

Texas Department of Transportation

BOOK 2 – TECHNICAL PROVISIONS

FOR

US 181 HARBOR BRIDGE PROJECT

DESIGN-BUILD PROJECT

ATTACHMENT 5-3

PORT CONSTRUCTION ACCESS AGREEMENT

DRAFT – TO BE REVISED WITH EXECUTED VERSION

**CONSTRUCTION ACCESS AGREEMENT
BETWEEN
TEXAS DEPARTMENT OF TRANSPORTATION
AND
PORT OF CORPUS CHRISTI AUTHORITY
FOR THE
US 181 HARBOR BRIDGE REPLACEMENT PROJECT**

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation (“TxDOT”), and the Port of Corpus Christi Authority (“Port”).

WITNESSETH

WHEREAS, Texas Transportation Commission Minute Order Number 113853 authorizes TxDOT to undertake and complete a highway improvement generally described as the US 181 Harbor Bridge Replacement Project, 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 (the “Project,” a map of which is attached hereto and made a part of this agreement as Attachment “A”);

WHEREAS, on October 2, 2014, TxDOT issued a Request for Proposals to Develop, Design, Construct, and Maintain the US 181 Harbor Bridge Replacement Project, which consists of Instructions to Proposers, a Comprehensive Development Agreement, and Technical Provisions (which, as it may be amended, is referred to as the “RFP”);

WHEREAS, after receiving and evaluating responses to the RFP, TxDOT intends to execute a contract with a developer to design, construct, operate, and maintain the Project (the “Developer”);

WHEREAS, the scope of work for the Developer includes, among other things, the construction of the New Harbor Bridge as shown on Attachment A (the “New Harbor Bridge”), and the demolition and removal of the existing Harbor Bridge (the “Existing Harbor Bridge”);

WHEREAS, the Port will benefit from the Project, in particular, from the construction of the New Harbor Bridge, in that the construction of the Project will provide for increased traffic in the Port facilities, among other benefits to the Port;

WHEREAS, a portion of the Project will be located on and above property owned by the Port;

WHEREAS, this agreement is necessary to provide for coordination and cooperation between the Port and TxDOT, including TxDOT’s Developer, in connection with the design, development, construction, operation, and maintenance of the Project; and

WHEREAS, the governing body of the Port has approved entering into this agreement by resolution or ordinance dated [REDACTED], 2014, which is attached to and made a part of this agreement as Attachment “B.”

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

AGREEMENT

1. Period of the Agreement

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until terminated in accordance with Section 8.

2. Conveyance of Easement

The Port agrees to convey to TxDOT, via a separate instrument and at no additional charge to TxDOT, a permanent easement, as more particularly described in Attachment “C” attached hereto (the “Easement”). The purpose of the easement will be for the construction, operation, and maintenance of the Project on the property of the Port.

3. Temporary Construction Easement

The Port acknowledges that TxDOT and/or the Developer may need access to areas on Port property outside of the Easement for the storage of equipment, material, and supplies used by the Developer in the construction of the Project, and for additional temporary workspace as may be needed by the Developer and/or TxDOT in completing the Project, including the demolition and removal of the Existing Harbor Bridge (the “Temporary Construction Easement” or “TCE”). The Port agrees to provide such Temporary Construction Easement as may be reasonably needed by the Developer and/or TxDOT, and may charge the Developer a reasonable fee for such TCE.

4. Access to Work Areas

A. Secured Areas

TxDOT and the Port agree to the provisions regarding access to Port property contained in Attachment D attached hereto, as it may be amended from time to time by the parties. The areas of Port property subject to the security requirements are shown on Attachments “E-1” and “E-2,” which are incorporated herein.

B. Fencing

TxDOT will require the Developer to construct security fencing, or to modify existing fencing, with gates, access points, and other features as shown in Attachments E-1 and E-2. Gates will be manned by a TWIC certified guard at all times when Developer is conducting construction activities on Port property. At all other times, the gates will be locked, and the Port and TxDOT

will be provided with keys to the locks. The construction of the security fencing will be in accordance with the fencing specifications contained in Attachment F-1, which is incorporated herein, and the gate and fence standards shown in Attachment F-2, which is also incorporated herein.

The security fencing installed by Developer will remain in place and be maintained until final acceptance of the Project, at which point the Developer will remove the security fencing and restore the fencing to its original configuration.

5. Construction

A. Security Cameras

TxDOT and the Port agree that the Port will be permitted to provide and install, at its expense, security cameras on the New Harbor Bridge at the locations shown in Attachments “G-1” and “G-2,” attached hereto and incorporated herein. TxDOT will require the Developer to install, at no expense to the Port, all conduit and other equipment necessary to support the security cameras, which will be consistent with Attachment “G-3,” attached hereto and incorporated herein. Upon substantial completion of the New Harbor Bridge portion of the Project, the Developer shall notify the Port that the structure is ready for the Port to install the security cameras. Thereafter, the Port shall be permitted access to the Project as needed to install the cameras.

