

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM
Return Completed Form to: Agenda Coordinator, County Judge's Office

Date Submitted: September 16, 2009
Court Date: September 22, 2009

Submitted By: Michael Gutierrez
Department: Comm. Pct#1
Telephone: 281-633-7687

SUMMARY OF ITEM:

Take all appropriate action to approve the First Amendment to the Interlocal Project Agreement between Fort Bend County and the City of Arcola.

Renewal Agreement/Appointment: YES NO
Reviewed by County Attorney's Office: YES X NO

List Supporting Documents Attached:
Original Agreement was approved by Court on May 26, 2009.

FINANCIAL SUMMARY:

Budgeted Item: YES NO

Funding Source: Fund: _____ Agency: _____ Organization: _____ Object: _____

Requires Auditor to Certify Funds: YES NO

Instructions for submitting an Agenda Request:

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

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office: x (✓ 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 the numbers below:

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

Recommendation:

Special Handling: _____

10-1-09 2 origs. ret. to Michael at Comm. Pct. 1

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF FORT BEND

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

THIS FIRST AMENDMENT ("First Amendment") is entered into by and between FORT BEND COUNTY, TEXAS ("County") and the CITY OF ARCOLA, TEXAS ("City").

Background. County and City entered into that certain "INTERLOCAL AGREEMENT BETWEEN FORT BEND COUNTY AND THE CITY OF ARCOLA" ("Interlocal Agreement") by signatures on May 13, 2009 and May 26, 2009. The Interlocal Agreement provides for extension of South Post Oak Road to connect State Highway 6 to McKeever Road and the improvement of McKeever Road ("Extension and Improvement"). The parties want to confirm the exhibits for the Interlocal Agreement.

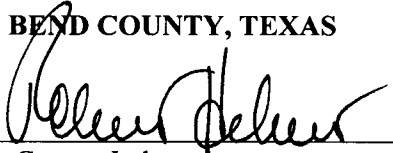
Specific Amendments. The Interlocal Agreement is amended to include Exhibit A (map showing Extension and Improvement) and Exhibit B (description and sketch of the Property), both of which are attached to this First Amendment. The Interlocal Agreement, with those two exhibits, is confirmed as of the time it was made.


General. This First Amendment and the Interlocal Agreement shall be read together and construed as one integrated contract, but in case of conflict, this First Amendment controls. Unless the context clearly indicates otherwise, words and phrases in this First Amendment have the same meanings as in the Interlocal Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment in multiple counterparts, each of which shall be deemed to be an original.

FORT BEND COUNTY, TEXAS

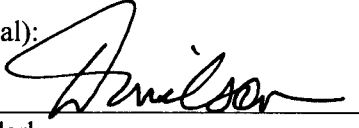
CITY OF ARCOLA, TEXAS

By: 
County Judge

By: 
Mayor

Date: September 22, 2009

Date: September 8, 2009

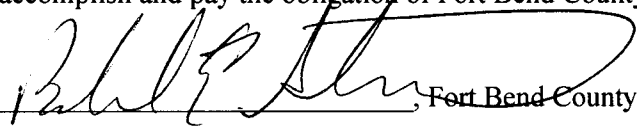
Attest (Seal): 
County Clerk

Attest (Seal): 
City Secretary

Reviewed: 
Road Commissioner

AUDITOR'S CERTIFICATE

I hereby certify that funds are available from current revenues legally available in the amount of \$ 0 to accomplish and pay the obligation of Fort Bend County under this First Amendment.

