

2010
FORT BEND COUNTY FY-2009
COMMISSIONERS COURT AGENDA REQUEST FORM

AGENDA ITEM

24B

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

Date Submitted:	09/30/2009	Submitted By: Mary Reveles
Court Agenda Date:	10/06/2009	Department: County Attorney
		Phone Number: 341-4554

SUMMARY OF ITEM:

ENGINEERING:

Take all appropriate action on the interlocal agreement between Fort Bend County and Harris County for improvements to Howell-Sugarland Road in an amount not to exceed 375,591.88. (Fund: Road & Bridge, Signal Fund).

RENEWAL AGREEMENT/APPOINTMENT YES NO

REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO

List Supporting Documents Attached:

FINANCIAL SUMMARY:	BUDGETED ITEM: YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
FUNDNG SOURCE: Accounting Unit: Account Number: N/A	
Activity (If Applicable): Road & Bridge – Signal Fund	COUNTY JUDGE RECEIVED SEP 30 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 checked="" 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 checked="" 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)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 10-12-04 2 orig. ret. to mary at Co. Attorney

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

INTERLOCAL AGREEMENT
FOR HOWELL-SUGARLAND ROAD IMPROVEMENTS

This Interlocal Agreement is made and entered into by and between the HARRIS COUNTY, Texas, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court and FORT BEND COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court. Harris County and Fort Bend County are sometimes referred to in this Agreement collectively as "Parties" and individually as "Party."

RECITALS:

1. It is to the mutual benefit of Harris County and Fort Bend County to construct roadway improvements on Howell-Sugarland Road from approximately 500 feet South of Bissonnet Road to approximately 500 feet south of Beechnut Road as a 4-lane concrete curb and gutter boulevard with a 14 foot median, transitions, traffic signal modifications, and necessary appurtenances, hereinafter called the "Project".
2. A portion of the Project (approximately 500 feet) south of Bissonnet lies within Fort Bend County and the remainder lies within Harris County.
3. Fort Bend County is willing to contribute 8.4% of the cost of construction for the Project and to reimburse Harris County for the acquisition of the necessary right of way, within Fort Bend County, consisting of 2 corner cuts on the southeast and southwest corners of the Howell-Sugarland Road and Bissonnet Road intersection, if Harris County will provide engineering and related services (hereinafter referred to as "Engineering") necessary for the design and construction of the Project, will acquire any right of way necessary for the Project, will administer the construction contract for the Project (including day to day inspection and materials testing), and will contribute the remainder of the construction costs in accordance with the terms of this Agreement.

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

I.
INCORPORATION OF RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

II.

ACQUISITION OF RIGHT-OF-WAY & DUTIES AFTER COMPLETION

- 2.01 Harris County will undertake to acquire, in the name of Fort Bend County the 2 corner cuts on the southeast and southwest corners of the Howell-Sugarland Road and Bissonnet Road intersection, such undertaking to include preparing the acquisition documents with metes and bounds descriptions and performing all steps necessary to acquire such corner cuts by purchase, gift, or donation , provided that Harris County shall not be required to expend any Harris County funds to accomplish such acquisition and that Fort Bend County forward to Harris County upon request any funding that the Harris County Engineer determines to be necessary to acquire such right-of-way. In the event that any of such corner cuts must be acquired through the power of eminent domain Harris County Right of Way Division, will prepare necessary appraisals and will attempt to negotiate the purchase with the property owner. The Fort Bend County Attorney's office will represent the Fort Bend County in any legal proceedings filed to condemn the property, and the property located in Fort Bend County will be acquired in the name of Fort Bend County. Harris County will undertake to acquire all right-of-way within Harris County necessary for the Project by purchase, gift, donation or exercise of the power of eminent domain. Such right-of-way shall be acquired in the name of and title shall vest in the name of Harris County. In the event Harris County or Fort Bend County is unable to acquire their respective property interests, the sole remedy of the other party shall be to terminate this Agreement as provided below.
- 2.02 Fort Bend County shall be responsible for the cost and accomplishment of adjustments/relocations/modifications of any utilities/pipelines within Fort Bend County, provided that Harris County shall arrange for adjustment/relocation/modification of utilities/pipelines within Fort Bend County when such adjustment/relocation/modification is an extension of an adjustment/relocation/modification in Harris County of the same facility. Fort Bend County shall remain responsible for the costs of such adjustment/relocation/modification in Fort Bend County that are arranged by Harris County. Harris County shall be responsible for the acquisition of the adjustment/relocation/modification of any utilities/pipelines within Harris County. In the event Harris County or Fort Bend County is unable to accomplish their utility/pipeline adjustments/relocations/modifications, the sole remedy shall be to terminate this Agreement as provided below.
- 2.03 Upon the completion of the construction of the Project, that part of the Project in Harris County will be a part of the Harris County road system and that part of the Project within Fort Bend County shall be a part of the Fort Bend County road system, and neither county shall have any responsibility in regard to any part of the Project within the other county.

