant funds under those programs. The subparts do not apply to the State program (subpart I) except to the extent expressly referred to.

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)).

[53 FR 34437, Sept. 6, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 61 FR 11475, Mar. 20, 1996; 69 FR 32778, June 10, 2004]

§ 570.3 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

Act means title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 *et seq.*).

Age of housing means the number of year-round housing units, as further defined in section 102(a)(11) of the Act.

Applicant means a State or unit of general local government that makes application pursuant to the provisions of subpart E, F, G or M.

Buildings for the general conduct of government shall have the meaning provided in section 102(a)(21) of the Act.

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D, F, or § 570.405 of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part, urban renewal surplus grant funds, and program income as defined in § 570.500(a).

Chief executive officer of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

City means the following:

(1) For purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

(ii) Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes that are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

Community Development Financial Institution has the same meaning as used in the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 note).

Consolidated plan. The plan prepared in accordance with 24 CFR part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with subpart E of this part.

Entitlement amount means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

Extent of growth lag shall have the meaning provided in section 102(a)(12) of the Act.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

Extent of poverty means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of “extent of poverty” for regional or area variations in income and cost of living.

Family refers to the definition of “family” in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

Income. For the purpose of determining whether a family or household is low- and moderate-income under subpart C of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

(1)(i) “Annual income” as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under § 570.202, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

(ii) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions; and

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

Insular area shall have the meaning provided in section 102(a)(24) of the Act.

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Metropolitan area shall have the meaning provided in section 102(a)(3) of the Act.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act except that the term "central city" is replaced by "principal city."

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Nonentitlement amount means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.

Nonentitlement area shall have the meaning provided in section 102(a)(7) of the Act.

Population means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State shall have the meaning provided in section 102(a)(2) of the Act.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

Urban county shall have the meaning provided in section 102(a)(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

Urban Development Action Grant (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and subpart G of this part.

[53 FR 34437, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 60 FR 1915, 1943, Jan. 5, 1995; 60 FR 56909, Nov. 9, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 11475, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004; 77 FR 5675, Feb. 3, 2012]

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, the allocation of appropriated funds to insular areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as appropriate.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and principal cities effective as of July 1 preceding such federal fiscal year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and

(3) With respect to the status of Metropolitan Statistical Areas and principal cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all non-entitled areas shall be excluded. It is recognized that all such

data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeout procedures, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

[53 FR 34437, Sept. 6, 1988, as amended at 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004]

§ 570.5 Waivers.

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

[61 FR 11476, Mar. 20, 1996]

Subpart B [Reserved]

Subpart C—Eligible Activities

SOURCE: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in § 570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(d)(3) for additional discussion

of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(d)(2). In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under § 570.205 and § 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to § 570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.

(v) Funds expended for any other activities qualifying under § 570.208(a) shall be counted for this purpose in their entirety.

(4) *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR PART 200 ¹ All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

¹ These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998-9999 or (800) 483-2209 (TDD).

(i) Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(1) *Definition of special assessment.* The term “special assessment” means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(2) *Special assessments to recover capital costs.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(3) *Public improvements not initially assisted with CDBG funds.* The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in § 570.208(a)(1), (b), or (c); and

(iii) The requirements of § 570.200(c)(2)(ii) are met.

(d) *Consultant activities.* Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

(f) *Means of carrying out eligible activities.* (1) Activities eligible under this subpart, other than those authorized under § 570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through loans or grants under agreements with subrecipients, as defined at § 570.500(c); or

(iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under § 570.204(a) may only be undertaken by entities specified in that section.

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR part 58;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or \$300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition,

construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[53 FR 34439, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 68 FR 56404, Sept. 30, 2003; 69 FR 32778, June 10, 2004; 70 FR 76369, Dec. 23, 2005; 72 FR 46370, Aug. 17, 2007]

§ 570.201 *Basic eligible activities.*

CDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.504.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.207(a), carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in § 570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.200(b).

(d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer down payment assistance, or recreational needs. To be eligible for CDBG assistance, a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e) (1) or (2) of this section, as applicable:

(1) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for entitlement grants made under subpart D of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in § 570.500(a). For entitlement grants under subpart D of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.