, Fort Bend County Auditor

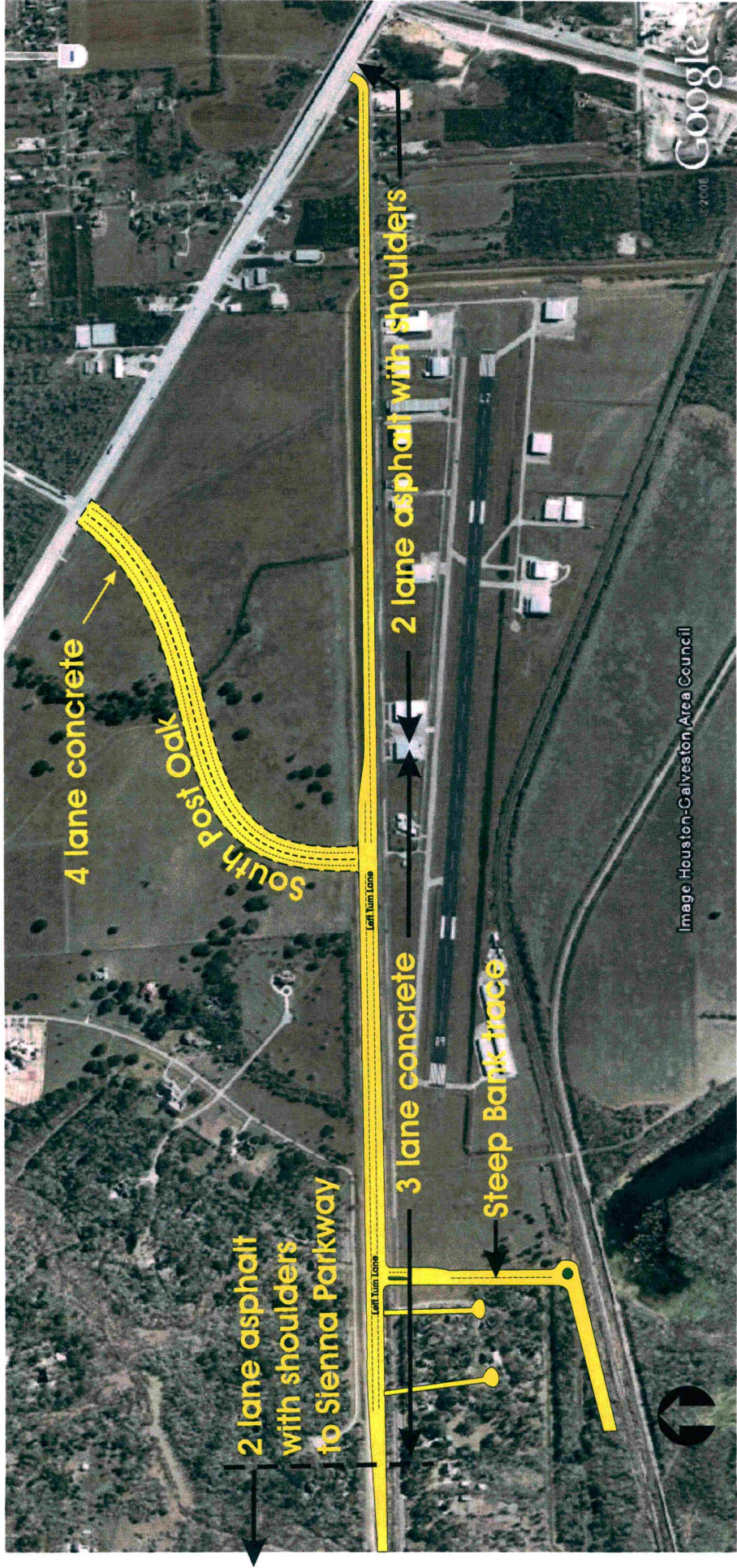


EXHIBIT A

Exhibit B

The "Property" includes all of the land described by metes and bounds, below, and illustrated in the survey drawing which is attached (prepared by Charlie Kalkomey and dated 3/22/05), SAVE AND EXCEPT the "EXCLUSION AREA" area shown in the sketch entitled "PROPOSED S. POST OAK ROAD ALIGNMENT AND ANNEXATION AREA," which is attached (prepared by LJA Engineering & Surveying, Inc. and dated 7-12-2005).

