



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR THE ADJUSTMENT OF CITY OF CORPUS CHRISTI  
MUNICIPAL UTILITIES IN CONNECTION WITH THE US 181 HARBOR BRIDGE  
REPLACEMENT PROJECT**

**THIS AGREEMENT** is made by and between the State of Texas (“State”), acting through the Texas Department of Transportation (“TxDOT”) and the City of Corpus Christi, Texas (“City”), in order to facilitate the adjustment of municipal utility facilities associated with the US 181 Harbor Bridge Replacement Project.

**WITNESSETH**

**WHEREAS**, Transportation Code, Chapters 201, 221, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads and highways that comprise the State Highway System;

**WHEREAS**, Transportation Code, Chapter 203, Subchapter E authorizes the State to regulate the placement of public utility facilities along a State Highway;

**WHEREAS**, the Government Code authorizes a contract or agreement between a local government and a state agency, and authorizes the parties, in performing a service under the contract or agreement, to apply the law applicable to a party, as agreed by the parties;

**WHEREAS**, Texas Transportation Commission Minute Order Number(s) 113853 authorizes TxDOT to undertake and complete a highway improvement generally described as: US 181 Harbor Bridge Project (including the removal of the existing bridge), which extends north-south along US 181 and the Crosstown Expressway and east-west along I-37 and includes: US 181 at Beach Avenue on the north; Crosstown Expressway at Laredo Street on the south; I-37 and Nueces Bay Boulevard on the west; and I-37 and Mesquite Street on the east side (“Project”);

**WHEREAS** the Project includes a Base Scope and, if exercised by TxDOT within 3 years of NTP1, an Option Scope(s), but as used herein, “Project” shall include only the Base Scope, unless and until this agreement is amended to include the Option Scope(s) within the Project;

**WHEREAS**, City possesses utility facilities including water, sanitary sewer, telecommunications, gas distribution, and appurtenances that are or may be in locational conflict with the Project and/or with the ultimate configuration of the Project (the “City Utilities”);



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

**WHEREAS**, the TxDOT has executed a conditional award for a certain Comprehensive Development Agreement (“CDA”), effective April 30, 2015, with Flatiron/Dragados, USA (the “Developer”) which will obligate the Developer to design and construct, and/or maintain the Project, pursuant to Title 6, Subtitle B, Chapter 223, Subchapters E and/or F of the Texas Transportation Code;

**WHEREAS**, the Developer’s obligation to design and construct the Project includes the obligation to adjust, install and relocate the City Utilities as necessary to accommodate the Project (the “City Adjustments”);

**WHEREAS**, TxDOT and the City agree that the performance of the City Adjustments in accordance with the CDA is important to the timely and successful completion of the project;

**WHEREAS**, TxDOT and the City, subject to their respective authorizations and approvals, shall work cooperatively to ensure that the responsibilities set forth in this Agreement are expeditiously executed;

**WHEREAS**, Disputes relating to the performance of the City Adjustments or responsibilities herein shall be resolved in a cooperative manner and attempt to achieve a mutual benefit to both parties;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them kept and performed as hereafter set forth, TxDOT and City do agree as follows:

## **AGREEMENT**

### **1. Time Period Covered**

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and TxDOT and the City will consider it to be in full force and effect until the Project has been completed and accepted by TxDOT or unless terminated, as provided.

### **2. Procurement**

This Agreement defines the responsibilities for the funding, design and construction of the Adjustment of City Utilities as necessary to accommodate the Project. Pursuant to the Texas Government Code, TxDOT and City agree to apply the law applicable to TxDOT in procuring the contractor to perform that work, including but not limited to, the Texas Transportation Code, Title 6, Subtitle B, Chapter 223, Subchapter(s) E and/or F, and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter I, and/or Chapter 27, Subchapter A.



