

**INTERLOCAL AGREEMENT
PROJECT DEVELOPMENT AGREEMENT FOR THE
FABENS AIRPORT FUEL FARM AND AWOS PROJECT**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into effective as of the ____ day of _____, 2021, by and between EL PASO COUNTY, TEXAS (the “County”) and the CAMINO REAL REGIONAL MOBILITY AUTHORITY (“Authority”), (collectively, the “Parties”), for the purposes described herein.

WITNESSETH:

WHEREAS, the County is a political subdivision of the State of Texas; and

WHEREAS, the Authority is a regional mobility authority created pursuant to the request of the City of El Paso and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §§26.1 *et seq.* and is a body politic and corporate and political subdivision of the State; and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, Section 370.033 of the RMA Act permits the Authority to enter into an agreement under which the Authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity if the transportation project is located in the Authority’s area of jurisdiction or in a county adjacent to the Authority’s area of jurisdiction; and

WHEREAS, the County requests the Authority to design and construction certain improvements at the El Paso County Fabens Airport, including a fuel farm and automated weather observing system (the “Project”), located in El Paso County which is within or adjacent to the Authority’s area of jurisdiction; and

WHEREAS, the County and Authority now desire to enter into this Agreement to allow for the Authority to complete the services requested by the County for the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned Parties agree as follows:

**I.
FINDINGS**

A. Recitals. The recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. It is further found and determined that the Parties have authorized and approved the Agreement by resolution or order adopted by their respective

governing bodies, and that this Agreement will be in full force and effect when approved by both Parties.

B. Overview of the Project. The County and Authority have agreed to cooperatively develop various major transportation projects, including the Project, due to the mutual benefit to each Party and the benefits to the residents of the County. The Project, as more fully defined in **EXHIBIT A** to this Agreement, consists of the design and construction of a fuel farm and automated weather observing system at the El Paso County Fabens Airport. The Project responsibilities of each Party and Project budget are more fully enumerated within **EXHIBITS B and C** of this Agreement.

II.

DUTIES AND RESPONSIBILITIES OF THE AUTHORITY

A. Project Services. Subject to the terms of this Agreement, the Authority agrees and is hereby authorized to use funding from the County, or such other lawfully available funds designated from time to time, to provide all or a portion of the funding necessary for the development, design, and construction of the Project identified in **EXHIBIT A**.

1. Timeline for Commencement and Completion of Work. Commencement of work on the Project shall begin when the County Representative (as defined in Section IV below) issues a written Notice to Proceed to the Authority for the Project. No later than fifteen (15) days from Authority receipt of a Notice to Proceed, the Authority will initiate the process to commence work on the Project, as more specifically described in **EXHIBITS A, B, and C**. Project-related services, including any applicable phasing of such work, will be completed in accordance with the schedule developed between the County and the Authority.

2. Scope of Work. Specific elements of the work required for the Project and the responsible party for the performance of such work are set forth in **EXHIBIT B** to this Agreement. Such services will be provided by the appropriate party within the jointly developed schedule referenced in subparagraph II.A.1. above.

3. Project Budget. The initial budget for the Project is set forth in **EXHIBIT C** to this Agreement ("Project Budget"). The Parties will work together to attempt to minimize the actual costs as reflected in the Project Budget, and in no event shall the cash disbursements by the Authority exceed such Project Budget, absent the written agreement of the Parties.

B. Authority and County Cooperation. The Parties shall cooperate in the development of the Project such that the Project is most effectively and efficiently developed.

1. Inspections. The County and its authorized representatives may observe or inspect all work done and materials furnished for the Project at reasonable times and places. If either Party believes such Project is not being designed or constructed as originally contemplated, the Parties' designated representatives shall meet to discuss appropriate actions to ensure that any defects in the Project or deviations are remedied.

2. Budget Overruns. In the event the costs of the Project funded in whole or in part

from County funds exceed, or due to a change in circumstances during development of such Project are expected to exceed, the amount specified in the Project Budget and other lawfully available and designated funds, the Parties, through their respective designated representatives, will work together to identify the additional funding necessary for the Project. In the event additional funds cannot be identified to address such increased costs, the Parties shall work together to amend the scope of the Project to fit within the available funds or to otherwise address the Project funding shortfall.