(2) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98-8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:

(i) For an entitlement grantee, 15% of the program income it received during the preceding program year; plus

(ii) A portion of the grant received for the program year which is the highest of the following amounts:

(A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;

(B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;

(C) The amount of funds it obligated for public services in the 1982 program year; or,

(D) The amount of funds it obligated for public services in the 1983 program year.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities, and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is (1) required under the provisions of § 570.606 (b) or (c); or (2) determined by the grantee to be appropriate under the provisions of § 570.606(d).

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(k) *Housing services.* Housing services, as provided in section 105(a)(21) of the Act (42 U.S.C. 5305(a)(21)).

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

(n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

(o)(1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.

(3) For purposes of this paragraph (o), “persons developing microenterprises” means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).

(p) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under § 570.205.

(q) *Assistance to institutions of higher education.* Provision of assistance by the recipient to institutions of higher education when the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

[53 FR 34439, Sept. 6, 1988, as amended at 53 FR 31239, Aug. 17, 1988; 55 FR 29308, July 18, 1990; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 67 FR 47213, July 17, 2002; 71 FR 30034, May 24, 2006]

§ 570.202 *Eligible rehabilitation and preservation activities.*

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under § 570.201(c); and

(5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements that may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937;

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937; and

(11) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law

or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

(f) *Lead-based paint activities.* Lead-based paint activities pursuant to § 570.608.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 64 FR 50225, Sept. 15, 1999; 71 FR 30035, May 24, 2006]

§ 570.203 *Special economic development activities.*

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart that may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

§ 570.204 *Special activities by Community-Based Development Organizations (CBDOs).*

(a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the

entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;

(2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR 91.1(a)(1)(iii); activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 570.207(a);

(2) Carrying out public services that do not meet the requirements of § 570.201(e), except that:

(i) Services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(ii) Services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR 91.215(e) shall not be subject to the limitations in § 570.201(e)(1) or (2), as applicable;

(3) Providing assistance to activities that would otherwise be eligible under § 570.203 that do not meet the requirements of § 570.209; or

(4) Carrying out an activity that would otherwise be eligible under § 570.205 or § 570.206, but that would result in the recipient's exceeding the spending limitation in § 570.200(g).

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions

located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

(3) A CBDO that does not qualify under paragraph (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraph (c)(1) or (2) of this section.

[60 FR 1944, Jan. 5, 1995, as amended at 71 FR 30035, May 24, 2006]

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) Housing, including the development of a consolidated plan;

- (ii) Land use and urban environmental design;
- (iii) Economic development;
- (iv) Open space and recreation;
- (v) Energy use and conservation;
- (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
- (vii) Transportation;
- (viii) Utilities; and
- (ix) Historic preservation.

(4) Other plans and studies such as:

- (i) Small area and neighborhood plans;
- (ii) Capital improvements programs;
- (iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201-570.204);
- (iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201-570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);
- (v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;
- (vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and
- (vii) Analysis of impediments to fair housing choice.
- (viii) Developing an inventory of properties with known or suspected environmental contamination.

(5) [Reserved]

(6) Policy—planning—management—capacity building activities which will enable the recipient to:

- (1) Determine its needs;
- (2) Set long-term goals and short-term objectives, including those related to urban environmental design;

- (3) Devise programs and activities to meet these goals and objectives;
- (4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
- (5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

§ 570.206 *Program administrative costs.*

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204, since those costs are eligible as part of such activities.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under subpart F). Program administration includes the following types of assignments:

- (i) Providing local officials and citizens with information about the program;
- (ii) Preparing program budgets and schedules, and amendments thereto;
- (iii) Developing systems for assuring compliance with program requirements;
- (iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (v) Monitoring program activities for progress and compliance with program requirements;
- (vi) Preparing reports and other documents related to the program for submission to HUD;
- (vii) Coordinating the resolution of audit and monitoring findings;
- (viii) Evaluating program results against stated objectives; and
- (ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with CDBG funds.

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

(d) [Reserved]

(e) *Indirect costs.* Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with 2 CFR PART 200 as applicable.