**RCSJ/CCSJ #** 0101-06-109 / 0101-06-095  
**DISTRICT #** CORPUS CHRISTI (16)  
**PROJECT:** US 181 HARBOR BRIDGE REPLACEMENT  
**FEDERAL PROJECT #:**

### 3. Funding and Work Responsibilities

#### A. Project Funding

- 1) City will be responsible for paying all costs associated with the planning, specification, estimate ("PS&E") development, and construction of the City Adjustments, including all Betterments (hereinafter defined). The total cost of the City Adjustments and the cost of the Betterments, if any, shall be the "City Adjustment Costs." City agrees to have TxDOT cause Developer to perform the design and construction of the City Adjustments.
- 2) The City Adjustment Costs reflected in the final agreed sum amount shall not include a contingency fee. The City Adjustment Costs may include costs for traffic management and local or municipal permit fees related directly to the City Adjustments.
- 3) This agreement is being executed with a preliminary agreed sum of **\$8,966,450**, and in the future may be amended to a final agreed sum. The preliminary agreed sum, shown in Attachment A, is based on roadway and design information available at the time this agreement is executed, shown in Attachment B. The final agreed sum will be agreed to by TxDOT, City, and Developer and based on roadway and design information available at the time when the final scope of work, final City Adjustment plans and final City Adjustment cost estimate and/or Utility bids are complete/received from Developer.
- 4) This agreement will be amended to include final City Adjustment plans detailed in Attachment B1-Final and a final scope of work description. The amendment will also include a final agreed sum detailed in Attachment A1-Final. TxDOT will make payment to the Developer, the same amount paid by the City under this agreement, in accordance with the CDA executed between TxDOT and Developer.
- 5) City shall remit to TxDOT the preliminary agreed sum down payment in the amount of **\$1,075,974**, which is 12% of the preliminary agreed sum for City Adjustment Costs, no later than 60 days after TxDOT issues NTP1 for the Project. The down payment is to be used for the purpose of TxDOT payment to Developer for engineering, geotech, and any related costs necessary to complete the final plans and cost estimate. The City shall remit to TxDOT the final agreed sum amount, less the preliminary agreed sum down payment of \$1,075,974, no later than 60 days following the execution of the amendment which will total the final agreed sum amount.
- 6) In the event the parties agree to a change in the scope of work, the City Adjustment Costs will be revised to account for the new scope of work.



**RCSJ/CCSJ #** 0101-06-109 / 0101-06-095  
**DISTRICT #** CORPUS CHRISTI (16)  
**PROJECT:** US 181 HARBOR BRIDGE REPLACEMENT  
**FEDERAL PROJECT #:**

- 7) Whenever funds are paid by the City to TxDOT under this Agreement, City will remit a warrant made payable to the "Texas Department of Transportation Trust Fund." The warrant will be deposited by TxDOT in an escrow account to be managed by the State. Funds in the escrow account may only be applied by TxDOT to the City Adjustment costs. Warrants under this agreement shall be sent to: TxDOT SPD ROW, Attn. Donald C. Toner, Jr., 7745 Chevy Chase Drive, Building 5 Suite 230, Austin, Texas 78752.
- 8) All payments or reimbursements by the Developer shall be remitted to the TxDOT escrow account established for the City Adjustments Costs. All payments or reimbursements by TxDOT to the City shall be sent to the City of Corpus Christi, in care of Valerie H. Gray, P.E., and shall reference "US 181 Harbor Bridge Replacement Utility Adjustments".

#### **B. Performance of Work**

- 1) City agrees that, subject to the terms of this Agreement, TxDOT, through its Developer and subcontractors selected by Developer, shall effect the Adjustment and relocation of the City Utilities that are in direct conflict with the Project, as such are determined by TxDOT, City and/or Developer. City acknowledges that Developer is an independent contractor of TxDOT, TxDOT is not responsible or liable for the design or construction work performed by Developer in connection with the City Adjustments, and TxDOT is not engaged in a joint enterprise with the Developer. TxDOT shall enforce all CDA provisions requiring the Developer to comply with the standards for design and construction contained in this Agreement.
- 2) TxDOT will authorize the performance of only those City Adjustment items of work for which City has requested and has agreed to pay for as described in this Agreement, including all work detailed in the Attachments A1-Final and B1-Final.

