

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

April 14, 2021

Honorable County Judge
& Commissioners

SUBJECT: Partnership Agreement – City of La Porte

Recommendation for authorization to execute an interlocal agreement with City of La Porte, Texas in connection with construction of traffic improvements along the Fairmont Parkway corridor between Beltway 8 and 7th Street, Precinct 2.

A Court Order was previously approved which required any participant in agreements with Harris County to revise their local ordinances to meet the Minimum Measures for Flood Resilience for new projects. The work covered under this agreement began prior to December 31, 2020. Therefore we recommend authorizing the agreement which will allow reimbursement of funds to Harris County.

Sincerely,



John R. Blount, P.E.
County Engineer

Attachment

cc: Commissioner Adrian Garcia
Mike Lykes
Milton Rahman, P.E.
Tiko Reynolds-Hausman
Faustino Benavidez, P.E.
Misty Rios
Rosalie Brockman
Juan Hernandez
Jose Jimenez
Chris Saddler
Tiffany Harding

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into by and between **Harris County** ("County") and **City of La Porte, Texas** ("City") pursuant to the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001, *et seq.* County and City may each be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, it is to the mutual benefit of the Parties to construct traffic improvements along the Fairmont Parkway corridor between Beltway 8, in Pasadena, Texas and South 7th Street in La Porte, Texas ("Project");

WHEREAS, the City has appropriated \$1,000,000.00, an agreed contribution towards the cost of construction of the Project ("Initial Funding");

WHEREAS, the Project will be constructed in two phases;

WHEREAS, the first phase of the Project ("Phase 1") consists of construction of intersection modifications and installation of temporary signals at the modified intersections, along Fairmont Parkway from Cunningham Drive to South 7th Street;

WHEREAS the construction of Phase 1 of the Project is substantially complete;

WHEREAS, the second phase of the Project ("Phase 2") includes installation of permanent signals at various intersections, construction of new signals, signal rebuilds, signal modifications, signal timing changes, and fiber optic interconnection of the traffic signals along the Project corridor;

WHEREAS, the County has entered into an Advance Funding Agreement ("AFA") with the Texas Department of Transportation ("TxDOT") for Phase 2 of the Project, under which TxDOT will be responsible for providing Federal funding for 80% of the construction cost, and the County shall be responsible for funding the remaining 20% of the construction cost ("Local Cost");

WHEREAS, Harris County Commissioners Court finds that the Project serves a public purpose.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties herein named, it is agreed as follows:

TERMS

I. Responsibilities of the Parties

- A. The County has provided or caused to be provided, all engineering and related services necessary to prepare plans, specifications and estimate ("PS&E") for construction of both Phase 1 and Phase 2 of the Project, at no cost to the City.
- B. During construction of Phase 1 and Phase 2 of the Project, County will:
 - i. Manage and inspect the construction of the Project; and
 - ii. Through its contractor, construct Phase 1 of the Project in accordance with the PS&E approved by the City and Phase 2 of the Project in accordance with the PS&E approved by TxDOT. County Engineer may make minor changes in either PS&E through change(s) in contract ("CIC") that he deems necessary or desirable.

- C. Upon completion of construction of the Project, County shall assume full ownership of and responsibility for the maintenance and repair of the Project.

II. Funding

- A. Upon execution of this Agreement by the Parties, the County will invoice the City for the Initial Funding, and the City shall remit payment to the County, in such amount, within 30 days of receipt of such invoice.
- B. County is not obligated to deposit the funds provided by City pursuant to this Agreement in an interest bearing account. As such, City is not entitled to receive any interest earned on such funds. If County chooses to deposit such funds in an interest bearing account, the interest earned thereon will be retained by County.

III. City's Right of Access

During the construction of the Project, City will have the right of access to the construction site. City will also have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting the Project. However, City shall give notice by telephone to the County Engineer prior to any inspection of either the construction site or documents. In conducting said inspections, City shall not interfere with the work in progress on the Project.

IV. City's Request for Records, Right to Review and Audit

- A. County shall furnish to City a copy of the record drawings and specifications in connection with the Project after its receipt of a written request from City. However, County has no obligation to furnish said record drawings and specifications to City so long as any funds are owed by City to County under this Agreement.
- B. City and its authorized representatives have the right to review and audit all books, records, vouchers and documents of whatever nature related to County's performance under this Agreement during the period of performance of the Agreement and for three (3) years thereafter, or for so long as there exists any dispute or litigation arising from this Agreement. City is responsible for the cost of the duplication.

