

**FORT BEND COUNTY FY 2009  
COMMISSIONERS COURT AGENDA REQUEST FORM**

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

<b>Date Submitted:</b> 06/24/2009	<b>Submitted By:</b> Mary Reveles
<b>Court Agenda Date:</b> 07/07/2009	<b>Department:</b> County Attorney
	<b>Phone Number:</b> 341-4554

**SUMMARY OF ITEM:** **AGENDA ITEM 24A**

**ENGINEERING:**

Take all appropriate action on interlocal agreement between Fort Bend County and the City of Houston for improvements to Fondren Road, South Post Oak Road and Blue Ridge Road, Project Nos. 701, 758 and 766 from the 2007 Mobility Bond Projects. (Fund 2007 Mobility Bond Projects.)

**RENEWAL AGREEMENT/APPOINTMENT** YES  NO

**REVIEWED BY COUNTY ATTORNEY'S OFFICE:** YES  NO

**List Supporting Documents Attached:** Agreement approved by City of Houston

**FINANCIAL SUMMARY:** BUDGETED ITEM: YES  NO  N/A

**FUNDNG SOURCE:** Accounting Unit: \_\_\_\_\_ Account Number: N/A  
Activity (If Applicable): \_\_\_\_\_

**DESCRIPTION OF LAWSOM ACCOUNT:** \_\_\_\_\_ (Fund 2007 Mobility Bond Projects.)

**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](mailto: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 checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input checked="" type="checkbox"/> Budget Officer (281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input type="checkbox"/> Purchasing Agent (281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input checked="" type="checkbox"/> Road & Bridge	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input checked="" type="checkbox"/> Engineering	<input checked="" type="checkbox"/> County Atty (281-341-4557)

**COUNTY JUDGE  
RECEIVED  
JUN 24 2009**

**RECOMMENDATION / ACTION REQUESTED:**

Special Handling Requested (specify):

7-23-09 4 orig. ret. to Mary at Co. Attorney

Ci73474  
09-0512

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

**INTERLOCAL AGREEMENT FOR ROADWAY IMPROVEMENTS**  
**2007 MOBILITY BOND PROJECT No. 701, 758, & 766**

This Agreement for roadway improvements is made between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, hereinafter called "County", and the City of Houston, a home-rule municipality of the State of Texas principally located in Harris County, Texas, hereinafter called "City".

**RECITALS:**

1. It is to the mutual benefit of the County and the City to construct the following three (3) roadway projects included in the 2007 Mobility Bond Projects of County, such improvements being herein after called the "Project" or "Projects":

- A. Fondren Road from Hillcroft Avenue to McHard Road (FM 2234). 1.2 miles of new 4 lane concrete boulevard, with curb and gutter, storm sewer, sanitary sewer, and water lines. The proposed boulevard will contain two 24-ft lanes in each direction with a median, sidewalks, utilities, and traffic signals. This Project is individually referred to as "Fondren" or Fort Bend County 2007 Mobility Bond Project No. 701.
- B. S. Post Oak Road from Sam Houston Tollway (Beltway 8) to McHard Road (FM 2234). Add a new 12-ft concrete lane in each direction (within the existing median), with modifications to the traffic signals and intersections as necessary. This Project is individually referred to as "South Post Oak" or Fort Bend County 2007 Mobility Bond Project No. 758.
- C. Blue Ridge Road from south of Rockergate Drive to McHard Road (FM 2234). Upgrade 0.5 miles of existing 2-lane rural road to a 2-lane concrete roadway with emergency lanes. This Project is individually referred to as "Blue Ridge" or Fort Bend County 2007 Mobility Bond Project No. 766.

A map showing the locations of the Projects is attached to and made a part of this Agreement as Exhibit A.

2. The County and City are willing to participate as set forth herein in the actual costs of the Project(s), including, the cost of right of way acquisition, engineering, construction, construction management, construction inspection, and construction testing costs related to the Project, herein after the "Costs" or the "Project Costs".

3. This agreement is authorized by the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE.

4. The County and City in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

### TERMS

#### 1. ALLOCATION OF COSTS:

A. Allocation of Costs for the Project: As of the date of this Agreement, the total estimated Project costs, as prepared by the City of Houston, are \$11,500,000. The costs of the Projects to be allocated as follows:

.1 The City will contribute 50% of the total Project Costs, plus any needed utility cost, up to but not to exceed \$5,750,000, subject to the appropriation of funds.

.2 The County's sole obligation is to provide the funding to the City as specified herein. Upon request for payment from the City, the County agrees to pay the City an amount equal to the *lesser* of the following:

- (a) FIFTY percent (50%) total Project Costs; or
- (b) \$5,750,000.00.