#### **C. Preparation of Plans**

The plans, specifications, and cost estimates necessary to adjust City's facilities (collectively the "Plans") are not available at the time of this agreement. The existing City utility facilities as provided on the TxDOT SUE work and existing utility exhibits are approximate and attached to this Agreement as Attachment B-Preliminary. The Plans will be developed through one (1) of the following options [*check one (1) box only that applies*]:

☒ **Option One – Plans Prepared by Developer**

The City will provide for the Developer its written "Standards" hereinafter defined, for the City Adjustments in accordance with applicable law. As part of



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

the “Standards” submittal, the City will also provide, to TxDOT and the Developer, electronic Geographic Information System (GIS) shape-files and “as-built” records illustrating to the best of City’s estimation, the location of existing utility facilities on the Project’s Right of Way Map. The City may also provide information regarding alternate configurations and betterments. TxDOT, in accordance with the Comprehensive Development Agreement, shall cause the Developer to design and provide the one or more preliminary plans prior to the final Plans for the City Adjustments, which are subject to the approval of the City and TxDOT. If City does not agree with Developer’s cost estimate and/or Plans to perform the work for the City Adjustments, then City and TxDOT will separately negotiate an agreement regarding the City Adjustments. In the event that City and TxDOT are unable to agree on the cost estimate and/or Plans, TxDOT will provide City with a receipt showing the costs for Developer’s design fee associated with preparing the Plans and reimburse City the amount remaining from its preliminary agreed sum down payment, after which the City shall have no further obligation for payment or performance under this Agreement, and this Agreement shall terminate. In that event City shall undertake the adjustments of its facilities separately, TxDOT retains all rights and remedies provided in the Transportation Code and the rules promulgated pursuant thereto regarding the relocation of utilities.



#### **Option Two – Plans Prepared by City**

The City will provide Plans for the City Adjustments. The City represents and warrants that the Plans will conform to the most recent Utility Accommodation Rules issued by TxDOT, set forth in 43 Texas Administrative Code Part 1, Chapter 21, Subchapter C *et seq.* (the “UAR”). The City will also provide to TxDOT a utility plan view map illustrating the location of existing and proposed utility facilities on the Developer’s Right of Way Map of the Project.

#### **D. Review of Plans**

- 1) Once the plans have been prepared by the Developer, TxDOT shall submit one or more preliminary plans prior to the final plans to the City for its review and pre-approval. Upon written approval by the City of the Developer-prepared Plans, the Plans are deemed “Reviewed and Approved for Construction” by the City. TxDOT will have final approval except that City shall have the authority to interpret its ordinances and rules as they apply to the Plans. The parties agree to act expeditiously, and to cooperate in good faith to modify the Plans as necessary and acceptable to the parties to respond to any modifications or comments.
- 2) Upon amending this agreement, each party hereto will acknowledge and agree that the Plans are approved as to the location and manner in which the utilities will be



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

installed, adjusted, or relocated within the State Highway Right of Way (the "ROW"), subject to the Developer's satisfactory performance of the City Adjustments in accordance with the approved Plans. City will agree that the Plans comply with City design standards. Neither TxDOT nor the Developer has a duty to review the facilities or components thereof for their adequacy to provide the intended utility service. The City will acknowledge that the Plans attached to this Agreement in Attachment B1-Final are "Reviewed and Approved for Construction" by the City.

#### **E. Design and Construction Standards**

- 1) TxDOT will require in the CDA that all design and construction performed for the City Adjustments by the Developer shall comply with and conform to the following:
  - a. All applicable local and State laws, regulations, decrees, ordinances and policies, including the UAR, the *ROW Utility Manual* issued by TxDOT (to the extent its requirements are mandatory for the City Adjustments necessitated by the Project), and the policies of TxDOT;
  - b. All Federal laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B; and the Buy America provisions of 23 U.S.C § 313 and 23 CFR 635.410;
  - c. The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
  - d. The standard specifications, standards of practice, and construction methods (collectively, "Standards") which City customarily applies to utility facilities comparable to the City Utilities that are constructed by City or for City by its contractors at City's expense, which standards are current at the time this Agreement is signed by City, and which City has submitted to TxDOT in writing;
  - e. The Plans; and
  - f. The warranty provided by Developer in the CDA with regard to all other work performed under the CDA.
- 2) TxDOT shall require in the CDA that such design and construction also shall be consistent and compatible with (i) the Developer's current design and construction of the Project, (ii) the "Ultimate Configuration" for the Project, and (iii) any other utilities being installed in the same vicinity. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