(f) *Submission of applications for federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs. In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(g) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low and moderate income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low and moderate income persons. Examples of eligible actions are as follows:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880-883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for low and moderate income persons.

(h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.

(i) Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:

(1) A Federally designated Empowerment Zone or Enterprise Community; and

(2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995; 69 FR 32778, June 10, 2004]

§ 570.207 *Ineligible activities.*

The general rule is that any activity that is not authorized under the provisions of §§ 570.201-570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with CDBG funds:

(1) *Buildings or portions thereof, used for the general conduct of government* as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under § 570.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in § 570.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under 2 CFR PART 200—expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein or when carried out by an entity under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to 2 CFR PART 200 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with 2 CFR PART 200 as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42;

(ii) As authorized under § 570.201(m) or (n);

(iii) When carried out by an entity pursuant to § 570.204(a);

(4) *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 56912, Nov. 9, 1995; 65 FR 70215, Nov. 21, 2000]

§ 570.208 *Criteria for national objectives.*

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under § 570.208(a)(1)(i), except that the area served contains less than 51 percent low- and moderate-income residents, will also be considered to meet the objective of benefiting low- and moderate-income persons where the proportion of such persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. This exception is inapplicable to non-entitlement CDBG grants in Hawaii. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose, as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) An activity to develop, establish, and operate for up to two years after the establishment of, a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents required under paragraph (a)(1)(i) of this section or (as applicable) paragraph (a)(1)(ii) of this section, provided the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by

the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in § 570.200(c)) levied against residential properties owned and occupied by persons of low and moderate income.

(v) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraph (a)(1) (i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(vii) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section.

(iii) A microenterprise assistance activity carried out in accordance with the provisions of § 570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(iv) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(A) In such cases where such training or provision of supportive services assists business(es), the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the

grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining “affordable rents” for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(1) Meets the requirements of paragraph (a)(4)(v) of this section; or

(2) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(1) All block groups in the census tract have poverty rates of at least 20 percent;

(2) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(3) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG

assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under part 91 of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) The area also meets the conditions in either paragraph (A) or (B):

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(1) Physical deterioration of buildings or improvements;

(2) Abandonment of properties;

(3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(4) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(5) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at § 570.208(b)(1)(ii)(A), and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be re-determined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506 (b)(8)(ii).

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Activities to address slums or blight in an urban renewal area.* An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including *initial* land redevelopment permitted by the plan.

NOTE: Despite the restrictions in (b) (1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under § 570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of § 91.215(e) of this title and HUD has approved the strategy, the grantee may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at § 570.209(b)(2)(v) may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(vii) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (a)(4)(vi)(D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56912, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 71 FR 30035, May 24, 2006; 72 FR 46370, Aug. 17, 2007]

§ 570.209 Guidelines for evaluating and selecting economic development projects.

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under § 570.203. These guidelines also apply to activities carried out under the authority

of § 570.204 that would otherwise be eligible under § 570.203, were it not for the involvement of a Community-Based Development Organization (CBDO). (This would include activities where a CBDO makes loans to for-profit businesses.) These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are *mandatory*, but the guidelines for evaluating projects costs and financial requirements are not.

(a) *Guidelines and objectives for evaluating project costs and financial requirements.* HUD has developed guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. These guidelines, also referred to as the underwriting guidelines, are published as appendix A to this part. The use of the underwriting guidelines published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. The objectives of the underwriting guidelines are to ensure:

- (1) That project costs are reasonable;
- (2) That all sources of project financing are committed;
- (3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
- (4) That the project is financially feasible;
- (5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- (6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) *Standards for evaluating public benefit.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory. Certain public facilities and improvements eligible under § 570.201(c) of the regulations, which are undertaken for economic development purposes, are also subject to these standards, as specified in § 570.208(a)(4)(vi)(F)(2).

(1) *Standards for activities in the aggregate.* Activities covered by these guidelines must, in the aggregate, either:

- (i) Create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used; or
- (ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per \$350 of CDBG funds used.

