

INTERLOCAL COOPERATION AGREEMENT BETWEEN ARANSAS COUNTY, TEXAS AND THE TOWN OF FULTON FOR ARANSAS COUNTY TO PROVIDE GRANT ADMINISTRATION AND OTHER SERVICES FOR PROJECTS FUNDED THROUGH A COMMUNITY DEVELOPMENT BLOCK GRANT REGIONAL COUNCIL OF GOVERNMENTS METHOD OF DISTRIBUTION AND MITIGATION GRANT ADMINISTERED THROUGH THE TEXAS GENERAL LAND OFFICE PROJECTS

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into as of the date last written below, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between ARANSAS COUNTY, TEXAS, hereinafter referred to as the “COUNTY,” and the TOWN OF FULTON, hereinafter referred to as the “TOWN,” both of which are political subdivisions of the State of Texas, and who are sometimes referred to collectively herein as the “Parties.”

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, authorizes units of local government to contract with one or more units of local government to perform government functions and services; and,

WHEREAS, the COUNTY recently received notice that it has been awarded grant funds through the Texas General Land Office (“GLO”) for Community Development Block Grant (“CDBG”) through the Regional Council of Governments Method of Distribution (“COG-MOD”) and Mitigation (“MIT”) and that such funds include an allocation for funds for the TOWN as well (the “Grant Funds”); and,

WHEREAS, the Parties endeavor to engage in activities and to complete projects that will benefit their citizens; and,

WHEREAS, the TOWN and COUNTY maintain necessary infrastructure within their respective limits, including certain roads, bridges, and drainage structures and will use Grant Funds to build and/or improve infrastructure; and,

WHEREAS, the COUNTY desires to assist the TOWN with the administration of the COG-MOD and MIT grant funds and projects; and,

WHEREAS, the TOWN desires to enter into this Agreement and to receive COUNTY’S assistance.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated, and in consideration of the benefits that will accrue to the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose and Public Benefit. The purpose of this Agreement is for the Parties to establish the terms and conditions that will establish how COUNTY will assist TOWN with grant administration, allow necessary repairs and improvements to roads and street projects, and provide

protection for public roadways and property (“Projects”). The respective governing body of each Party finds that this Agreement will be of benefit to that Party and to the public; that each Party has the legal authority to perform its duties hereunder; that the division of cost fairly compensates the performing Party under this Agreement; and the performance of this Agreement is in the common interest of both parties.

2. Permission to Perform Work. The TOWN hereby agrees to allow COUNTY and its contractors, agents, and employees, to administer grants through the COG-MOD and MIT program, to assist with construction and contracts, and to enter the TOWN’S property and areas within and adjacent to the project areas as necessary to complete the Projects, under the terms of this Agreement.

3. Effective Date and Term:

a. This Agreement shall be effective on the first date that it has been signed and dated by all Parties (the “Effective Date”), as shown by the dated signatures hereunder.

b. The term of this Agreement shall begin on the Effective Date and expire in six (6) years.

c. All work and obligations contemplated herein shall be paid from current revenue or current grants awarded to the Parties.

4. Scope of Services. COUNTY agrees to provide services necessary to administer the Grant Funds and to assist TOWN with its Projects. The Scope of Services includes the following:

a. COUNTY shall serve as the liaison for TOWN in all matters related to the Projects and the Grant Funds;

b. COUNTY will ensure that proper procurement procedures are followed at all times;

c. COUNTY shall be the sole employer, at all times, of any official, employee, agent, or subcontractor hired by COUNTY for any work associated with the Projects and/or the Grant Funds;

d. COUNTY shall prepare and maintain grant files pursuant to State and federal requirements;

e. COUNTY, as the recipient of the grant, will administer Grant Funds and assist with TOWN’S Projects as explained in greater detail herein. COUNTY will ensure that TOWN has access to all documents and information pertaining to the Projects and the Grant Funds.

5. TOWN’S Duties and Responsibilities:

a. Provide the COUNTY with all information in its possession reasonably required to fulfill the COUNTY’S duties, responsibilities, and obligations under the Grant;