- 3) The Plans shall identify all utility facilities that City intends to abandon in place rather than remove, including material type, quantity, size, age, condition, and method of abandonment, which shall be subject to TxDOT's approval. Unless approved by TxDOT, no facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of this Agreement. City agrees to pay for the assessment and remediation or other corrective action relating to soil and groundwater contamination caused by the utility facility prior to the removal to the extent such is not reimbursable pursuant to State law.
- 4) The Plans shall identify all utility facilities that City intends to leave in place as they are of satisfactory design and condition and not in direct conflict with the Project, meaning (i) not directly under pavement structure or shoulder, (ii) meets the minimum depth of cover or (iii) located under the span of the bridge. This does not diminish the responsibility of the City to comply with UAR requirements and this contract.
- 5) The City agrees that all service meters must be placed outside of the State ROW unless such meter does not need to be adjusted to accommodate the Project and can remain in its current location, if approved by TxDOT and the City. A service meter may be adjusted to a location within State ROW, if approved by TxDOT and the City.
- 6) TxDOT shall not allow the Developer to install or construct any drilled shaft, pier or foundation in violation of local, State or Federal rules and regulations. TxDOT shall require the Developer to not place or store any material upon, cover, bury, pave over or otherwise obstruct any cleanout, valve, meter, fire hydrant, manhole, or other appurtenance during any phases of the Project construction without written authorization from the City.
- 7) TxDOT hereby agrees that the embedment of existing or adjusted water mains and wastewater mains is an integral component to the performance and longevity of the City's water mains and wastewater mains. In the event an existing or adjusted water or wastewater main is exposed, TxDOT shall require the Developer to contact the City's inspector(s) and shall support/protect the utility, and restore the embedment in a manner approved by the City.

#### **F. Design Changes and Field Modifications**

TxDOT shall provide the City with all submittals, requests for information, and change requests received from the Developer for changes to the Project relating to the City Adjustments. TxDOT and the City will cooperatively review change requests and field modifications for approval prior to implementation by the Developer. TxDOT agrees to



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

provide, upon request of the City, a copy of any original, modified or revised Plans of the Project improvements, including but not limited to paving, bridge, foundation, wall, drainage, subsurface investigations, and other utility adjustment plans. TxDOT shall cause the Developer to provide the City “as-built” drawings of all design changes and field modifications, including minor changes, within **60 days** after acceptance of the City Adjustments by the City.

### **G. City Provided Services**

In addition to services provided by City as specified elsewhere in this Agreement, City shall provide the following services:

- 1) At the Developer’s request, City shall assist the Developer in locating any City Utilities (including appurtenances) which are owned and/or operated by City and may be or are impacted by the Project. Without limiting the generality of the foregoing, or limiting Developer’s obligation under the CDA to make inspections and investigations necessary to locate and avoid existing utilities, in order to help facilitate that neither the adjusted City Utilities nor existing, unadjusted utilities owned or operated by the City are damaged during construction of the Project, City shall make reasonable attempts based on available “as built” information, to mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.
- 2) Assist with obtaining any necessary local or municipal permits as not otherwise provided for under the CDA, as may be required for the City Adjustments. Permit fees required for the City Adjustments will be included in the final agreed sum.
- 3) Throughout the City Adjustment work hereunder, City may provide adequate inspectors for such construction. The work may be inspected by the City’s inspector(s) at least once each working day, and more often if such inspections are deemed necessary by City. TxDOT shall notify City prior to Developer covering any work so that City can inspect. Further, upon request by the Developer or its contractors, City may furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual 40 hour work week and at such other times as reasonably required. City agrees to promptly notify the Developer and TxDOT of any concerns resulting from any such inspection.
- 4) For this Agreement, “Substantial Completion” means that the City Adjustments have been constructed in accordance with the Plans with the exception of only minor Punch List Items, hereinafter defined. The Developer shall notify the City of Substantial Completion of the City Adjustments.





