

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 5/18/2009	Submitted By: Rose Askew
Court Agenda Date: 5/26/2009	Department: Commissioner Pct. 1
	Phone Number: 281.344.9400

SUMMARY OF ITEM:
 An ordinance approving and authorizing an interlocal agreement with Fort Bend County relating to the extension of South Post Oak Road; and containing findings and provisions relating to the subject.

RENEWAL AGREEMENT/APPOINTMENT REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO
 YES NO

List Supporting Documents Attached: Interlocal Agreement between Fort Bend County and the City of Arcola

FINANCIAL SUMMARY:

BUDGETED ITEM: YES NO

FUNDNG SOURCE: Accounting Unit: _____ Account Number: _____
 Activity (If Applicable): _____

DESCRIPTION OF LAWSOM ACCOUNT: _____

COUNTY JUDGE
 RECEIVED
 MAY 19 2009

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:
 Original Form Submitted with back up to County Judge's Office (✓ when completed)
 If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input type="checkbox"/> Budget Officer (281-344-3954)	<input type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input type="checkbox"/> Information Technology (281-341-4526)	<input type="checkbox"/> County Clerk (281-341-8697)
<input type="checkbox"/> Other:	<input type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

5-29-09 orig. ret. to Rose at Comm Pct. 1

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**INTERLOCAL AGREEMENT BETWEEN FORT BEND COUNTY
AND THE CITY OF ARCOLA**

This INTERLOCAL AGREEMENT is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE and Chapters 251.012 and/or 251.015 of the Texas Transportation Code, by and between FORT BEND COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court (hereinafter referred to as “County”) and the CITY OF ARCOLA, a municipal corporation of the State of Texas, acting herein by and through its City Council (hereinafter referred to as “City.”)

WHEREAS, County and City desire to cooperate on the extension of South Post Oak Road to connect State Highway 6 to McKeever Road and the improvement of McKeever Road, in Fort Bend County, Texas (hereinafter referred to as the “Extension and Improvement”); and,

WHEREAS, this Agreement relates to the Extension and Improvement, which are to be public roads; and it is distinctly understood and agreed by the parties that THIS AGREEMENT DOES NOT AUTHORIZE THE CLOSING OR ABANDONMENT OF MCKEEVER ROAD OR EXPANSION OF HOUSTON SOUTHWEST AIRPORT; AND

WHEREAS, the governing bodies of the City and County have duly authorized this Agreement.

NOW, THEREFORE, in consideration of the foregoing and further consideration of the mutual promises, covenants and conditions herein, the parties hereby agree as follow;

**I.
INITIAL STEPS**

A. Layout and Design.

The Extension and Improvement will be constructed as South Post Oak Road from SH 6 to McKeever Road as a four-lane divided concrete roadway with a raised median, curb and gutters, and open ditch drainage, transitioning to a three-lane concrete roadway as it approaches the McKeever Road intersection. McKeever Road will be constructed as a three-lane concrete roadway, 40' wide, with a curb (no closer to the current runway), and an open ditch drainage between South Post Oak and Steep Bank Trace as generally depicted on Exhibit A. West of the Steep Bank Trace intersection, McKeever Road will transition to a two-lane asphalt roadway with open ditch drainage. McKeever Road will be constructed as a two-lane, 30' wide asphalt roadway with open ditch drainage between South Post Oak and SH 6 along the existing alignment. Detailed plans and specifications will be prepared under the direction of the County Engineer and must be submitted and approved by the City before start of construction. The County Engineer is authorized to include additional and enhanced facilities in the plans and specifications, if funds are available for that purpose, without the approval of City. McKeever Road shall remain open and used as a public road along its entire length.

B. Property Owner Responsibilities.

(1) *Payment.* Upon completion of plans and surveys to the degree necessary to determine the right of way required, the County Engineer shall notify the owner(s) of the property described in Exhibit B (hereinafter referred to as "Property"), attached hereto and fully incorporated by reference herein, that the payment of \$500,000 is required for construction of South Post Oak, and such payment shall be made within 30 days following the owner's receipt of notice. This payment will be held by the County in the special project account to be used only for the Extension and Improvement, as provided in this Agreement. It is understood and agreed that this payment is the maximum amount to be required to be paid by the owner(s) of this Property. If the payment is not made, neither the City nor the County is obligated to proceed further under this Agreement and this Agreement shall automatically terminate. If the construction of South Post Oak has not commenced within eighteen months of the signing of this agreement, the \$500,000 will be returned to the owner(s) of the Property.

(2) *Other Actions.* The owner(s) of the Property are also responsible for taking all the following actions promptly following approval of the detailed plans and specifications by the County Engineer and the City:

- (a) *Dedication:* Dedicate to the county the right-of-way for the Extension and Improvement across the Property (100 feet wide, plus any additional width that may be required for drainage). Dedication may be made by a recorded subdivision plat of the Property or other instruments acceptable to the City and the County. If approved by the County Engineer and the City, such additional width may be an easement for drainage purposes.
- (b) *Annexation:* Take all action necessary to allow the Property to be annexed by the City (except for those portions of the Property that are already in the City's corporate limits). This action would include: (i) making, executing, acknowledging and delivering to the City petitions and supporting documents that may be reasonably requested by the City or its attorneys for such annexation, and (ii) providing such additional items and assistance as the City or its attorneys may require to complete the annexation. This action would be taken in time to allow the annexation to be completed before the start of construction of the Extension.