CHARLIE KALKOMEY SURVEYING, INC.

1815 MONRO AVENUE
ROSENBERG, TEXAS 77471
281 242-2033

CHARLIE KALKOMEY
REGISTERED PROFESSIONAL LAND SURVEYOR

CHARLES A. KALKOMEY
REGISTERED PROFESSIONAL LAND SURVEYOR

FIELD NOTES FOR A 211.109 ACRE TRACT OF LAND IN THE THOMAS BARNETT SURVEY, ABSTRACT 7, AND THE MOSES SHIPMAN LEAGUE, ABSTRACT 86, FORT BEND COUNTY, TEXAS, BEING COMPRISED OF THAT CERTAIN CALLED 98.1708 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER COUNTY CLERK'S FILE NUMBER 1999033788, OFFICIAL PUBLIC RECORDS, FORT BEND COUNTY, TEXAS, THAT CERTAIN CALLED 69.8168 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER COUNTY CLERK'S FILE NUMBER 1999033784, OFFICIAL PUBLIC RECORDS, FORT BEND COUNTY, TEXAS, AND THAT CERTAIN CALLED 43.1290 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER COUNTY CLERK'S FILE NUMBER 1999045887, OFFICIAL PUBLIC RECORDS, FORT BEND COUNTY, TEXAS, WITH ALL BEARINGS BASED ON THE NORTHEAST LINE OF THE HEREIN DESCRIBED TRACT, SAME BEING THE SOUTHWEST LINE OF STATE HIGHWAY 6, AND BEING SOUTH 60 DEGREES 55 MINUTES 22 SECONDS EAST (CALLED SOUTH 58 DEGREES 00 MINUTES 00 SECONDS EAST, ADJOINER CALLED SOUTH 60 DEGREES 55 MINUTES 22 SECONDS EAST).

BEGINNING at a 5/8 inch iron rod with TxDOT disk found for the north most corner of said called 98.1708 acre tract, same being the east corner of the adjoining residue of Reserve "B", Newpoint Estates Subdivision, Section 1, according to map or plat thereof recorded under Slide Numbers 1164A&B and 1165A&B, Plat Records, Fort Bend County, Texas, for the north most corner and Place of Beginning of the herein described 211.109 acre tract, said point being in the southwest right-of-way line of State Highway 6 (225-foot wide), and being the west corner of an adjoining called 3.296 acre tract (Parcel 1) recorded in Cause Number 17442, Civil Court Records, Fort Bend County, Texas, from which point a found 5/8 inch iron rod bears South 86 degrees 40 minutes 25 seconds East, 1.80 feet, and a found 5/8 inch iron rod bears North 80 degrees 25 minutes 40 seconds East, 1.95 feet;

THENCE South 60 degrees 55 minutes 22 seconds East (called South 58 degrees 00 minutes 00 seconds East, adjoiner called South 60 degrees 55 minutes 22 seconds East) along the northeast line of the herein described tract and the northeast line of said called 98.1708 acre tract, same being the southwest right-of-way line of State Highway 6, at 695.41 feet pass a 5/8 inch iron rod with TxDOT disk found on said line, at 1,195.10 feet pass a 5/8 inch iron rod found on said line, at 1,257.43 feet (called 1,256.76 feet) pass a 1/4 inch iron pipe with cap marked "Kalkomey Surveying" set on said line for the east corner of said called 98.1708 acre tract, same being the north corner of said called 69.8168 acre tract, the west corner of an adjoining called 4.235 acre tract (Parcel 2) described in deed recorded under County Clerk's File Number 2000053293, Official Public Records, Fort Bend County, Texas, and the south corner of said adjoining called 3.296 acre tract (Parcel 1), from which point a found 5/8 inch iron rod bears South 83 degrees 23 minutes 14 seconds East, 1.10 feet, at 1,695.03 feet pass a 5/8 inch iron rod found on said line, at 2,195.01 feet pass a 5/8 inch iron rod found 0.31 feet right of said line, at