**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

- a. TxDOT shall cause the Developer to provide the City with a certified letter indicating that the City Adjustments have been substantially completed in accordance with the Plans and that installation of all components is substantially in accordance with all applicable City Standards and all other Design and Construction Standards as stated in this Agreement;
  - b. The Developer, TxDOT, and the City shall schedule and perform, within **14 days** after notification of Substantial Completion, a joint punch-list inspection and identify items to be corrected or completed before the City's approval of the Project ("Punch List Items");
  - c. TxDOT shall cause the Developer to provide the City with a certified letter indicating that the City Utilities are free and clear of all liens, claims and encumbrances; and
  - d. TxDOT shall cause the completion of all Punch List Items no later than **120 days** after Substantial Completion, subject to Force Majeure Delays.
- 5) TxDOT and/or Developer shall have the obligation to maintain and operate the adjusted City Utilities until the City accepts the adjusted City Utilities as stated herein.
  - 6) Before the City acknowledges full completion of the City Adjustments, and within **180 days** after Substantial Completion, the Developer shall submit to the City written documentation that the construction has been completed as required by this Agreement.
  - 7) Before the City acknowledges full completion of the City Adjustments, TxDOT and/or the Developer must provide the City with the final costs and quantities of the new facilities and any abandoned facilities, an engineer's concurrence letter, and "as-built" drawings of the City Adjustments.
  - 8) The City shall perform a final inspection of the adjusted City Utilities, including conducting any tests as are necessary or appropriate, and accept such construction by giving written notice of such acceptance to TxDOT and Developer within **five (5) business days** after the City receives notice from TxDOT of the Completion of Construction, hereinafter defined. "Completion of Construction" means the completion of all work required to place the Utility Adjustment in active service, including but not limited to any necessary hydrostatic testing, bacterial testing, television inspections, tie-ins, service connections, appurtenance adjustments, and completion of all adjacent paving, drainage, franchise utility adjustments, walls, or other project improvements in accordance with local, State and Federal rules and regulations. An adjusted facility that has been placed into service by the City does not



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

imply acceptance of any kind. If the City does not accept the construction, then City shall, no later than the **ten (10) business days** after it receives notice of Completion of Construction from TxDOT and/or Developer, notify TxDOT and Developer in writing of the grounds for non-acceptance. TxDOT and Developer shall notify City in writing upon completion of corrections to the non-conforming work. With regard to any re-inspection (and re-testing, if appropriate) of any revised construction, TxDOT, Developer, and City shall follow the same notice and inspection schedule set forth above.

- 9) From and after City's acceptance of an adjusted City Utility, City agrees to accept ownership of, and full operation for, such City Utility, subject to the one (1) year warranty provided by the Developer as described in the City's written "Standards". The one (1) year warranty begins upon completion of the construction phase of the Project, and Developer will maintain the City Utility until such time.
- 10) All references to "business or work days" herein shall be construed to refer to working days, unless otherwise stated. Working days do not include weekends and City holidays and mandatory furlough days.



**RCSJ/CCSJ #** 0101-06-109 / 0101-06-095  
**DISTRICT #** CORPUS CHRISTI (16)  
**PROJECT:** US 181 HARBOR BRIDGE REPLACEMENT  
**FEDERAL PROJECT #:**

## **H. TxDOT Provided Services**

In addition to services provided by TxDOT as specified elsewhere in this Agreement, TxDOT shall provide the following services:

- 1) Ensure the Developer adds the City as an additional insured on all insurance policies in accordance with the CDA and provide a copy of the policies and endorsements to the City.
- 2) Review and approve the final construction Plans for the City Adjustments prior to any construction-related activities and cause the Developer, in accordance with the CDA, to construct the City Adjustments in accordance with the Plans and Specifications included in Attachment B1-Final.
- 3) Participate with Developer in inspections of the work by City and coordinate with the City's inspector. Notify City prior to Developer covering any work so that City can inspect.
- 4) Make timely payment to the Developer pursuant to the terms of the CDA for work performed in connection with the Project, subject to City approval. Within 15 days following TxDOT's payment to the Developer, TxDOT shall send to the City a copy of the Developer's payment application and a statement of the State's escrow account showing any draw-downs.
- 5) Ensure access and permit City's inspectors and other authorized representatives to inspect the City Adjustments at all times.
- 6) Assist the City with the resolution of disputes with the Developer and without limiting TxDOT's authority to administer the CDA, work to resolve issues to the mutual benefit of TxDOT and the City.
- 7) Ensure delivery of "as-built" drawings to City in accordance with the City "Standards".
- 8) Ensure delivery of a letter from Developer indicating that the City Utilities are free and clear of all liens, claims and encumbrances.

## **I. Developer Provided Services**

The CDA provides that the Developer will, at a minimum, provide the following services:

- 1) Project management and oversight during the City Adjustments and perform the City



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

Adjustments in accordance with the standard of care provided under the CDA to perform the work on the Project.

- 2) Be responsible for performing all the work necessary to accomplish the City Adjustments in accordance with the design, plans and specifications for the Project.
- 3) Provide City and TxDOT with documentation of any field modifications occurring in the City Adjustments.
- 4) Provide the design plans and specifications including the “as-built” plans of the City Adjustments to TxDOT and City.
- 5) Keep detailed records of work and payments to manage and account for City’s funds that have been escrowed with TxDOT.
- 6) Maintain job file.
- 7) Maintain insurance and include the City as an additional insured.
- 8) Provide the City with a letter indicating the City utilities are free and clear of all liens, claims and encumbrances.
- 9) All other services required of the Developer by the CDA not listed in this Agreement.

#### **J. Betterments**

- 1) For purposes of this Agreement, the term “Betterment” means any upgrading of a City Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the City, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted City Utility over that provide by the existing City Utility facility or an expansion of the existing City Utility facility; *provided, however*, that the following are not considered Betterments:
  - a. Any upgrading which is required for accommodation of the Project;
  - b. Replacement devices or materials that are of equivalent standards although not identical;
  - c. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
  - d. Any upgrading required by applicable laws, regulations, standards or ordinances;



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

- e. Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and/or
  - f. Any upgrading required by the City's written "Standards" meeting the requirements of Paragraph 3.J.1)d.
- 2) It is understood and agreed that TxDOT shall not pay for any Betterments and that the City shall be solely responsible therefore. No Betterment may be performed hereunder (i) which is incompatible with the Project or the Ultimate Configuration, (ii) which cannot be performed within the other constraints of applicable law or any applicable governmental approvals, or (iii) which cannot be performed within the requirements of the Project schedule.
- 3) The determinations and calculations of Betterment described in this Paragraph 3.J shall exclude Right of Way acquisition costs.

#### **4. Real Property Interests**

- A.** The real property interests owned, held, or claimed by the City with respect to the City Utilities in their existing location(s) are referred to herein as "Existing Utility Property Interests", which shall include but not be limited to property interests in fee simple, easements, by express grant, judgment, instrument, or licenses. It is expected that all City utility adjustments for the Project will be located within State Right of Way. If acquisition of any new easement or other interest in real property outside of the Project Right of Way ("Replacement Utility Property Interest") is necessary for the City Adjustments, then the City shall be responsible for undertaking such acquisition. The City shall use commercially reasonable efforts to implement each acquisition hereunder expeditiously so that related City Adjustment construction can proceed in accordance with the Developer's Project schedules. City shall be responsible and pay the actual costs of any such Replacement Utility Property Interest (including without limitation the City's reasonable overhead charges, costs for environmental studies, and legal costs as well as all compensation paid to the landowner or judgment or award paid into the registry of the court), including any costs to the extent attributable to Betterment, subject to the terms of this Paragraph 4.A.
- B.** For each Existing Utility Property Interest located within the final Project Right of Way, upon completion of the related City Adjustment work, its acceptance by the City, and after the Existing Utility Property Interest has been abandoned by the City pursuant to the City's code, rules and regulations, the City agrees to execute a quitclaim deed relinquishing such Existing Utility Property Interest to TxDOT, unless the affected City Utility is remaining in its original location or is being re-installed in a new location within the area subject to such Existing Utility Property Interest. All quitclaim deeds or



**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

other relinquishment documents shall be subject to TxDOT's reasonable approval; *provided, however*, such documents shall release the City's interests in the Existing Utility Property Interest on an "as-is, where-is" basis and the City shall not be required to give any warranty of title.

