

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
FOR PUBLIC HEALTH SERVICES BETWEEN
THE CITY OF AUSTIN AND THE CITY OF PFLUGERVILLE**

This Amended and Restated Interlocal Cooperation Agreement for Public Health Services ("Agreement") is made and entered into by and between the City of Austin, a municipal corporation and political subdivision of Texas ("Austin") and the City of Pflugerville, Travis County, a municipal corporation and political subdivision of Texas ("Pflugerville"), together the "parties," and each individually, a "party."

RECITALS

Austin and Pflugerville have the authority to provide for the enactment and enforcement of ordinances for the general welfare and health of local citizens under Chapter 51 of the Local Government Code and other statutes.

Austin has established a public health department to provide for and promote public health through the enforcement of laws and ordinances governing activities affecting public health in Austin.

Pflugerville has adopted public health ordinances and wishes to secure certain health inspection services from Austin.

Austin has experienced and trained personnel that can provide inspection services to Pflugerville in a way that would be more efficient than efforts by Pflugerville to provide those same services directly to its residents.

Austin and Pflugerville have the authority to enter into this Agreement under Chapter 791 of the Texas Government Code and Chapter 121 of the Health and Safety Code.

The parties have historically operated to collaboratively provide public health services throughout Pflugerville and most recently executed an interlocal cooperation agreement for such services on September 8, 2023 ("Prior Agreement").

The parties desire to amend and modify the Prior Agreement to address Austin's inspection of pools located in Pflugerville's extraterritorial jurisdiction by replacing the Prior Agreement with this Agreement.

NOW, THEREFORE, in consideration of the agreements and consideration set forth below, the amount and sufficiency of which are hereby acknowledged, Pflugerville and Austin agree as follows:

1.0 DEFINITIONS

1.01 "Austin " means City of Austin, Texas.

1.02 "Certified Farmers Market" means a farmers market that has been certified by the Texas Department of Agriculture pursuant to Subchapter D of Title 4 of the Texas Administrative Code.

1.03 "Custodial Care" means a general environmental health and safety inspection conducted at the request of a facility operator or resident to fulfill the requirements of the state licensing agency for child care, adoption or foster care.

1.04 "Director" means Austin's Director of the Austin Public Health Department (Austin Public Health).

1.05 "Fiscal Year" means the 12-month time period between October 1 and September 30 of the following year.

1.06 "Food Enterprise" has the same meaning set forth in the Austin City Code.

1.07 "Mayor" means the Mayor of Pflugerville, or his or her successor.

1.08 "Swimming Pools and Spas" has the same meaning as established in Title 25, Chapter 265 of the Texas Administrative Code and the 2018 International Swimming Pool and Spa Code.

2.0 AGREEMENT TERM

Initial Term. This Agreement will be effective for a 12-month term beginning October 1, 2023 and ending September 30, 2024, unless sooner terminated under the terms of this Agreement.

It is understood and agreed that in no event shall any provision of this Agreement or any contract entered into under the terms of this Agreement, be interpreted to obligate either party to provide funding or services beyond the revenues currently available to the party.

Renewal Term(s). This Agreement may be renewed for an additional four (4) successive 12-month terms upon written approval of the parties.

3.0 RESPONSIBILITIES OF AUSTIN

3.01 Austin shall:

3.01.1 Conduct inspections and help administer and enforce state laws and Pflugerville's ordinances regulating Food Enterprises, Swimming Pools and Spas, certified farmers markets, and Custodial Care establishments. More specifically, Austin shall conduct plan review, permit issuance, inspections, and complaint investigations, and shall participate in Pflugerville's administrative enforcement as described in Section 3.03 of the Agreement.

3.01.2 Inspect Swimming Pools and Spas located outside Pflugerville city limits as authorized pursuant to Pflugerville's development agreements. Specifically, Austin agrees to inspect the completed Swimming Pool and Spa located at 21100 Carries Ranch Rd, Pflugerville, Texas and within Williamson County and Pflugerville's extraterritorial jurisdiction, as depicted on the attached Exhibit B.

3.01.3 Prepare and maintain case files of completed inspections and inform Pflugerville of the results of such inspections and any recommendations for action by Pflugerville.