C. Completion of Annexation.

Upon fulfillment of all the Property owner responsibilities mentioned above—including, especially, completion of the annexation—the City hereby approves and consents to the construction and maintenance of the Extension and Improvement by the County. This paragraph shall remain in full force and effect for the term of this Agreement, including any extensions of that term, at the end of which the City's approval and consent may be revoked by the City Council, unless construction has already begun and is prosecuted to completion with reasonable diligence.

D. Tax Incentives.

Upon fulfillment of all Property owner responsibilities referenced in Section B above—including, especially, completion of the annexation—the City intends to consider providing tax abatements to the Property under the requirements of Chapter 312 of the TEXAS TAX CODE.

E. Other Funds.

The County has appropriated an amount not to exceed \$4,500,000.00 for the Extension and Improvement. This sum shall be held in a special project account for the Extension and Improvement and shall be current revenues available to the County. Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

F. Local Government's Responsibilities.

Upon request by the City, the design engineer will be required to provide to the City necessary engineering data for the notice, if any, required by the Federal Aviation Administration. City agrees to submit, if required, any notice of the Project to the Federal Aviation Administration. If the FAA finds that the Project would be a hazard to air navigation or requires changes to the Project, the City and County agree to meet and confer before proceeding further with the work. They may agree to modify the Project and confer further with the FAA.

G. Acceptance, Warranty & Repairs.

Before acceptance of the work, the County and the City will conduct a joint inspection of the Project with the construction phase engineers, and the County will require that the contractor provide any missing items and repair or replace any defective work before acceptance. The County and City will work together to make sure that the contractor performs its warranty and repair obligations, after acceptance.

**II.
COMPLETION OF EXTENSION AND IMPROVEMENT**

Upon: (i) the County's receipt of the \$500,000 referenced in Section B(1) above from the Property owners, (ii) any necessary property acquisitions, and (iii) completion of the annexation mentioned above, and subject to availability of sufficient funds, the County shall proceed to complete the Extension and Improvement as soon as practicable.

**III.
TERM**

A. The term of this Agreement begins on the date approved by the last party hereto and shall extend for one (2) calendar years. On each anniversary, the term of this Agreement shall

automatically renew for a one-year period, unless, at least 90 days prior to an upcoming anniversary date, one party notifies the other of its intention to terminate this Agreement, in which case the Agreement shall expire the end of the existing term. The expiration of the term of this Agreement does not affect any party's obligations to pay costs incurred or committed prior to expiration.

B. It is expressly understood and agreed that this Agreement will have no force or effect until duly executed by both parties. Neither party is obligated to proceed unless the owner(s) of the Property submits a written commitment, in a form satisfactory to City and County, to make the payment and perform the other actions contemplated by Section I(B) of this Agreement.

IV. MISCELLANEOUS

A. By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.

B. Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.

C. City agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorney's Office was offered solely to benefit its client; City and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.

D. Should any party be delayed or hindered in the performance of any of its obligations or duties under this Agreement, other than an obligation to pay money, because of a force majeure, then the party so delayed or hindered shall be excused from such delay or hindrance to the extent that it is caused by the force majeure. The term "force majeure", as used in the Agreement, includes, without limitation of the generality thereof: acts of God, strikes, lockouts, other personnel disturbances or job actions, acts of the public enemy, laws, regulations, orders of any kind of the government of the United States of the State of Texas or any civil or military authority, insurrections, riots, epidemics. Landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery or equipment, shortages of materials, equipment or supplies, or any other limitations of any party, whether similar to those enumerated or otherwise, which are not within the reasonable control of the party claiming such inability. If a party is affected by strike lockout or other personnel disturbance or job action, the Agreement does not compel the party to acquiesce to any demand or position of any personnel or other party, it being understood that the strike, lockout, disturbance or action would be a force majeure for the duration thereof.

E. This Agreement shall bind and benefit the parties only. It shall not confer any rights or benefits upon any non-party, nor may any non-party enforce this Agreement or sue for any damages under this Agreement.

F. No party shall terminate its performance under this Agreement because of a breach by the other party, unless: (i) the terminating party first delivers an effective notice of breach to the breaching party, (ii) the breach is not cured by the end of the cure period, and (iii) on or before the thirtieth day following the last day of the cure period, the terminating party sends an actual notice of termination setting a termination date, which date may not be sooner than the tenth day following receipt of the termination notice. To be effective, a notice of breach must: (1) identify the breach, giving enough details for the notified party to understand, investigate and cure, (2) state the sections and exact provisions of this Agreement which have been breached, (3) state all means of curing the breach known to the party sending the notice, and (4) designate a cure period of at least 30 days following receipt of the notice of breach. If a breach has already occurred, or if it is continuing in nature, it can be cured by taking reasonable action to prevent a recurrence. Except as limited by this Agreement, all remedies at law or in equity shall remain available to the parties.