- C.** The City shall execute a Utility Joint Use Acknowledgment (UJUA) or Utility Installation Request (Form 1082), as appropriate, for each City Adjustment where required pursuant to TxDOT policies. All City Joint Use Acknowledgments and Utility Installation Requests shall be the forms attached to this Agreement as Attachments C and D, respectively.

## **5. Termination**

- A.** This Agreement may be terminated in the following manner:

- 1) By mutual written agreement and consent of both parties;
- 2) By either party upon the failure of the other party to cure an Event of Default as provided below;
- 3) By either party if a party fails to appropriate funds for the completion of this Project;  
or
- 4) By either party if the Project is cancelled or modified so as to eliminate the necessity of the Adjustment work described herein. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination. In particular, and without limitation, each party shall be liable to the other for its share of any costs incurred, not including costs to prepare the preliminary scope and preliminary agreed sum, by the other party prior to receipt of notice of termination, and for its share of any costs incurred by the other party after receipt of notice of termination, and which could not be reasonably avoided.

- B.** In the event either party fails to perform its material obligations as set forth in this Agreement (an "Event of Default"), the other party (the "Non-Defaulting Party") shall provide prompt written notice of such failure. The party receiving the notice (the "Defaulting Party") shall then have **30 days** in which to cure the Event of Default, or if the failure is such that it cannot be cured in **30 days**, to make substantial and continued progress toward curing the Event of Default within a reasonable time. In the event that, after written notice as provided herein, the Defaulting Party fails, within **30 days**, to cure the Event of Default, or, if the Event of Default is such that it cannot be cured in **30 days**, to make substantial and continued progress toward curing the Event of Default within a



**RCSJ/CCSJ #** 0101-06-109 / 0101-06-095  
**DISTRICT #** CORPUS CHRISTI (16)  
**PROJECT:** US 181 HARBOR BRIDGE REPLACEMENT  
**FEDERAL PROJECT #:**

reasonable time, then the Non-Defaulting Party, by further written notice to the Defaulting Party, may immediately terminate this Agreement.

- C. If the Agreement is terminated in accordance with the above provisions and City is the Defaulting Party, City will be responsible for the payment of its share of City Adjustment Costs incurred by TxDOT on behalf of City up to the time of termination. If City is the Non-Defaulting Party, City will not pay for design work that will not be constructed.

## **6. Right of Access**

If City is the owner of any part of the Project site, City shall permit TxDOT, Developer, or their authorized representatives to have access to the site to perform any activities required to execute the City Adjustments. TxDOT shall be responsible for inspecting the property to make sure it is safe for the entry of its employees, agents and contractors. TxDOT agrees to cause the Developer to repair any damages immediately to its original condition or better, otherwise, TxDOT shall compensate the City for any damage done on the property.

## **7. Responsibilities of the Parties and Indemnity**

CITY ACKNOWLEDGES THAT IT IS NOT AN AGENT, SERVANT OR EMPLOYEE OF THE STATE OR DEVELOPER, NOR IS IT ENGAGED IN A JOINT ENTERPRISE WITH EITHER OF THEM, AND IT IS RESPONSIBLE FOR ITS OWN ACTS AND DEEDS AND FOR THOSE OF ITS AGENTS OR EMPLOYEES DURING THE PERFORMANCE OF THE CITY ADJUSTMENTS.

THE CITY IS NOT RESPONSIBLE FOR ANY LIABILITY, SUITS, ACTIONS, AND/OR CLAIMS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT THAT THEY ARE CAUSED BY ANY OTHER ENTITY, INCLUDING THE STATE, ITS EMPLOYEES, PROFESSIONAL CONSULTANTS, CONTRACTORS, AND/OR AGENTS. SUCH RESPONSIBILITY INCLUDES BUT IS NOT LIMITED TO ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE "WORKERS COMPENSATION LAW," THE TEXAS TORT CLAIMS ACT, CHAPTER 101, TEXAS CIVIL PRACTICE AND REMEDIES CODE; OR ANY OTHER APPLICABLE LAWS OR REGULATIONS, ALL AS TIME TO TIME MAY BE AMENDED.