3.01.4 Ensure Austin staff is available to testify at court proceedings in the event suit is brought regarding the services provided under this Agreement or Pflugerville's enforcement actions.

3.01.5 Collect all fees related to inspection, permitting, and plan review activities as provided for in this Agreement from affected businesses based on fee rates set forth in Exhibit A, or as otherwise amended by the Austin City Council.

3.02 Austin shall have no duty to perform the following activities, and Pflugerville agrees to be fully responsible for the following:

3.02.1 Initiate or prosecute civil or criminal suits resulting from complaints or cases investigated under this Agreement.

3.02.2 Schedule or conduct enforcement hearings.

3.02.3 Assess or collect any penalties, fines, or liens.

3.03 Enforce state laws and any applicable Pflugerville ordinances, which shall be limited to on-site investigations, issuance of notices, attempts to secure voluntary compliance, and provision of witness testimony and evidence by Austin staff at administrative hearings before the Pflugerville City Council or its delegate.

4.0 RESPONSIBILITIES OF PFLUGERVILLE

4.01 Pflugerville shall:

4.01.1 Authorize personnel of Austin Public Health to act as its agents in enforcing state law and any applicable Pflugerville ordinances.

4.01.2 Provide Austin certified copies of any Pflugerville ordinances intended to be enforced in accordance with this Agreement.

4.01.3 Schedule and conduct required legal enforcement hearings related to services rendered under this Agreement. Additionally, Pflugerville will be responsible for implementing legal enforcement measures that result from enforcement hearings.

4.01.4 Assess and collect fines and penalties and enforce liens.

4.01.5 Notify Austin Public Health regarding Food Enterprises or Swimming Pools and Spas for which Pflugerville has received a site plan or building permit application.

5.0 MUTUAL RESPONSIBILITIES

Austin and Pflugerville agree to meet annually to establish and evaluate operating policies and procedures, and make adjustments or changes that mutually benefit both parties, unless otherwise scheduled by mutual agreement.

6.0 COMPENSATION

In consideration of the services to be provided by Austin under this Agreement, Pflugerville grants to Austin the exclusive right to bill, collect, and retain all inspection, permit and other fees from residents and businesses located within the corporate limits of Pflugerville, Texas based on fee rates set forth in Exhibit A, incorporated herein for all purposes, or as otherwise amended by Austin City Council.

By approving this Agreement, Pflugerville hereby adopts the fees described in Exhibit A, waives all rights to fees collected by Austin, and designates Austin as its exclusive agent for purposes of providing the services and collecting the related fees as described in this Agreement. The parties agree that Austin shall bill and collect fees in accordance with Austin policies and procedures.

In recognition of the fact that Austin's primary form of compensation under this Agreement will be the fees it is able to collect, Pflugerville agrees to promptly take action against any resident or business that fails to pay a fee in a timely manner.

7.0 ENTIRE AGREEMENT

All oral and written agreements between the parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

8.0 RETENTION, ACCESSIBILITY AND AUDIT OF RECORDS AND REPORTS

- 8.01 Original Records. Austin, on behalf of Pflugerville, shall create and maintain files and records regarding permits, investigations, and enforcement activities undertaken under this Agreement. All original records shall belong to Austin. Pflugerville shall be entitled to make and retain such copies as may be necessary to document its work.
- 8.02 Record Retention. Austin shall maintain the original of all routine fiscal and performance records and documentation of its activities performed under this Agreement in a readily available state and location until the later of: a) the completion by Pflugerville of an audit in conformance with generally accepted accounting principles and procedures for governmental organizations, or b) three (3) years after the Agreement term in which the activity occurred. Pflugerville shall maintain records related to this Agreement in accordance with applicable government records retention schedules.
- 8.03 Pflugerville Access. Austin shall give Pflugerville, or its duly authorized representatives, full and reasonable access to and the right to examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by Austin pertaining to this Agreement in an accessible location at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by Austin.
- 8.04 Audit by Pflugerville. Pflugerville has the right to conduct an annual financial and compliance audit of Austin's performance of this Agreement. Austin shall permit Pflugerville, or its duly authorized representatives, to audit Austin's records that relate to this Agreement and to copy, at Pflugerville's expense, any document, materials or information necessary to facilitate these audits.
- 8.05 Austin Access. Pflugerville shall give Austin, or its duly authorized representatives, full and reasonable access to and the right to copy and examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by Pflugerville pertaining to this Agreement in an accessible location at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by Pflugerville. As requested by Austin, Pflugerville shall certify to Austin the financial records relating to the performance of this Agreement.