#### 2. PAYMENT

Within thirty (30) days of execution of this Agreement the County shall remit its total financial share of \$5,750,000.00 to the City.

#### 3. DESIGN AND ENGINEERING FOR THE PROJECT

A. The County will propose a selection of any registered civil engineer or civil engineering firms (the "Engineer" or "Engineers") for design of the Projects. The County's selection will be subject to approval by the City. The City will not unreasonably withhold approval. The Engineer may subcontract surveying, geotechnical, and environmental services necessary for the Project provided such selection complies with all applicable laws and City of Houston contract requirements.

B. Upon execution of this Agreement the City will enter into negotiations with the approved County selected Engineers for the Project. The City will enter into engineering contracts for design of the Project in accordance with the Project Sequence as defined in Section 6(E). Design shall include all engineering required for the Project (preliminary, final, and construction phase engineering services), including geotechnical and environmental

services. Should any one of the selected Engineers not satisfactorily perform and the City terminate their services, the County will be allowed to propose for the City's approval the replacement Engineer or Engineers to complete the Project.

- C. As part of the Projects, the City shall also acquire and deliver the necessary documentation for acquisition of right-of-way. The City shall obtain rights for the County to use all drawings, specifications and other documents obtained by the City for construction and upon request shall provide such documents to the County for its own use. The City shall provide notification to the County on project schedules and approvals. All right-of-way acquisition is the sole responsibility of the City. The costs for acquisition of the right-of-way shall be included in the City's financial share for the costs of the Projects under this Agreement.
- D. The City shall have Plans, Specifications and Estimates ("PS&E") prepared for the Project.

#### 4. COMPETITIVE BID AND AWARD

- A. Within 90 days after the City has approved final design for each Project, the City will competitively bid each Project and award contracts for the construction of the Projects. The City will comply with competitive bid laws applicable to the City, and other existing laws and ordinances governing the City's construction of public works. If the lowest bid for construction of the Projects is greater than the amount of funds allocated by the parties for the Projects, the City may reject all bids and re-advertise for bids for the construction of the Project according to the terms specified in this section of the Agreement.
- B. Upon receipt of bids for the Projects, the City will notify the County of the amount of the low bids, plus a fifteen percent (15%) contingency (the "Notice of Bid") not to exceed the amount allocated by the parties. If a party desires to object to the award of the contracts, it must provide written notice to the other party within 15 days of the date the Notice of Bid is served on the party. Otherwise, the party will be deemed to have approved the award of the contract to the low bidder.
- C. If there are no objections to the award of the contract to the low bidder, the City will issue a notice to proceed to the contractor.
- D. The City will enter into separate contracts with the qualified low bidders (the "Contractors"), which will be subject to change orders that may increase or otherwise alter the cost for the work to be done under such Contracts ("Change Orders"). The Change Orders shall not exceed the total funds allocated by the Parties under this Agreement.

5. CONSTRUCTION

- A. The City shall administer the Contracts for the Projects and provide on-site inspection of the construction. Administration duties include but are not limited to entering into all necessary change orders to the Contract, provided that all such change orders shall require the approval of the County, which shall not be unreasonably withheld or delayed. The City has no obligation to approve or to pay for any change orders that would increase its contribution to an amount above the funds appropriated upon award of the Contracts.
- B. The City shall inspect all construction for the conformity with City standards, and shall immediately request changes or corrections to the Contractor's work if the City finds such changes or corrections to be necessary upon inspection. The City shall approve all change orders to the Contract necessary by any request of the City.
- C. The City shall have the right to terminate any of the Contracts awarded and enforce its remedies under this Agreement as determined to be necessary by the City. In the event of any such termination, the City shall have the right to complete and/or cause the completion of the Project itself through such other contractor as the City determines to be appropriate, provided that all work done in connection with such completion shall be in compliance with the City's standards for public works.

6. GENERAL PROVISIONS

- A. If on January 1, 2014, the City has not completed the PS&E for all the Projects and the County has not exercised its right to terminate this Agreement before January 1, 2014, the County may terminate this Agreement at any time after such date. Any unused funds will be reimbursed according to the allocation of costs in Section 1 of this Agreement.
- B. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the County has available the maximum sum of \$5,750,000 to satisfy its obligations under this Agreement and the County shall under no circumstances be required to expend more than the said maximum sum. It is further agreed that the County shall not be required to expend other than current funds to accomplish its obligations hereunder.
- C. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the City has available the maximum sum of \$5,750,000 to satisfy its obligations under this Agreement and the City shall under no circumstances be required to expend more than the said maximum sum. It is further agreed that the City shall not be required to expend other than current funds to accomplish its obligations hereunder.
- D. In accordance with Subsections B and C of this Section 6, total project costs shall not exceed \$11,500,000. Total project costs include all costs associated with Sections 3 - 5 of

this Agreement. If the Projects' total cost reaches 95% of \$11,500,000, any remaining work will be deleted from the Projects' scope and all respective contracts will be closed in a manner that will not exceed Project funding limits.