III.
HARRIS COUNTY'S RIGHTS AND OBLIGATIONS

- 3.01 It is expressly understood and agreed that Harris County is not obligated to expend more than the maximum sum of \$3,405,867.82 to satisfy its obligations under this Agreement.
- 3.02 Within one hundred eighty (180) days after execution of this Agreement, Harris County shall prepare, or cause to be prepared, drawings, specifications, and estimates (PS&E) in accordance with the usual requirements and design criteria of Harris County, and will perform Engineering. Upon completion of the said PS&E, Harris County will deliver the same to Fort Bend County for review and approval.
- 3.03 Within sixty (60) days after the approval by Fort Bend County of the PS&E described in Section 3.02, accomplishment of all utility/pipeline adjustments/relocations/modifications, and acquisition of any necessary right of way for the Project described in Section II, Harris County will advertise for and receive bids for the construction of the Project in accordance with the approved PS&E in a manner similar to that of other like Harris County projects.
- 3.04 Upon receipt and tabulation of the bids for the Project, Harris County will determine the lowest and best bid for the construction of the Project. Harris County's determination of the lowest and best bid for the Project shall be final and conclusive. If the Harris County Engineer determines that the Project can be designed and accomplished without requiring Harris County to expend funds in excess of the maximum sum available to Harris County per Section 3.01 above, Harris County shall notify Fort Bend County.
- 3.05 Within thirty days after Harris County's receipt of funding described in Section IV, Harris County shall award the contract to the lowest and best bidder, in accordance with the usual and customary procedures of Harris County, subject to certification of the availability of funds for the Project by the Harris County Auditor.
- 3.06 It is expressly agreed and understood that Harris County reserves the right to reject all bids. In such event, Harris County, in its discretion, may either re-advertise for bids pursuant to the same understanding with regard to rejection of bids or terminate this agreement as hereinafter provided. Harris County's determination of the lowest and best bid for the Project shall be final and conclusive.
- 3.07 Harris County shall be responsible for administering the construction contract. During the construction of the Project, Fort Bend County shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction; provided, however, Fort Bend County shall give notice by telephone to the Harris County Engineer prior to any inspection of either the site or documents and provided further that in conducting said inspections Fort Bend County shall not interfere with the work in progress.
- 3.08 In the event the Harris County Engineer determines that the Project cannot be designed and accomplished without requiring Harris County to expend funds in excess of the maximum sum available to Harris County in Section 3.01, Harris County shall have the following four (4) options:
- A. Harris County may elect to proceed to award the construction contract and continue with the Project with the increased funding provided by Harris

County and Harris County shall then notify Fort Bend County. Within thirty (30) days after such notice, Fort Bend County shall forward to Harris County the *LESSER* of the following:

(i) 9.24% of such lowest and best bid (8.4% of the lowest bid plus an additional 10% of Fort Bend County's 8.4% share of the bid for contingencies) plus the estimated cost of adjustments/relocations/modifications of any utilities/pipelines in Fort Bend County accomplished or to be accomplished by Harris County and any costs incurred by Harris County in acquiring the corner cuts that have not yet been forwarded; or(ii) \$375,591.88.