- b. If requested by the COUNTY at any time, the TOWN will cooperate with the COUNTY in obtaining necessary permits;
 - c. Be responsible for all proportionate costs to correct, mitigate, or remediate physical, biological, or other environmental effects that are related to TOWN'S Projects. The COUNTY will not be financially responsible for any damages associated with the TOWN'S Projects;
 - d. Maintain and use the Project improvements for the purposes for which they are intended in accordance with all Grant requirements;
 - e. All grant assurances and maintenance requirements for the Projects which are TOWN'S Projects, shall be solely the responsibility of TOWN at all times.
6. Duty to Notify. Each Party will promptly notify and provide relevant information to the other Party if it becomes aware of any hazardous or deteriorated condition of any Project or of any other works performed under this Agreement. A failure to so notify or to receive such notification shall not be deemed a waiver or release of any party's maintenance and repair obligations under this Agreement or an estoppel of any party's rights hereunder.
7. No Change to Jurisdictional Boundaries or Control. No improvement, physical alteration, structure, or other work created or performed under or in relation to the Grant or this Agreement shall be held, or be asserted by any Party, to alter the legal boundaries or ownership or control of any of the lands or waters of any Party.
8. Liability; No Waiver of Immunity or Defenses; and No Waiver of Rights or Remedies:
- a. *Liability.* Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and no Party shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.
 - b. *Limit to COUNTY Liability.* By approving or failing to object to any design, construction, or other work, by permitting the placement of structures or other work, or by giving any advice or comments with regard to any aspect of the Project, the COUNTY shall not be deemed or held to assume or have any responsibility or liability for the design, safety, soundness, quality, effectiveness, or any other aspect of the Project, or of structures, work, or other activities performed under the Grant or this Agreement.
 - c. *No Waiver of Immunity or Defenses.* No Party waives or relinquishes any immunity or defense on behalf of itself, its Councilmembers, Commissioners, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein. For example, nothing in this Agreement

shall be construed to waive, partially or in full, any immunities the Parties may have under the Texas Tort Claim Act or other laws.

d. *Non-Wavier of Rights or Remedies.* Failure of any Party to insist on the strict performance of any of the duties or obligations herein or to exercise any rights or remedies accruing hereunder, upon default or failure of performance, shall not be considered a waiver of the right to insist on strict compliance and performance, to enforce this Agreement by any appropriate remedy, or to exercise any right or remedy occurring as a result of any other default or breach.

9. Indemnification and Tort Claims Act:

a. To the extent allowed by law, COUNTY agrees to promptly defend, indemnify, and hold TOWN harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damages to the loss of property of any person; and or (b) the death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of or incident to, concerning or resulting from, the negligent or willful act or omission of the COUNTY, its agents, officers, and/or employees in the performance of duties pursuant to this Agreement.

b. To the extent allowed by law, TOWN agrees to promptly defend, indemnify, and hold the COUNTY harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damages to the loss of property of any person; and or (b) the death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of or incident to, concerning or resulting from, the negligent or willful act or omission of the Texas State, its agents, officers, and/or employees in the performance of duties pursuant to this Agreement.

c. *The Texas Tort Claims Act.* By entering into this Contract, COUNTY and TOWN, and their respective “employees,” as defined by the Governmental Tort Claims Act, Title 5 of the Texas Civil Practice & Remedies Code, §101.001 et seq., do not waive sovereign immunity, any defenses, or any limitations of liability as may be provided for by law. No provision of this Contract modifies and/or waives any provision of the Texas Tort Claims Act, including any limitations of liability.

10. No Warranties. The COUNTY, makes no representations or warranties, and disclaims all warranties implied, to TOWN, or any other person or entity, with regard to the title, condition or suitability of any property or any location for the structures or other work the TOWN propose to build or perform under this Project or this Agreement.

11. Insurance. The COUNTY shall cause the TOWN to be named as additional insured under all policies of liability or contractor’s general insurance, or policies carried by the COUNTY or required to be carried by any agent, engineer, or contractor, covering work or otherwise related to TOWN’S Projects. The TOWN shall cause the COUNTY to be named as additional insureds under all policies of liability or contractor’s general insurance, or policies carried by the TOWN or required to be carried by any agent, engineer, or contractor, covering work or otherwise related to

the TOWN'S Project or this Agreement. Acceptable proof of such insurance coverages shall be delivered to the COUNTY before any work is performed under the Project.

12. Termination:

a. *Termination Generally.* Either Party may terminate this Agreement upon Ninety (90) days advance written notice to the other Party for any reason.

b. *Termination Upon Default.* Any Party may seek termination of this Agreement upon the default of another Party or Parties. Should default, as defined herein, occur, the Party or Parties affected by such default shall have the right to terminate this Agreement as of the Thirtieth (30th) day after the defaulting Party received written notice of such default. If it is possible to cure the default, the defaulting Party shall have thirty (30) days to cure default from the date notice is received. Default shall occur if:

- i. COUNTY fails to perform the Services or fails to observe and comply with the terms and conditions of this Agreement; COUNTY fails to employ staff qualified to perform the Services; or COUNTY fails to submit timely reports; or,
- ii. TOWN fails to perform its duties and obligations set forth in this Agreement, including but not limited to, providing required information and documentation.

13. Status of Employees, Contractors, and Agents. No joint employment is created by this Agreement. The employees, contractors, and agents of the respective Parties shall remain solely the employees, contractors, and agents of that respective Party.