3. Change Order. Change Order shall mean a written order to the Authority's contractor executed by the Authority after execution of the original construction contract between the Authority and that contractor, directing a change in the work to be performed on a Project, and may include a change in the contract price or the time for the contractor's performance or any combination thereof. A Change Order requested by the Authority or its contractor, which would result in an increase in the Project Budget, must be approved by the County in writing prior to creating an enforceable commitment of County funds or other lawfully available and designated funds. A proposed Change Order requested by the Authority or its contractor shall be provided to the County in writing and include detailed justification for the requested change(s). The Authority may approve a Change Order without the approval of the County if the Authority agrees to pay the increased cost of the Project from its own funding source.

4. Final Acceptance. The Authority shall notify the County in writing upon Final Acceptance of the Project or a portion of the Project. Upon Final Acceptance of the Project, or a portion of the Project, the Authority will assign to the County, or other responsible entity, all contractor warranties, guarantees, and bonds which it possesses with respect to such work and which extend beyond the date of such Final Acceptance. Unless otherwise agreed by the Authority, the Authority shall have no further obligation with respect to such work after Final Acceptance.

5. Authority Performance Measures. Some of the services being provided pursuant to this Agreement are an extension of the services being provided to the Authority under agreements with contractors or under consulting agreements with third-party professionals. As such, the Authority shall ensure, through its agreements with such contractors and third-party professionals, that the same performance measures are established and maintained for the performance of the services delivered on the Project pursuant to this Agreement as are applicable to work performed by such contractors and third parties on other Authority Projects. The Authority shall enforce such measures and standards on the County's and Authority's behalf, and the Authority shall not agree to modify performance measures, as they may relate to the services contemplated herein, without the prior written consent of the County.

C. Reports to the County. The Authority shall, at such times and in such form as the County may reasonably request, furnish periodic information concerning the status of the Project and the performance of the Authority's obligations under this Agreement. To the extent requested by the County, the Authority shall make an annual report to Commissioners Court on the Project. Such annual report shall include information on the current construction and financial status of the Project and the state of the Authority as a public entity in general.

D. Accounting. The Authority shall use diligence to insure that each distribution of Project funds is for proper and documented expenditures. Complete books and records shall be maintained by the Authority of disbursements for payments required in this Agreement. All such books and records shall be deemed complete if kept in accordance with the Governmental Accounting Standards Board's principles and in accordance with the provisions of the RMA Act. Such books and records shall be available for examination by the duly authorized officers or agents of the County during normal business hours upon request made not less than five (5) business days prior to the date of such examination. In addition, the Authority shall coordinate with the County's Auditor's Office to provide information and documentation necessary for the County to complete its annual books, records and reports for each fiscal year ending September 30th during which: (1) Project funds are/were distributed for the Project; (2) Project warranties are/were in effect; and/or (3) Project claims are/were outstanding.

E. Limitations on Project Development. Notwithstanding anything herein to the contrary, the Authority shall not be obligated to pursue or complete development of the Project if the funds available from the County together with other lawfully available and designated funds are insufficient to pay all costs associated with the Project and the County fails to provide additional funding to cover the amount of any such deficiency.

III. DUTIES AND OBLIGATIONS OF THE COUNTY

A. Project Responsibilities of the County. The County shall be responsible for the costs of those responsibilities as enumerated within **EXHIBIT B** to this Agreement. Once those responsibilities or deliverables have been completed, the County shall bear no additional costs for completion of the Project, unless specifically included in the Project Budget or in a written amendment of this Agreement approved by the County.

B. Financial Obligations of the County. Authority financial obligations created hereunder shall be limited solely to County funds transferred from time to time by the County to the Authority as required by this Agreement. Except for delivery of the funds enumerated herein, the County shall have no financial obligation to make any payment, in whole or in part, on behalf of the Authority, unless specifically provided in accordance with the terms of this Agreement, its exhibits or amendments.

C. Disclosure of Information. The County covenants and agrees that it shall cooperate with the Authority to ensure the timely completion of the Project within specified and agreed upon budgets and shall promptly provide the Authority with such information or support as may be necessary for the Authority to satisfy its obligations under this Agreement.

