

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
ARANSAS COUNTY, TEXAS, AND THE TOWN OF FULTON, TEXAS FOR  
ARANSAS COUNTY TO PROVIDE RETAIL FOOD ESTABLISHMENT  
REGULATION AND ENFORCEMENT SERVICES**

**THIS INTERLOCAL COOPERATION AGREEMENT** (the “Agreement”) is entered into by and between **Aransas County, Texas** (hereinafter “COUNTY”), and **the Town of Fulton, Texas** (hereinafter “TOWN”), with both sometimes referred to individually herein as a “Party” or collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, pursuant to provisions of the Texas Government Code Chapter 791, the Interlocal Cooperation Act, the Parties are authorized to enter into a contract with each other to perform governmental functions and services; and,

**WHEREAS**, Section 121.003 of the Texas Health & Safety Code authorizes cities and counties to cooperate to provide health related services; and,

**WHEREAS**, COUNTY has established and maintains an Environmental Health Department that employs at least one qualified individual trained by a health authority who is authorized to issue citations for violations of laws or orders when reasonably necessary to protect the public health as authorized by Section 121.003 of the Texas Health & Safety Code; and,

**WHEREAS**, TOWN does not have an environmental health department or health inspector; and,

**WHEREAS**, TOWN desires for COUNTY to provide services and to regulate and enforce food establishment regulations; and,

**WHEREAS**, COUNTY desires to enter into this Agreement to provide the needed services.

**NOW, THEREFORE**, COUNTY and TOWN, both finding that this Agreement is necessary for the benefit of the public, and in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

1. Purpose and Public Benefit. The purpose of this Agreement is for the Parties to work together to improve public health and safety. The rights and responsibilities of each Party are described below. The governing bodies of each Party find that the Services, the subject of this Agreement, are necessary for the benefit of the public, that each Party has the legal authority to perform the duties described herein, and that the performance of this Agreement is in the common interest of the Parties.
2. Term. This Agreement shall be effective on **March 1, 2023** and shall remain in effect for One (1) year. Unless a Party notifies the other Party of its intent not to renew this Agreement or

to terminate it pursuant to the terms herein prior to the One (1) year anniversary of the effective date, this Agreement shall automatically renew for another year. Unless a Party notifies the other Party of its intent not to renew this Agreement or to terminate it pursuant to terms herein prior to the Two (2) year anniversary of the effective date, this Agreement shall automatically renew.

This Agreement shall terminate on the Three (3) year anniversary of the effective date, if no amendment or extension is agreed to between the Parties and it is not otherwise terminated as described herein. If the Parties desire to extend the term beyond the Three (3) consecutive One (1) year terms that are available, this Agreement shall be amended in a writing accepted and signed by both Parties and attached hereto.

3. TOWN Authorization, Duties, and Responsibilities. TOWN hereby authorizes COUNTY personnel to act as its agent(s) in enforcing State law and local ordinances related to retail food establishments and will provide COUNTY with all up-to-date TOWN ordinances and resolutions. TOWN shall be responsible for scheduling and conducting any enforcement hearings and assessing and collecting fines and penalties when applicable. TOWN shall also be responsible for handling any liens.

4. Scope of Services. COUNTY agrees to provide necessary inspections of retail food service establishments to ensure public health and safety by reviewing compliance with the Texas Food Establishment Rules set forth in 25 Texas Administrative Code, Chapter 228, as amended from time to time. Such inspections will include any business or location where consumable products are prepared, served, or sold, including but not limited to the following: convenience stores; grocery stores; catering operations, and restaurants. The Scope of Services includes the following:

- a. *The Services.* COUNTY shall conduct inspections and administer and enforce State law and TOWN'S ordinances with regard to food establishments (the "Services"). COUNTY shall also issue permits, investigate complaints, and conduct plan reviews. COUNTY shall endeavor to secure voluntary compliance, shall issue necessary notices, and conduct on-site investigations as needed.
- b. *Files.* COUNTY shall prepare and maintain case files on locations and/or businesses and notify TOWN of such inspections and COUNTY'S recommendations regarding whether TOWN should take action;
- c. *Court Proceedings.* COUNTY staff performing the Services described in this Agreement shall be reasonably available to attend court proceedings if necessary.
- d. *No Duty to Prosecute.* COUNTY shall not have any duty to initiate or prosecute any civil or criminal action on any complaint, inspection, or investigation conducted in performance of the Services.
- e. *No Duty to Assess Penalties, Fines, or Liens.* COUNTY shall not have any duty to assess or collect any penalties, fines, or liens related to the Services.

5. Payments from Current Revenues and Notice of Non-appropriation. Any Party paying for the performance of governmental functions or services must make those payments from current revenues. If, for any fiscal year, a party fails to appropriate funds in amounts sufficient to pay or perform its obligations under this Agreement, such party shall endeavor to provide thirty (30) days' notice of its failure to appropriate and, if applicable, it's subsequent need to terminate this Agreement.

6. Compensation: Inspection and Permit Fees. In consideration of the Services under this Agreement, TOWN shall:

a. Pay COUNTY the following amounts:

i. Year 1: \$0.00;

ii. Year 2: \$1,000.00;

iii. Year 3: \$2,000.00; and,

b. Grant COUNTY the exclusive right to bill, collect, and retain all inspection, permit, and other fees related to retail food establishments within TOWN'S jurisdiction. TOWN hereby waives all rights to bill, collect, and retain these fees and designates COUNTY as its exclusive agent for the purpose of providing these Services.

7. COUNTY'S Rights and Responsibilities:

a. *Fee Collection.*

b. *Reports.*

c. *Permits, certifications, and licenses.*

8. 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, remitting timely payment for Services.

9. Amendments. This Agreement may be amended by mutual written agreement signed by the Parties hereto.

10. 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.

11. 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.

12. No Warranty. The Parties further agree that any Services provided by the COUNTY are without any warranty of any kind to the TOWN or any third party, and the TOWN hereby agrees that, to the extent allowed by law, it will defend, hold harmless, and indemnify the COUNTY, its officers, agents, and employees for any claims of any kind, including claims for injury or death of any person or for damage to property, arising out of the COUNTY'S performance of its duties under this Agreement.

13. 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. *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.

- c. *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.

14. 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.

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

16. Notices. Whenever a notice is required to be given in writing and under the terms of this Agreement, such notices shall either be delivered or mailed by certified mail, return receipt requested, to the parties at the following addresses:

**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](mailto: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](mailto:judge@aransascounty.org)

Each party may change the address for notice to it be giving notice of such change in accordance with the provisions in this paragraph.

17. 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.

18. 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. This covenant extends to contractors, subcontractors, and others acting by or through the Parties, and includes compliance with all federal and state laws and policies prohibiting discrimination, harassment, and sexual misconduct.

19. 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. There are no other agreements, representations, warranties, whether oral or written, regarding the subject matter of this Agreement. Any amendment to this Agreement shall be attached to this Agreement and all of the terms herein that are not specifically address in the amendment shall remain in full force and effect.

20. 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, except as expressly stated herein.

21. 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.

22. 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 either party.



“TOWN ”  
Town of Fulton, Texas

By:\_\_\_\_\_Date \_\_\_\_\_  
Kelli Cole, Mayor

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, in and for the above state and county, personally appeared \_\_\_\_\_, known to me to be or who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same for the purposes contained therein.

(SEAL)

\_\_\_\_\_  
Notary Public