14. Governmental Functions and Relationship of the Parties. Notwithstanding any provision to the contrary herein, this Agreement is a contract for, and with respect to, the performance of governmental functions by governmental entities.

a. *Governmental Functions.* The Services provided for herein are governmental functions, and the Parties shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

b. *No Partnership or Joint Venture.* Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or relationship of employment between the Parties. Neither Party shall have the authority to act on behalf of the other Party, or to commit any other Party in any manner or cause whatsoever, or to use any other Party's name in any way not specifically authorized in this Agreement.

15. Dispute Resolution. If a dispute arises between the Parties arising from or relating to this Agreement, the following alternative dispute resolution procedure shall be used prior to any Party filing suit. A Party may initiate dispute resolution by delivering written notice to the other Parties, stating a description of the dispute; an initial meeting shall be held promptly thereafter among the Parties to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days

after the initial meeting, the parties have not reached a written agreement resolving the dispute, any interested Party may require that the dispute be submitted to non-binding mediation, to be held within the boundaries of Aransas County before a mutually acceptable mediator. All Parties will participate in good faith. An initial notice of dispute may be amended or supplemented, and another Party may deliver a counter notice, prior to the conclusion of mediation. If the dispute is not resolved within one hundred and twenty (120) days after the initiating notice of dispute was delivered to all Parties, any Party may proceed to file suit on the disputes stated in the notices.

16. Compliance with the Law. The Parties shall comply with all federal, State, and local laws, rules, and regulations in carrying out this Agreement.

17. Notices. Whenever a notice is required under the terms of this Agreement, delivery of such notice shall be deemed completed when it is actually delivered in hand, or by certified mail, return receipt requested, to the receiving party addressed to its authorized agent, at the address listed below, or to such other address for service that the party may designate by notice from time to time. A notice may also be delivered by electronic transmission to the electronic address of the authorized agent by a means that creates proof of delivery. A notice delivered after regular office hours or on a weekend or State holiday will be effective on the next day that is not a weekend or State holiday. As used in this section, “an authorized agent” means, for the COUNTY, the County Judge; for the TOWN, the Town’s Mayor.

Town of Fulton: Town of Fulton, Texas
Mayor Kelli Cole
P.O. Box 1130
Fulton, TX 78358
Phone: (361) 729-5533
Email: citysec@fultontexas.org

Aransas County: Ray A. Garza
County Judge
2840 Highway 35 North
Rockport, TX 78382
Phone: 361-790-0101
Email: judge@aransascounty.org

18. Interpretation of Law, Assignment, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. No assignment of this agreement or any right accrued hereunder shall be made, in whole or in part, by either party without the prior written consent of the other party. Venue shall be in Aransas County, Texas.

19. Non-Discrimination. The Parties covenant that (1) no person shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under the terms of this Agreement on the ground of race, color, age, sex, handicap, or national origin; and (2) in carrying out the terms and conditions of this Agreement, no person shall be subjected to discrimination on the grounds of race, color, age, sex, handicap, or national origin.

20. Integration and Amendments. This Agreement constitutes the entire agreement between the Parties and may not be amended, altered, modified, or changed in any way, except in writing that is signed by the Parties, which specifically references this Agreement. Any amendment to this Agreement shall be attached to this Agreement and all of the terms herein that are not specifically addressed in the amendment shall remain in full force and effect.

21. No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the Parties hereto, any rights or remedies under the terms of this Agreement.

22. Severability. If any one or more of the sections, sentences, clauses, or parts of this Agreement be held invalid for any reason, the invalidity of such section, sentence, clause, or part shall not affect nor prejudice the applicability and validity of any other provision of this Agreement, but only if the intent and purpose of the Parties can thereby be preserved.

23. Bargaining. The Parties have each had the opportunity to seek independent legal counsel before entering into this Agreement. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

24. Counterparts. This Agreement may be executed in any number of counterparts and when each party has signed and delivered to the other at least one (1) such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one (1) agreement; provided, however, this Agreement shall not be binding upon the Parties until signed by all Parties in one document or in counterparts.

25. Authorization. The undersigned officers or agents of their respective party hereto are the properly authorized agents of the party and have the necessary authority to execute this Agreement. Each party certifies by signing below that any necessary actions and resolutions extending such authority have been duly passed and approved and are currently in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year last written below.

[Signature Pages Follow]

“TOWN ”
Town of Fulton, Texas

By: _____
Kelli Cole, Mayor Date

TOWN’S CERTIFICATE OF APPROVAL

I, the undersigned, hereby certify that the foregoing Agreement was approved by the Fulton City Council at a meeting duly noticed and held on the ____day of _____, 2023.

Stephanie Garcia, City Secretary