Field Notes - 211.109 Acre Tract Cont'd

Page 2

2,695.26 feet pass a 5/8 inch iron rod with TxDOT disk found on said line, at 2,733.42 feet pass a 1/4 inch iron pipe with cap marked "Kalkomey Surveying" set on said line for the east corner of said called 69.8168 acre tract, same being the north corner of said called 43.1290 acre tract, the west corner of an adjoining called 3.868 acre tract (Parcel 3) described in deed recorded under County Clerk's File Number 2000049372, Official Public Records, Fort Bend County, Texas, and the south corner of said adjoining called 4.235 acre tract (Parcel 2), from which point a found 5/8 inch iron rod bears South 32 degrees 13 minutes 55 seconds East, 1.25 feet, at 3,195.18 feet pass a 5/8 inch iron rod found 0.32 feet right of said line, at 3,695.08 feet pass a TxDOT disk found on said line, and continuing for a total distance of 4,111.48 feet (called 4,110.81 feet) to a 1/4 inch iron pipe with cap marked "Kalkomey Surveying" set on said line for the northeast corner of the herein described tract and the northeast corner of said called 43.1290 acre tract, same being the northwest corner of an adjoining called 1.04 acre tract described in deed recorded under County Clerk's File Number 2003130912, Official Public Records, Fort Bend County, Texas, the west corner of an adjoining called 0.470 acre tract (Parcel 5-A) described in deed recorded in Volume 2169, Page 1230, Official Records, Fort Bend County, Texas, and the south corner of said adjoining called 3.868 acre tract (Parcel 3), from which point a found 5/8 inch iron-rod bears South 03 degrees 17 minutes 04 seconds East, 2.00 feet, said point also being in the common line of the Thomas Barnett Survey, Abstract 7, and the Manuel Escalero Survey, Abstract 170;

THENCE South 03 degrees 17 minutes 04 seconds East (called South 00 degrees 23 minutes 51 seconds East) along the east line of the herein described tract and the east line of said called 43.1290 acre tract, same being the west line of said adjoining called 1.04 acre tract, at 371.10 feet pass a 5/8 inch iron rod found on said line for the southwest corner of said adjoining called 1.04 acre tract, same being the northwest corner of an adjoining called 4.14 acre tract described in deed recorded under County Clerk's File Number 9517810, Official Public Records, Fort Bend County, Texas, and continuing for a total distance of 818.03 feet (called 816.33 feet) to a 5/8 inch iron rod found for the southeast corner of the herein described tract and the southeast corner of said called 43.1290 acre tract, being in the west line of said adjoining called 4.14 acre tract, and being in the north line of the adjoining Brazos River Authority called 200-foot wide strip (Briscoe Canal) recorded in Volume 494, Page 477, Deed Records, Fort Bend County, Texas, described in Volume 196, Page 209, Deed Records, Fort Bend County, Texas;

THENCE South 87 degrees 28 minutes 02 seconds West (called North 89 degrees 38 minutes 35 seconds West) along the south line of the herein described tract and the south line of said called 43.1290 acre tract, same being the north line of said adjoining Briscoe Canal, at 1,823.87 feet (called 1,823.87 feet) pass a 1/4 inch iron rod found on said line for the southwest corner of said called 43.1290 acre tract, same being the southeast corner of said called 69.8168 acre tract, at 3,402.47 feet pass a 1/4 inch iron pipe with cap marked "Kalkomey Surveying" set on said line for the southwest corner of said called 69.816 acre tract, same being the southeast corner of said called 98.170 acre tract, and continuing for a total distance of 4,270.42 feet (called 4,270.34 feet) to a 5/8 inch iron rod found for the southwest corner of the herein described tract and the southwest corner of said called 98.1708 acre tract;