V. Term and Termination

This Agreement shall commence upon final execution by all the Parties and shall remain in full force and effect until completion of the Project, unless earlier terminated in accordance with the terms of this Agreement. This Agreement may be terminated by the County at any time, by providing thirty (30) days' written notice to the City, in which case the County shall return any unexpended or uncommitted funds previously provided by the City under this Agreement. In conjunction with the return of any unexpended or uncommitted funds County shall provide City a written accounting substantiating the use of any City funds expended by County and not returned to City. Should this Agreement be terminated, the City shall not be entitled to any payment or reimbursement of interest that may have been realized by the County on any such funds provided by the City.

VI. Assignment

- A. Upon completion of the construction of the Project, City is assigned any rights that County may have against the contractor, the design engineer, and the surety on the contractor's performance bond, which relate to the Project.

- B. No Party shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party hereto.

VII. Notice

Any notice herein provided or permitted to be given under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or District at the following addresses:

City: City of La Porte, Texas
2963 North 23rd Street
La Porte, Texas 77571
Attention: Ray Mayo, Director of Public Works
Email: mayo@laportetx.gov

County: Harris County Engineering Department
1001 Preston Avenue, 7th Floor
Houston, Texas 77002-1893
Attention: Interagency Agreement Contract Coordinator
Email: weona.dean@hcpid.org

Any Notice given hereunder is deemed given upon hand delivery or three (3) days after the date of deposit in the United States Mail.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

VIII. Liability of the Parties

Each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agent or subcontractors arising out of or under this Agreement and which result from any act, error, or omission, intentional tort, intellectual property infringement, or failure to pay a vendor, committed by the Party or its employees, officials, agents, consultants under contract, or any other entity over which it exercises control.

IX. Limitation of Appropriation

- A. City understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the County is not currently appropriating any funds for the Project. County may appropriate funds to complete the Project, but such funds shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified available by the Harris County Auditor.
- B. City understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the Harris County Auditor to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

- C. County understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the City of La Porte Finance Director to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

X. Miscellaneous

- A. **Independent Parties.** It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the City for any purpose. The City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.
- B. **No Third Party Beneficiaries.** This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than City for the performance of this Agreement. The City is not obligated or liable to any party other than County for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County or City with respect to any third party.
- C. **Waiver of Breach.** No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.
- D. **No Personal Liability; No Waiver of Immunity.**
- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
 - (2) The Parties agree that no provision of this Agreement extends the County's or the City's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
 - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County or City of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- E. **Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

- F. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- G. Contract Construction.
- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
 - (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
 - (3) When terms are used in the singular or plural, the meaning shall apply to both.
 - (4) When either the male or female gender is used, the meaning shall apply to both.
- H. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- I. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- J. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- K. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- L. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- M. Warranty. By execution of this Agreement, the City warrants that the duties accorded to the City in this Agreement are within the powers and authority of the City.

[EXECUTION PAGE FOLLOWS]

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

By: Christy Gilbert
Christy Gilbert
Assistant County Attorney
CAO File No.: 18GEN1775

CITY OF LA PORTE, TEXAS

By: [Signature]
Mayor

ATTEST

By: [Signature]
City Secretary

APPROVED AS TO FORM:

By: Clark T. Askins
City Attorney, La Porte, Texas

Exhibit A

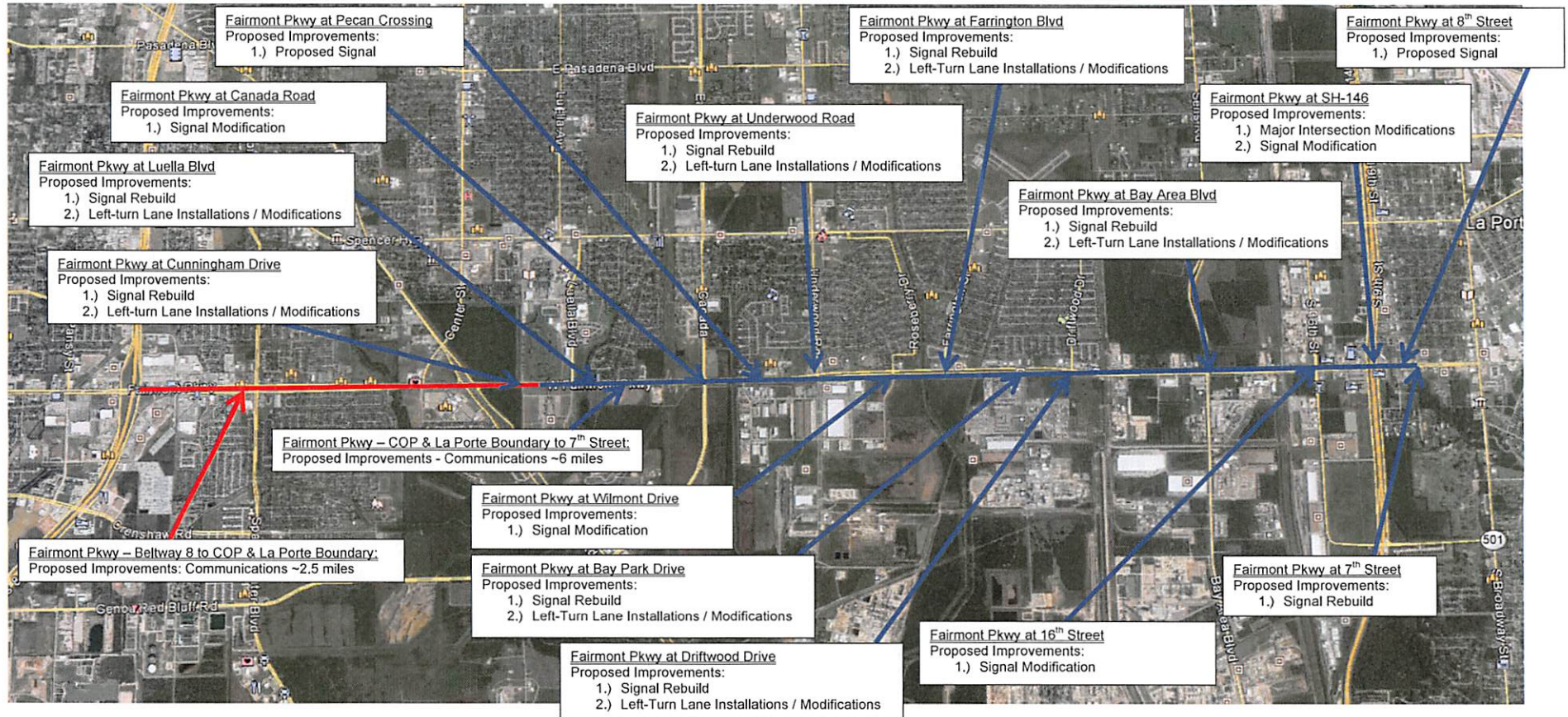


Exhibit B

Proposed CMAQ and Roadway Improvements – Fairmont Parkway

Scope of Work: The project includes the installation of 8.5 miles of fiber optic cable providing communication across various traffic devices along Fairmont Parkway from Beltway 8 to 7th Street. There will be a total of (2) two proposed signal installation, (8) eight signal rebuilds, (4) four signal modifications, (14) fourteen left-turn lane installations / modifications, various signal timing changes, and (1) one major intersection modification at SH 146 @ Fairmont Parkway. These improvements will improve the efficiency and relieve congestion at critical intersections, add capacity in much needed areas and improve air quality.

If both County and City agree upon a funding cap and de-scoping is required, then priority will be placed on roadway, communication, and signal improvements at intersections between the railroad grade separation and 7th Street (the eastern portions of the proposed project).

Funding:

The project will be funded through two mechanisms:

- 1) Federally-funded effort with 80/20 Local Participation of Construction
- 2) Roadway Improvements that are 100% Local Participation

	HGAC Federal Portion		Roadway	Total Local Share
	Total Federal Project	Local Share	100% Local	
Design	\$706,000	\$706,000	\$250,000	\$956,000
Construction	\$4,334,550	\$866,910	\$1,565,000	\$2,431,910
				\$3,387,910

Total Project Value Federal \$5,040,550

Total Project Value Roadway Work \$1,815,000

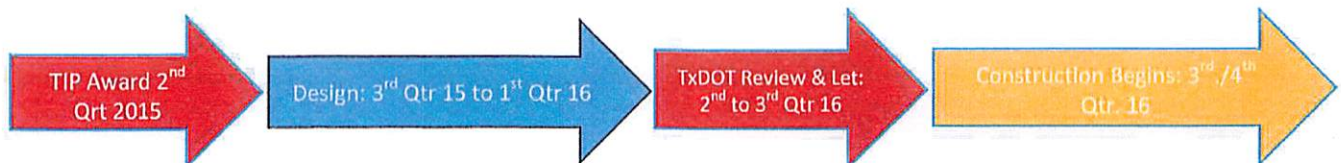
Total Value of Improvements \$6,855,550

Total Local Share \$3,387,910

Proposed La Porte Share \$1,000,000 minimum or 40% of Local Share of Construction

Proposed Harris County Share \$2,387,910

Conceptual Timeline



ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CITY OF LA PORTE IN CONNECTION WITH CONSTRUCTION OF TRAFFIC IMPROVEMENTS ALONG THE FAIRMONT PARKWAY CORRIDOR BETWEEN BELTWAY 8 AND 7TH STREET , LOCATED IN HARRIS COUNTY PRECINCT 2

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Interlocal Agreement between Harris County and City of La Porte in connection with construction of traffic improvements along the Fairmont Parkway corridor between Beltway 8 and 7th Street, located in Harris County Precinct 2.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.