IV.
PARTY REPRESENTATIVES AND LEGAL NOTICES

A. Party Representatives. The designated representatives authorized to act on behalf of each party hereto, and the addresses to which notices due hereunder should be directed, are as follows, unless and until either Party is otherwise notified in writing by the other:

County:

Director of Planning & Development
800 E. Overland, Room 200
El Paso, Texas 79901

Authority:

Executive Director
801 Texas Avenue
El Paso, Texas 79901.

B. Limitations on County Representative. Notwithstanding anything contained herein to the contrary, approval of the Project Budget, changes to the funding source(s), change orders that increase the Project Budget, and all amendments to this Agreement shall require the action of Commissioners Court.

C. Legal Notices. Any and all notices and communications under this Agreement shall be in writing and mailed by first-class mail, or hand delivered, addressed to the following designated officials:

County:

El Paso County Judge
500 E. San Antonio, Room 301
El Paso, Texas 79901

Authority:

Executive Director
801 Texas Avenue
El Paso, Texas 79901

With copies to:

Director of Planning & Development
800 E. Overland, Room 200
El Paso, Texas 79901.

V.
TERM AND TERMINATION

Term and Termination. Subject to the following, this Agreement shall be effective as of the date first written above and shall continue in full force and effect until the completion of the services to be provided. Notwithstanding the foregoing, and without limitation on any other remedy identified in the Agreement or available at law or in equity:

A. either Party may terminate this Agreement in the event of a material breach of its terms, which may include, but is not limited to, failure to make timely payments of amounts owed and failure of services to be provided in accordance with this Agreement, provided that the party seeking to terminate the Agreement has provided written notice to the other of the alleged default and the default has not been cured within thirty (30) days of receipt of such notice; and

B. the Parties may mutually agree to terminate this Agreement.

VI. GENERAL AND MISCELLANEOUS

A. Waiver. Neither this Agreement nor any of the terms hereof may be waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the waiver or modification shall be sought. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy.

B. Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

C. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

D. Amendments and Modifications. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

E. Venue. For any and all disputes arising under this Agreement, venue shall be in El Paso County, Texas.

F. Successors and Assigns. This Agreement shall bind and benefit the respective Parties and their legal successors, and shall not be assignable, in whole or in part, by any Party hereto without first obtaining the written consent of the other Party.

G. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

H. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

EL PASO COUNTY, TEXAS

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

Ricardo Samaniego
County Judge

Joyce A. Wilson
Chair

APPROVED AS TO FORM ONLY

ATTEST:



Kevin McCary
Assistant County Attorney

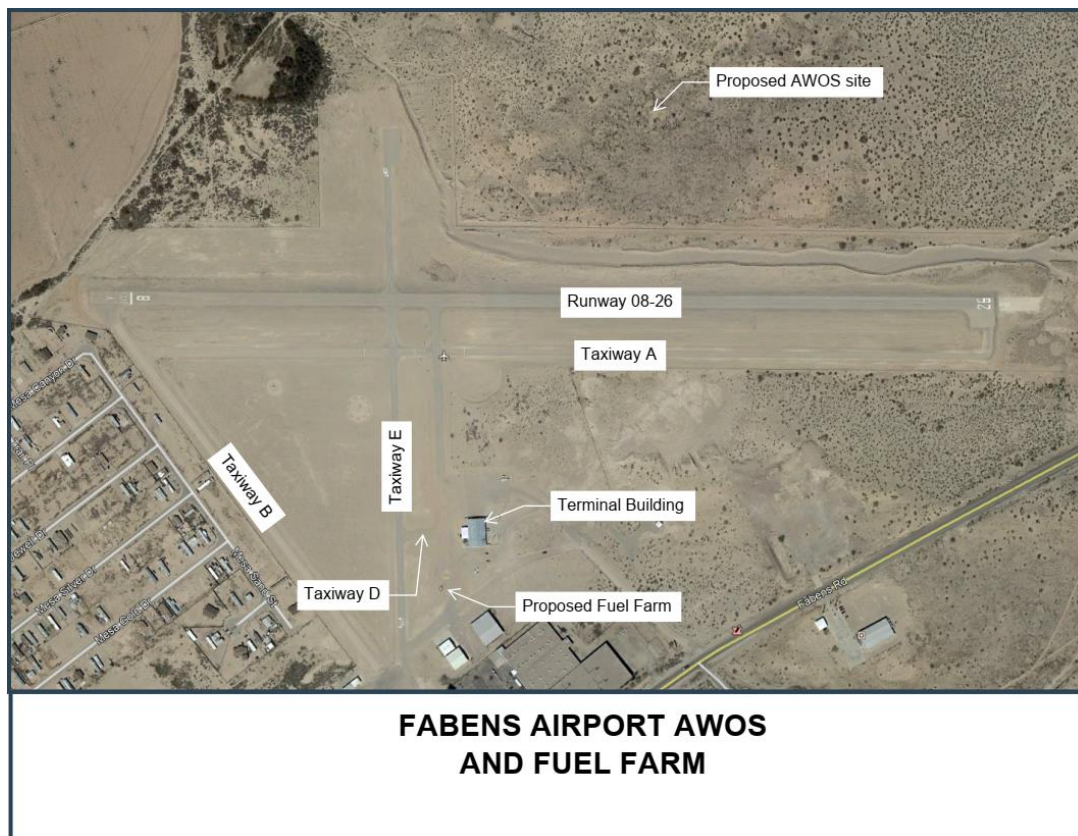
Luis Rosas
Board Secretary

EXHIBIT “A”

FABENS AIRPORT FUEL FARM & AWOS PROJECT DESCRIPTION

The proposed scope of work consists of those activities required of the Authority to design a fuel farm and automated weather observing system (AWOS) for the El Paso County Fabens Airport, as more fully described below and subject to the available Project Budget. Such activities shall include those services reasonably expected to be utilized in the design and construction of a fuel farm and AWOS. The design plans shall be developed in coordination with the County but shall be limited by the Project Budget identified in **EXHIBIT C** of this Agreement.

The Parties recognize that the County is providing local and Federally granted funds for the completion of these services. Accordingly, project activities shall comply with Federal standards and shall be completed in coordination with the County to maximize available project funds.



[END OF EXHIBIT]

EXHIBIT “B”

FABENS AIRPORT FUEL FARM & AWOS PROJECT RESPONSIBILITIES

- 1. PLANNING: County**
- 2. DESIGN: Authority**
- 3. ENVIRONMENTAL PERMITTING: Authority**
- 4. RIGHT-OF-WAY ACQUISITION: N/A**
- 5. CONSTRUCTION LETTING: Authority**
- 6. CONSTRUCTION: Authority**
- 7. FINANCIAL OBLIGATIONS: County, using Local & Federal Funds**
- 8. REPORTING: Authority**
- 9. PERFORMANCE STANDARDS: Federal**
- 10. MARKETING AND PUBLIC OUTREACH: None**
- 11. UTILITY RELOCATION: County, if necessary**
- 12. OTHERS: N/A**

[END OF EXHIBIT]

EXHIBIT “C”

FABENS AIRPORT FUEL FARM & AWOS PROJECT BUDGET

DESCRIPTION	TOTAL ESTIMATE D PROJECT COST	AUTHORITY PAYS WITH COUNTY FUNDS*	AUTHORITY PAYS WITH FEDERAL FUNDS
LAND	\$ 0.00	\$ 0.00	\$ 0.00
UTILITY RELOCATION	\$ 0.00	\$ 0.00	\$ 0.00
PERMITS & SERVICES	\$ 0.00	\$ 0.00	\$ 0.00
ENVIRONMENTAL & ENGINEERING	\$ 98,361.63	\$ 98,361.63	\$ 0.00
CONSTRUCTION	\$ 0.00	\$ 0.00	\$ 0.00
MISCELLANEOUS	\$ 0.00	\$ 0.00	\$ 0.00
TOTAL	\$ 98,361.63	\$ 98,361.63	\$ 0.00

*NOTE: While “County Funds” will be utilized by the Authority for completion of the Project, the parties anticipate that the County will seek federal contributions to offset up to half of the total project costs expended.

[END OF EXHIBIT]