(2) *Applying the aggregate standards.* (i) A metropolitan city, an urban county, a non-entitlement CDBG grantee in Hawaii, or an Insular Area shall apply the aggregate standards under paragraph (b)(1) of this

section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities Program, or Insular Areas CDBG grants prior to Fiscal Year 2005, shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution that serve an area that is predominantly low- and moderate-income persons;

(I) Provides assistance to a Community-Based Development Organization serving a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by HUD under the provisions of § 91.215(e) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by HUD under the provisions of § 91.215(e) of this title.

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

(3) *Standards for individual activities.* Any activity subject to these guidelines which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) \$50,000 per full-time equivalent, permanent job created or retained; or

(B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(4) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (b)(3)(i) of this section.

(ii) The individual activity standards in paragraph (b)(3)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (b)(3)(i) of this section.

(c) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (b) of this section.

(d) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If the grantee's actual results show a pattern of substantial variation from anticipated results, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

[60 FR 1947, Jan. 5, 1995, as amended at 60 FR 17445, Apr. 6, 1995; 71 FR 30035, May 24, 2006; 72 FR 12535, Mar. 15, 2007; 72 FR 46370, Aug. 17, 2007]

§ 570.210 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one LMA to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

(i) § 570.203(b); or

(ii) §§ 570.201(a)-(d), 570.201(l), 570.203(a), or § 570.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to § 570.204, a Community Based Development Organization (CDBO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of "directly assist," unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are non-overlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by

the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business; or the time period within which jobs are to be created as specified by the agreement between the business and the recipient if it is longer than three years.

(c) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or a CDBO (in the case of an activity carried out pursuant to § 570.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA;

(2) *Required information.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(3) *Reimbursement of assistance.* The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601-4655);

(2) *Microenterprises.* Assistance to microenterprises as defined by Section 102(a)(22) of the Housing and Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[70 FR 76369, Dec. 23, 2005]

Subpart K—Other Program Requirements

SOURCE: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

[61 FR 11477, Mar. 20, 1996]

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section

504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

[61 FR 11477, Mar. 20, 1996]

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decision making, and action responsibilities by execution of grant agreements with the Secretary.

[61 FR 11477, Mar. 20, 1996]

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

[61 FR 11477, Mar. 20, 1996]

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) *Displaced person.* (i) For purposes of paragraph (b) of this section, the term “ *displaced person* ” means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of

rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the “initiation of negotiations” if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term “ *displaced person* -” does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term “ *initiation of negotiations* ” means the

execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) *Residential anti-displacement and relocation assistance plan.* The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) *Responsibility of grantee or State.* (1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102)

[61 FR 11477, Mar. 20, 1996, as amended at 61 FR 51760, Oct. 3, 1996]

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

[68 FR 56405, Sept. 30, 2003]

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

[61 FR 5209, Feb. 9, 1996]

§ 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and 2 CFR PART 200 as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502.

² See footnote 1 at § 570.200(a)(5).

[60 FR 56916, Nov. 9, 1995]

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

[60 FR 56916, Nov. 9, 1995]

§ 570.612 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction

(reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§ 570.613 Eligibility restrictions for certain resident aliens.

(a) *Restriction.* Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. “Benefits” under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. “Benefits” do not include relocation services and payments to which displacees are entitled by law.

(b) *Covered activities.* “Covered activities” under this section means activities meeting the requirements of § 570.208(a) that either:

- (1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or
- (2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) *Limitation on coverage.* The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) *Compliance.* Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) *Programs affected.* (1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 CFR 40.2 or the definition of “building” as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

[60 FR 56917, Nov. 9, 1995]

UPDATE: Effective March 2015

2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance supersedes, consolidates and streamlines requirements from 8 OMB Circulars referenced in Exhibit D - CDBG Regulations and Other Program Requirements:

A - 21	A - 110
A - 87	A - 122
A - 89	A - 133
A - 102	A - 50

To view Notice SD-2015-01 Issued by the U.S. Department of Housing and Urban Development, please visit the following link:

www.hudexchange.info/resources/documents/Notice-DC-2015-01-Transition-to-2-CFR-Part-200-Guidance.pdf

Exhibit E

Audit Findings or Exceptions

(N/A - No audit findings or exceptions)