title D99 5/6 ele 1P 8705 NO. 8705 FB 2005063788.021

JUL 1 2005 3:05PM HOUSTON TITLE

Field Notes - 211.109 Acre Tract Cont'd

THENCE North 06 degrees 27 minutes 54 seconds West (called North 03 degrees 35 minutes 14 seconds west) along the west line of the herein described tract and the west line of said called 98.1708 acre tract, at 3.00 feet pass a 5/8 inch iron rod found on said line for the southeast corner of the adjoining Lot 7, Block 3, of said adjoining Newpoint Estates Subdivision, Section 1, at 709.30 feet pass a 5/8 inch iron rod found 0.15 feet left of said line, at 1,314.74 feet pass a 5/8 inch iron rod found 0.35 feet left of said line, at 1,912.65 feet pass a 5/8 inch iron rod found 0.23 feet left of said line, at 2,384.77 feet pass a 5/8 inch iron rod found 0.30 feet left of said line, and continuing for a total distance of 2,973.29 feet (called 2,973.41 feet) to a 5/8 inch iron rod found for the northwest corner of the herein described tract and the northwest corner of said called 98.1708 acre tract, same being the northeast corner of said adjoining Lot 1, and being in the south line of Darby Lane (60-foot wide) according to map or plat thereof of said Newpoint Estates Subdivision, Section 1;

THENCE North 87 degrees 04 minutes 19 seconds East (called North 89 degrees 56 minutes 43 seconds East) along the northerly line of the herein described tract and the northerly line of said called 98.1708 acre tract, same being the south line of said Darby Lane, at 217.46 feet pass a 5/8 inch iron rod found on said line for the west corner of the aforementioned adjoining residue of Reserve "B", Newpoint Estates Subdivision, Section 1, and continuing for a total distance of 962.12 feet (called 964.48 feet) to the Place of Beginning and containing 211.109 acres of land, more or less.

For reference and further description see Survey Plat No. 4500-01-FB prepared by the undersigned on same date.



Charlie Kalkomey
Charlie Kalkomey, R.P.L.S.
Texas Registration Number 1399
March 22, 2005

Job Number 4500-01-FB

F:\Surveying\Part_Bond\4500-01-FB\field notes\Gr\TA_In_211.109ac.dwg

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dr. Dianna Wilson

2005 JUN 02 03:12 PM 2005063788
CK \$48.00

Dianna Wilson, Ph.D. COUNTY CLERK
FT BEND COUNTY TEXAS

Title 19/9 TR 078 NO. 932 FB 2005063788-022

JUL 1 2005 3:05PM HOUSTON TITLE

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.

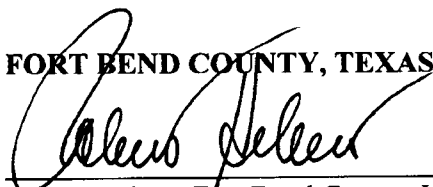
**V.
EXECUTION**

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.

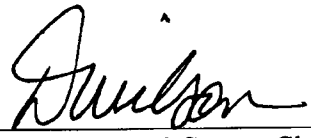
FORT BEND COUNTY, TEXAS



Robert Hebert, Fort Bend County Judge

Date May 26, 2009

ATTEST:



Dianne Wilson, Fort Bend County Clerk


CITY OF ARCOLA



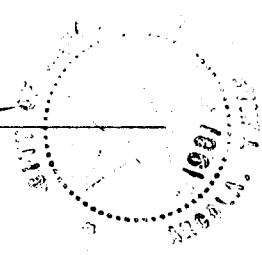
Mayor

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.

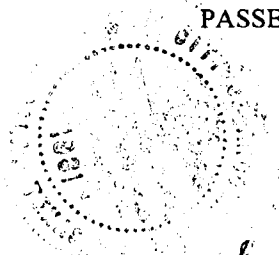
Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this ordinance, nor the 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 Cantu*
City Secretary (Seal)

Signed: *Mary Etta Anderson*
Mayor