E. The Project Sequence is as follows:

- .1 Fondren – 2007 Mobility Bond Project No. 701
- .2 South Post Oak - 2007 Mobility Bond Project No. 758
- .3 Blue Ridge - 2007 Mobility Bond Project No. 766

## 7. TERMINATION

A. This Agreement may be terminated by any of the following conditions:

- .1 By mutual agreement and consent of the City's Director of Public Works and Engineering Department ("Director") and County up until the award of a construction contract for such Project.
- .2 By either party, upon the failure of the other party to fulfill its obligations as set forth in this Agreement. To the extent permitted by law, the breaching party shall pay any cost incurred due to such breach.
- .3 Termination for Convenience by City. The Director may terminate this Agreement at any time, up until the award of a construction contract for each Project, by giving 30 days written notice to County. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

B. Should this Agreement terminate, for section 7.A.1 OR 7.A.2 above, the City shall subtract half of any reasonable costs incurred by the City, from the County's financial share received under this Agreement and return the balance of the County's payment to the County. Should this Agreement terminate for section 7.A.3 above, the City shall reimburse the County its allocation of costs for such Project that is the subject of termination under section 7.A.3.

C. If either party elects to terminate this Agreement prior to completion of the Project(s), it shall do so in such a manner that the roadways for the Project(s) are operational and are not left in an unreasonably hazardous condition.

D. If either party elects to terminate this Agreement at any time, for any reason, then that party shall notify the other not less than 30 days prior to the termination.

## 8. ASSIGNMENT

No Party hereto will make in whole or in part any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Parties hereto.

## 9. NOTICE

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed hereinbelow or at such other address as the other party may have theretofore prescribed by notice to the sending party.

Address for notice shall be as follows:

### COUNTY:

County Judge Robert Hebert  
Attn: Ann Werlin  
301 Jackson Street, Suite 719  
Richmond, Texas 77469

### Copy to:

D. Jesse Hegemier  
County Engineer  
1124-52 Blume Road  
Rosenberg, Texas 77471

### CITY:

Department of Public Works and Engineering  
Engineering & Construction Division  
611 Walker Street, 15<sup>th</sup> Floor  
P.O. Box 1562  
Houston, Texas 77251-1562

Attn.: Carol Ellinger, P.E.

IN TESTIMONY OF WHICH, this agreement, in duplicate counterparts, each having equal force and effect of an original, has been executed on behalf of the parties hereto as follows, to-wit:

- a. It has on the 7 day of July, 2009, been executed on behalf of the County by the County Judge of Fort Bend County, Texas, pursuant to an order of the Commissioners Court of Fort Bend County authorizing such execution.

**FORT BEND COUNTY**

APPROVED AS TO FORM:

COUNTY ATTORNEY

ATTEST:

By Mary E. Reed  
Assistant County Attorney

FORT BEND COUNTY

By Robert Hebert  
ROBERT HEBERT, County Judge

ATTEST:

Dianne Wilson  
Dianne Wilson, County Clerk

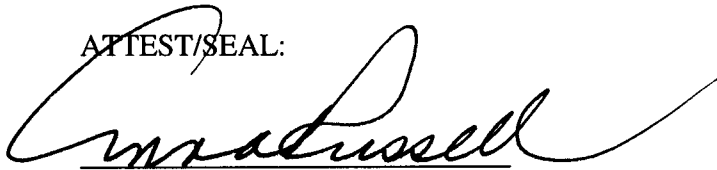
AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 5,750,000.<sup>00</sup> to accomplish and pay the obligations of Fort Bend County herein.