G. No waiver or waivers of any breach (or any series of breaches) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches of any kind, under any circumstances. As used in this Agreement, "breach" includes default and all other circumstances in which a party does not perform as required by the Agreement.

H. Neither County nor City intends for any third party to obtain a right by virtue of this Agreement.

I. County and City understand and agree that County is an Independent Contractor and that at no time will County's employees, agents or assignees be deemed for any purpose to be employees or agents of City.

J. County and City understand and agree that City is an Independent Contractor and that at no time will City's employees, agents or assignees be deemed for any purpose to be employees or agents of County.

K. City waives all requirements for permits and fees that may be required of the County or the County's employees, agents or assignees for the project contemplated herein.

L. Any notice, communication, request, reply, or advice (in the Agreement, severally and collectively called "notice") herein provided or permitted to be given, made, or accepted by any party to any other party must be in writing and may be given: (i) by depositing the same in the United States mail, postpaid as registered or certified mail with return receipt requested, addressed to the party to be notified at the address required by this Agreement, or (ii) by physically delivering the same to the address of such party. Notice deposited in the mail in the manner described shall be presumed to be received on and the fourth day following the day it is so deposited. This presumption is rebuttable. For the purpose of notice, addresses of the parties, shall, until changed as hereinafter provided, be as set forth below:

Fort Bend County
301 Jackson, Suite 719
Richmond, Texas 77469
Attn: County Judge

City of Arcola
13222 Highway 6
Arcola, Texas 77583
Attn: Mayor

The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by giving at least fifteen days written notice of the changed address to each other party.

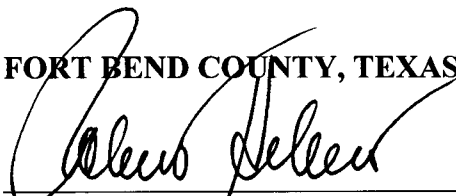
**V.
EXECUTION**

A. This Agreement has been executed by the City and the County upon and by the authority of an order or resolution passed at a property constituted meeting of their respective governing bodies and shall be effective on the date of execution of the final party to the Agreement.

B. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing signed by all parties hereto.

C. The undersigned officers and/or agents are properly authorized to execute this contract on behalf of the Parties hereto, and each hereby certifies to the other that any necessary resolution or order extending such authority have been duly passed and are now in full force and effect. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

FORT BEND COUNTY, TEXAS



Robert Hebert, Fort Bend County Judge

Date May 26, 2009

ATTEST: 


Dianne Wilson, Fort Bend County Clerk

CITY OF ARCOLA

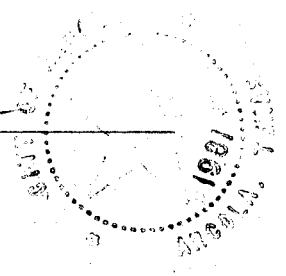


Mayor

Date: May 13, 2009

ATTEST: 

City Secretary



**City of Arcola
Fort Bend County, Texas**

Ordinance No. 05-12-09

AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT WITH FORT BEND COUNTY RELATING TO THE EXTENSION OF SOUTH POST OAK ROAD; AND CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARCOLA, TEXAS:

Section 1. An interlocal agreement with Fort Bend County (relating to the extension of South Post Oak Road and improvement of McKeever Road) is hereby approved and authorized, in substantially the form attached to this ordinance ("Interlocal Agreement"). The Mayor is authorized to complete, execute and deliver the Interlocal Agreement on behalf of the City.

Section 2. This ordinance and the Interlocal Agreement are adopted in accordance with the laws of the State of Texas (including, among others, Chapter 791 of the Texas Government Code) and shall be interpreted and construed in compliance therewith. To the extent necessary to carry out the Interlocal Agreement and to extend South Post Oak, all prior ordinances, resolutions, motions and other measures are hereby amended. Resolutions Nos. 05-17-05 and 07-12-05 are superseded and replaced by this ordinance and the Interlocal Agreement.

Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this ordinance, nor the application of such work, phrase, clause, sentence, paragraph, section or other part of this ordinance to any other persons or circumstances, shall be affected thereby.

Section 4. The City Council officially finds, determines and declares that sufficient written notice of the date, hour, place and subject of each meeting at which this ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 5. This ordinance shall become effective immediately upon adoption and signature.

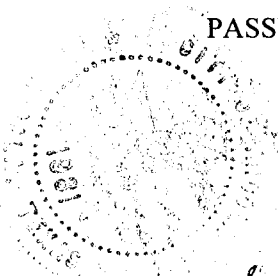
PASSED, ADOPTED AND SIGNED on May 12, 2009

Councilmembers Voting Aye: 5

Councilmembers Voting No: 0

Councilmembers Absent: 0

Attest:


Billy Cantre
City Secretary (Seal)

Signed:
Mayor

Mary Etta Anderson