Within thirty days after receipt of such funds, Harris County shall award the contract to the lowest and best bidder, in accordance with the usual and customary procedures of Harris County, subject to certification of the availability of funds for the Project by the Harris County Auditor. Notwithstanding the above, it is expressly agreed and understood that Harris County reserves the right to reject all bids. In such event, Harris County, in its discretion, may either re-advertise for bids pursuant to the same understanding with regard to rejection of bids or terminate this agreement as hereinafter provided. Harris County's determination of the lowest and best bid for the Project shall be final and conclusive.

- B. Harris County may reject all bids and elect not to proceed with the award of the construction contract and terminate the Project without further obligation to Fort Bend County.
- C. Harris County may reject all bids and re-advertise for bids as in the first instance.
- D. Harris County may notify Fort Bend County of the bid and undertake to negotiate with Fort Bend County for Harris County and Fort Bend County to enter into an amendment to this Agreement providing for payment of the additional costs of the Project. In the event Harris County and Fort Bend County agree in writing to pay the additional costs, then and in that event, Fort Bend County shall transmit to Harris County, without demand, a warrant or check made payable to Harris County Treasurer as set forth in such amendment, and Harris County will proceed to award the construction contract and continue with the Project. If Harris County and Fort Bend County fail to agree in writing to pay the additional costs, then and in that event Harris County may proceed under one of the other three options.

3.09 Upon the completion of the construction of the Project or upon termination as provided below, Harris County, after completion of all proceedings for acquiring corner cuts for Fort Bend County and determination of all costs thereof, shall perform or cause to be performed, a final accounting. If the amounts forwarded to Harris County by Fort Bend County under Sections II., 3.05, 3.08, and or IV is greater than 8.4% of the actual construction costs plus 100% of the actual costs to Harris County in acquiring the two corner cuts in Fort Bend County and accomplishing adjustments/relocations/modifications of any utilities/pipelines in Fort Bend County, then

Harris County shall promptly pay over to Fort Bend County the surplus. If the amounts forwarded to Harris County by Fort Bend County under Sections II, 3.05, 3.08, and IV are less than 8.4% of the actual construction costs plus 100% of the actual costs of Harris County in acquiring the two corner cuts in Fort Bend County and accomplishing adjustments/relocations/modifications of any utilities/pipelines in Fort Bend County, Fort Bend County shall promptly pay over to Harris County the deficiency, up to its maximum obligation under Section 4.01.

- 3.10 Harris County may make changes and amendments to the PS&E within the general scope of the approved Project as the Harris County Engineer deems necessary or desirable during construction of the Project so long as the original scope and intent of the Project is unchanged. If any such changes would cause the Fort Bend County's actual costs to exceed the amount forwarded under Section III or IV, Harris County shall provide notice to Fort Bend County...

IV. FORT BEND COUNTY'S RIGHTS AND OBLIGATIONS

- 4.01 Notwithstanding any other provision of this Agreement, it is expressly understood and agreed that Fort Bend County is not obligated to expend more than the maximum sum of \$375,591.88 to satisfy its obligations under this Agreement.
- 4.02 Within thirty (30) days after Fort Bend County's receipt of notice described in Section 3.04 above, the Fort Bend County shall forward to Harris County the *LESSER* of the following:
- A. 9.24% of such lowest and best bid (8.4% of the lowest bid plus an additional 10% of Fort Bend County's 8.4% share of the bid for contingencies) plus the estimated cost of adjustments/relocations/modifications of any utilities/pipelines in Fort Bend County accomplished or to be accomplished by Harris County and any costs incurred by Harris County in acquiring the corner cuts that have not yet been forwarded; or
 - B. \$375,591.88.

V. TERMINATION

Either party may terminate this Agreement, without cause, at any time prior to the letting of the contract for construction of the Project, by written notice to the other party, and neither party shall have any obligation hereunder other than as provided in Section 3.09. After letting of the construction contract for the Project, neither party may terminate this Agreement.