**RCSJ/CCSJ #** 0101-06-109 / 0101-06-095  
**DISTRICT #** CORPUS CHRISTI (16)  
**PROJECT:** US 181 HARBOR BRIDGE REPLACEMENT  
**FEDERAL PROJECT #:**

## 8. Entire Agreement

This Agreement embodies the entire agreement between the parties, supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter, and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.

## 9. Successors and Assigns

TxDOT and City each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

## 10. Amendments

This Agreement may be amended only in a writing signed by both parties.

## 11. Notices

All notices to either party by the other required under this Agreement shall be delivered by receipted overnight delivery service, addressed to such party at the following addresses:

<b>CITY:</b>	<b>STATE:</b>
City of Corpus Christi Attn: Executive Director of Public Works 1201 Leopard Street, 3 <sup>rd</sup> Floor Corpus Christi, TX 78401	Texas Department of Transportation Attention: Strategic Projects Division 125 E 11 <sup>th</sup> St Austin, TX 78701
City of Corpus Christi Attn: Executive Director of Utilities 2726 Holly Road Corpus Christi, TX 78415	

All notices shall be deemed given on the date so delivered, unless otherwise provided in this Agreement. Either party may change the above address by sending written notice of the change to the other party.





**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

## 12. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

## 13. Approvals

Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by either City or TxDOT pursuant to this Agreement:

- A.** Must be in writing to be effective (except if deemed granted pursuant hereto); and
- B.** Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

## 14. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by TxDOT and City in duplicate.

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

**CITY OF CORPUS CHRISTI**

By: Donald C. Toner, Jr., SR/WA  
[Printed Name]

By: Gustavo Gonzalez  
[Print Name]

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Duly Authorized Representative Signature



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 18 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

Director - Strategic Projects Right of Way  
Strategic Projects Division

Assistant City Manager  
Public Works & Utilities

Date: \_\_\_\_\_

Date: \_\_\_\_\_



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 19 OF 24

RCSJ/CCSJ # 0101-06-109 / 0101-06-095  
DISTRICT # CORPUS CHRISTI (16)  
PROJECT: US 181 HARBOR BRIDGE REPLACEMENT  
FEDERAL PROJECT #:

**ATTACHMENT A**

**ESTIMATED CITY ADJUSTMENT COSTS**

☐

**ACTUAL**

**OR**

☒

**AGREED SUM**

---

**\$8,966,450**



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 20 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

## **ATTACHMENT B**

### **SUE WORK AND EXISTING UTILITY EXHIBITS**

---



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 21 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

### **ATTACHMENT C**

**FORM OF UTILITY JOINT USE ACKNOWLEDGMENT - THIS FORM TO BE  
COMPLETED AND INCLUDED WITH ATTACHMENT A1-FINAL**

---



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 22 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

**ATTACHMENT D**

**UTILITY INSTALLATION REQUEST - THIS FORM TO BE COMPLETED AND INCLUDED WITH ATTACHMENT A1-FINAL**

---



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 23 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

**ATTACHMENT A1-FINAL**

**FINAL AGREED SUM COST DETAIL –  
CITY ADJUSTMENT COSTS TO BE INCLUDED WITH ATTACHMENT B1-FINAL**

---



SPD ROW-U-AAMU-1  
(REV 04/2015)  
PAGE 24 OF 24

**RCSJ/CCSJ # 0101-06-109 / 0101-06-095**  
**DISTRICT # CORPUS CHRISTI (16)**  
**PROJECT: US 181 HARBOR BRIDGE REPLACEMENT**  
**FEDERAL PROJECT #:**

**ATTACHMENT B1-FINAL**

**CITY ADJUSTMENT PLANS -  
TO BE INCLUDED WITH ATTACHMENT A1-FINAL**

---