9.0 AGENCY

The parties expressly acknowledge and agree that the actions of Austin personnel while in the performance of duties authorized by this Agreement shall be deemed to be the actions of Pflugerville. However, no employee of Austin shall be considered an employee of Pflugerville for purposes of gaining any rights or benefits available to an employee of Pflugerville pursuant to Pflugerville's personnel policies.

10.0 ON-SITE MONITORING

Pflugerville has the right to perform periodic on-site monitoring of Austin's compliance with the provisions of this Agreement and of the adequacy and timeliness of Austin's performance under this Agreement.

11.0 TERMINATION AND REMEDIES, CANCELLATION

11.01 Breach. Either party may terminate this Agreement if the other is in breach of an obligation and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching party. If more than thirty (30) days are required to cure such default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted.

11.02 Termination. Either party has the right to terminate this Agreement, in whole or in part, as follows:

11.02.1 The other party fails to comply with a term or condition of this Agreement and failed to cure the breach in accordance with Section 11.01 of the Agreement;

11.02.2 The party is unable to conform to changes required by federal, state or local laws or regulations; or

11.02.3 The governing body of either party fails to approve funding sufficient to meet its obligations under the Agreement during their annual budget planning and adoption process.

11.03 Procedure for Termination. In the event of termination under Section 11.02.2 or 11.02.3 of the Agreement, the party desiring to terminate shall notify the other party in compliance with the notice provisions described in Section 14 of the Agreement regarding the decision to terminate and specify an effective date of termination that is at least thirty (30) days after that notice, and in the case of partial termination, the portion of the Agreement to be terminated.

11.04 Termination Without Cause. Either party may terminate this Agreement at any time, in whole or in part, without cause, upon providing at least sixty (60) days written notice to the other party.

11.05 Rights Surviving Termination. City's right to bill and collect any fee that became due during the term of this Agreement shall survive the termination of this Agreement.

12.0 AMENDMENTS

This Agreement may be amended only in a writing approved by each party's governing body and signed by an authorized representative of each party.

13.0 LIABILITIES, CLAIMS

- 13.01 Liability. Austin shall not be liable for any claims, damages or attorney's fees arising from negligence or unlawful acts of Pflugerville or its agents arising from the performance of duties or responsibilities under this Agreement. Pflugerville shall not be liable for any claims, damages or attorney's fees arising from acts of Austin or its employees conducted outside the scope of this Agreement.
- 13.02 Claims. If any claim or other action, including proceedings before an administrative agency, is made or brought by a person, firm, corporation or other entity against Austin or Pflugerville relating to the performance of the obligations under this Agreement, the party receiving notice of the claim shall give written notice to the other party of the claim or other action within three (3) working days after being notified of it or the threat of it, such notice to include: the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner described in Section 14 of the Agreement. Except as otherwise directed, each party shall furnish the other with copies of all pertinent papers received by that party with respect to such claims or actions.

14.0 NOTICES

- 14.01 Written Notice. Unless otherwise specified, all notices to be given to either party under this Agreement shall be in writing and may be delivered by courier or sent via electronic mail or postage paid by certified or registered mail, return receipt requested. Notice shall be deemed effective if sent to the parties and addresses designated below, upon receipt in case of hand delivery or electronic mail, and three (3) days after deposit in the U.S. Mail, in case of mailing.
- 14.02 Pflugerville Address. The address of Pflugerville for all purposes under this Agreement and all notices hereunder shall be:
- Sereniah Breland, City Manager (or successor)
City of Pflugerville
100 East Main Street
Suite 300
Pflugerville, Texas 78660
Email: sereniabb@pflugervilletx.gov

- 14.03 Austin Address. The addresses of Austin for all purposes under this Agreement and all notices hereunder shall be:

Jesus Garza, Interim City Manager (or successor)
City of Austin
City Hall
301 West 2nd Street, Third Floor
Austin, Texas 78767
Email: Jesus.Garza@austintexas.gov

With copies to:

Adrienne Sturup, Director (or successor)
Austin Public Health Department
7201 Levander Loop, Building E
Austin, Texas 78702
Email: Adrienne.Sturup@austintexas.gov

Marcel Elizondo, Division Chief (or successor)
Austin Public Health Department
P.O. Box 142529
Austin, Texas 78714
Email: Marcel.Elizondo@austintexas.gov

- 14.04 Change of Address. Each party may change the address for notice to it by giving notice of the change in compliance with Section 14.01 of the Agreement.

15.0 LAW AND VENUE

This Agreement is governed by the laws of the State of Texas and all obligations under it are performable in Travis County, Texas. It is expressly understood that venue for any lawsuit or dispute arising out of or relating to this Agreement will be in Travis County.

16.0 COMPLIANCE WITH LAWS

Austin and Pflugerville shall observe and comply with the Constitutions of the United States and the State of Texas, and all applicable federal, state, Austin and Pflugerville laws, rules, ordinances and regulations affecting the conduct and performance of all obligations undertaken pursuant to this Agreement.

17.0 RESERVATION OF RIGHTS AND REMEDIES, NON-WAIVER; NO JOINT VENTURE

- 17.01 Rights and Remedies. If either party breaches this Agreement, the other party shall be entitled to any and all rights and remedies provided for by Texas law and any applicable Federal laws or regulations. All rights of Pflugerville and Austin, respectively, under this Agreement are specifically reserved and any payment, act or

omission shall not impair or prejudice any remedy or right under this Agreement. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

17.02 Non-Waiver. One or more acts of forbearance by either party to enforce any provision of this Agreement or any payment, act or omission by either party shall not constitute or be construed as a modification of this Agreement or a waiver of any breach or default of the other party which then exists or may subsequently exist.

17.03 Immunity or Defense. It is expressly understood and agreed that, in the execution of this Agreement, neither Austin nor Pflugerville waives nor shall be deemed to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions.

17.04 No Joint Venture or Joint Enterprise/No Third Party Beneficiaries. This Agreement shall not be construed to establish a joint venture or joint enterprise by the parties, nor shall this Agreement be construed to create or grant rights, contractual or otherwise, to any other person, third party or entity not a party to this Agreement.

18.0 ASSIGNABILITY

Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party. It is acknowledged by both parties that no officer, agent, employee or representative of either party has any authority to assign any part of this Agreement unless expressly granted that authority by the party's governing body.

19.0 BINDING CONTRACT

Subject to Section 18.0, this Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Agreement.

20.0 SEVERABILITY

If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall be construed as if that portion were not included in the Agreement and shall remain valid and binding.

21.0 MEDIATION

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use the Dispute Resolution Center of Austin, Texas, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

22.0 INTERPRETATIONAL GUIDELINES

22.01 Computation of Time. When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that either party has declared a holiday for its employees, it shall be omitted from the computation.

22.02 Headings. The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection, and are not to be used in construing this Agreement.

23.0 DESIGNATION OF CODE ENFORCEMENT OFFICERS

Approval of this Agreement by Pflugerville City Council constitutes Pflugerville's designation of its authority to enforce Pflugerville's ordinances regulating Food Enterprises, Swimming Pools and Spas, and Custodial Care establishments and to collect related fees, as provided in this Agreement, to qualified personnel of Austin Public Health as Code Enforcement Officers of Pflugerville.

24.0 NON-APPROPRIATION.

The awarding or continuation of this Agreement is dependent upon the availability of funding and authorization by Austin City Council. Austin's performance obligations rely solely on funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to Pflugerville. Austin shall provide Pflugerville written notice of the failure of Austin to make an adequate appropriation for any fiscal year to perform under the Agreement, or the reduction of any appropriation to an amount insufficient to permit Austin to perform its obligations under the Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to Austin.

Executed on this the 14th day of December, 2023.

CITY OF PFLUGERVILLE

By: [Signature]

Title: City Manager

CITY OF AUSTIN

By: [Signature]

Title: Assistant City Manager