VI. NOTICES

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 herein below 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:

FORT BEND COUNTY

Copy to:

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

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

HARRIS COUNTY

Harris County Public Infrastructure Department
Architecture and Engineering Division
Harris County Administration Building
1001 Preston, 7th Floor
Houston, Texas 77002

Attention: Contract Administration

**VII.
MISCELLANEOUS**

- 7.01 Fort Bend County or its authorized representatives shall have the right to review and audit all books, records, vouchers and documents of whatever nature related to Harris County's performance under this Agreement during the period of performance of this agreement and for three (3) years thereafter or for so long as there exists any dispute or litigation arising from this agreement.
- 7.02 No party hereto 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.
- 7.03 This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by all parties hereto.

**VIII.
EXECUTION**

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 _____ day of SEP 15 2009, 2009, been executed on behalf of the Harris County by the County Judge of Harris County, Texas, pursuant to an order of the Commissioners Court of Harris County authorizing such execution.

- b. It has on the 6 day of October, 2009, been executed on behalf of Fort Bend 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.

APPROVED AS TO FORM:

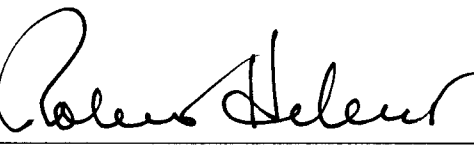
HARRIS COUNTY

VINCE RYAN
County Attorney


By 
DON C. WHITLEY
Assistant County Attorney

By 
ED EMMETT County Judge

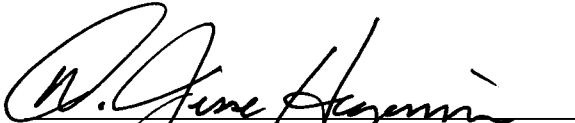
FORT BEND COUNTY

By 
ROBERT HEBERT, County Judge

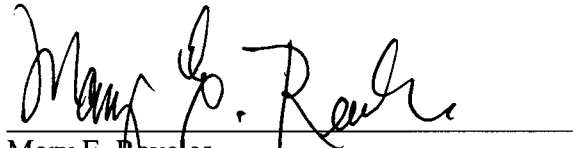
Attest:


Dianne Wilson, County Clerk

Approved:

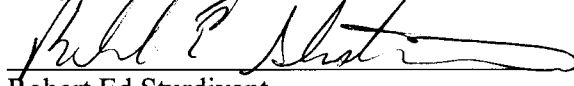

D. Jesse Hegemier, County Engineer,

Approved as to legal form:


Mary E. Reveles,
First Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$375,591.88 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.


Robert Ed Sturdivant,
Fort Bend County Auditor

THE STATE OF TEXAS §
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of SEP 15 2009, 2009, with the following members present, to-wit:

Ed Emmett	County Judge
El Franco Lee	Commissioner, Precinct No. 1
Sylvia R. Garcia	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

and the following members absent, to-wit: none, constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING/APPROVING AGREEMENT BETWEEN HARRIS COUNTY AND FORT BEND COUNTY FOR JOINT FUNDING OF HOWELL-SUGARLAND ROAD FROM APPROXIMATELY 500 FEET SOUTH OF BISSONET ROAD TO APPROXIMATELY 500 FEET SOUTH OF BEECHNUT ROAD AS A 4-LANE CONCRETE CURB AND GUTTER BOULEVARD WITH A 14 FOOT MEDIAN, TRANSITIONS, TRAFFIC SIGNAL MODIFICATIONS, AND ALL NECESSARY APPURTENANCES

Commissioner Garcia introduced an order and made a motion that the same be adopted. Commissioner Lee 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 Emmett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Eversole	<input checked="" 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 law-fully adopted. The order thus adopted follows:

IT IS ORDERED that the County Judge is authorized to execute for and on behalf of Harris County, an Agreement by and between Harris County and Fort Bend County, for joint funding of the construction of roadway improvements on Howell-Sugarland Road from approximately 500 feet South of Bissonet Road to approximately 500 feet south of Beechnut Road as a 4-lane concrete curb and gutter boulevard with a 14 foot median, transitions, traffic signal modifications, and all necessary appurtenances, said Agreement being incorporated herein by reference for all purposes as though fully set forth word for word.

Presented to Commissioner's Court

SEP 15 2009

APPROVE _____

Recorded Vol _____ Page _____