Ed Sturdivant  
Ed Sturdivant, County Auditor

**CITY OF HOUSTON**

ATTEST/SEAL:

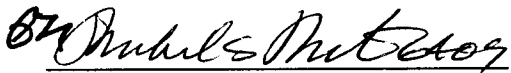


City Secretary

CITY OF HOUSTON

By Bill White  
BILL WHITE, Mayor *Arayda Ulibarri*

APPROVED:



Director, Department of Public Works and Engineering

COUNTERSIGNED:

Arvise D. Parker  
City Controller *Madeline P. Appel*

APPROVED AS TO FORM:



Assistant City Attorney  
L.D. File No. 0520800019001

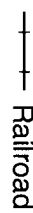
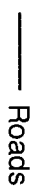

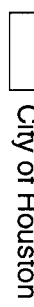
DATE COUNTERSIGNED:

6-17-09

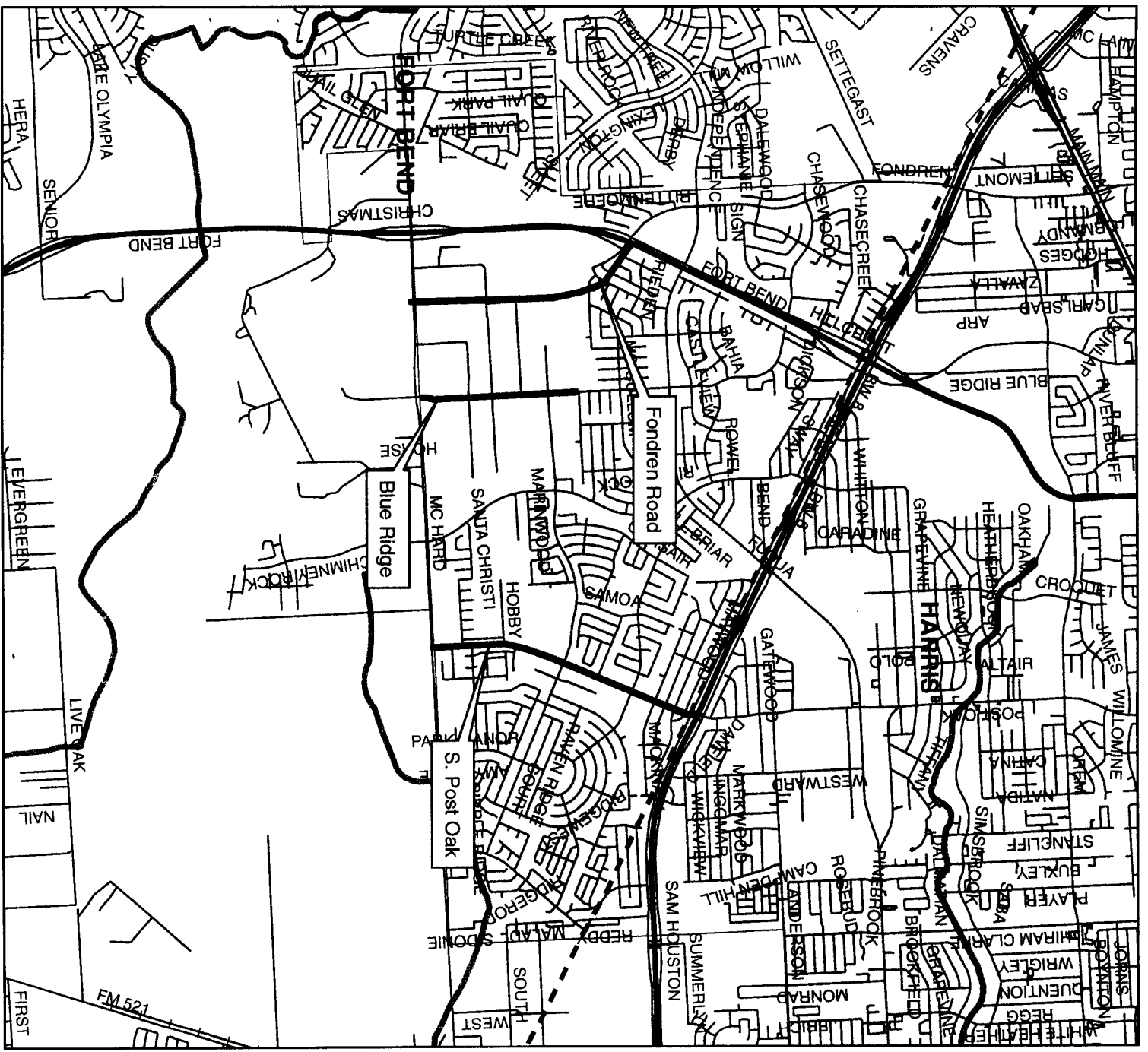


# Exhibit A Project Locations

## Legend

-  Railroad
-  Roads
-  County Line
-  City of Houston

Locational Map



This map represents the best information available to the City. The City does not warrant its accuracy or completeness. Field verifications should be performed as necessary.