Operation and maintenance of the security cameras will be the responsibility of the Port, including paying the electrical costs for the cameras, and TxDOT will provide the Port such access to the New Harbor Bridge as is necessary to operate and maintain the cameras. The Port agrees to comply with TxDOT’s reasonable safety, security, and insurance requirements in performing that work.

B. Removal of Existing Structures

~~The Developer will be required to demolish and remove the following~~Certain existing structures located on the Port property will be removed as follows:

~~i. Cold Storage Facility~~

i. Cold Storage Facility

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The Port will remove, at its expense, the refrigerated warehouse (the “Cold Storage Facility” or “CSF”) located at 701 E. Navigation Boulevard on the Port’s property, to the foundation and/or floor slabs. For the avoidance of doubt, the Port will not remove the foundation and/or floor slabs. The Port agrees that the removal of the CSF will be complete by July 31, 2015.

~~The cold storage facility shall be removed by the Developer at the Developer’s cost in accordance with the requirements of Attachment “H,” attached hereto and incorporated herein.~~

ii. Gulf Stream Marine Building on East Port Ave

The east end of the building falls within the Easement. If the structure will be impacted by construction or operation, the entire building may be removed to ground level, or alternatively only that portion contained within the Easement may be removed, upon a showing satisfactory to the Port that the remaining portion of the building is structurally sound and can be adequately enclosed. This work will be done by the Developer.

iii. Cargo Storage Buildings 26 and 27

These buildings shall be removed by the Developer to ground level. The fencing around those buildings shall also be removed.

iv. H&S Constructors, Inc. Building

This building shall be removed by the Developer to ground level.

v. Three Accutrans, Inc. Mobile Buildings

The Port agrees to remove these three mobile buildings. At least 45 days before TxDOT issues Notice to Proceed 2 ("NTP2") to the Developer, TxDOT shall notify the Port of the date that TxDOT plans to issue NTP2. The Port shall remove the buildings before TxDOT issues NTP2.

With regard to the structures described in (ii), (iii), and (i+iv)–and–(iv) above, all structure removal shall be at the Developer's cost. The Developer is responsible for the removal and disposal of all materials and waste in connection with the removal of those structures. To the extent permitted by any applicable lease agreement, the Developer is permitted to retain any and all materials, equipment, fixtures, and other items of value located in, on, or attached to those structures which have not been disposed of by the Port prior to the beginning of the demolition of the structures. The Port agrees to execute and deliver to the Developer a bill of sale or other sufficient documentation evidencing the transfer of the ownership of the structures and the associated materials, equipment, fixtures, and other items of value located in, on, or attached to those structures. TxDOT will require the Developer to be responsible for the management, treatment, handling, storage, remediation, removal, transportation (where applicable) and/or disposal of all hazardous materials encountered in connection with the demolition of those structures.

With regard to the structures described in (v) above, all structure removal shall be at the Port's cost. The Port is responsible for the removal and disposal of all materials and waste in connection with the removal of those structures.

One or more of these existing structures may be the subject of a lease to a third party. No demolition or removal of the structures shall take place except in accordance with the terms of any such lease, or unless the consent of the lessee is obtained.

TxDOT acknowledges that the buildings are provided "AS IS" with all faults, including but not limited to any and all pollutants, asbestos, underground storage tanks and/or any other hazardous materials, and that the Port has not made any representations or warranties as to the condition of the buildings. The Port will provide to TXDOT information the Port may have concerning the

environmental status of the buildings. TxDOT agrees to include similar disclaimer of warranty language regarding these buildings in its contract with the Developer.

C. Railroads

The Port owns and operates certain railroad tracks on Port property, as shown in Attachments “I-1” and “I-2,” which are attached hereto and included in this agreement, including the notes on those attachments. The Developer is permitted to construct the temporary connection and to relocate existing tracks on the south side of the channel as shown on Attachment I-1, and in accordance with the notes thereon. On the north side of the channel, the Developer is required to locate all structures placed thereon so as to permit the future construction by the Port of either or both of the proposed rail loops shown on Attachment I-2. All costs related to such work shall be borne by the Developer. The Port agrees to be responsible for making arrangements with the operator of railroad using those tracks to accommodate the work to be done the Developer contemplated herein.

The Developer is permitted to provide its own flaggers for crossing the rail lines located on Port property, so long as the Developer complies with the Roadway Worker Protection & On Track Safety Rules contained in Attachment I-3, which is attached hereto and incorporated herein.

D. Utility Relocation

The Port owns utility facilities and appurtenances that are or may be in locational conflict with the Project (the “Port Utilities”). The Developer will be responsible for paying all costs associated with the relocation and/or adjustment of the Port Utilities. The Port agrees that, subject to the terms of this agreement, the Developer and subcontractors selected by Developer, will effect the adjustment or relocation of the Port Utilities that are in locational conflict with the Project, as such are determined by TxDOT and/or Developer. It is expected that the Developer and the Port will execute an agreement describing in more detail their respective obligations with regard to the relocation and/or adjustment of the Port Utilities.

E. Channel Closure and Access to Channel

i. The Developer shall submit for approval by the Port the Corpus Christi Ship Channel Plan which shall contain the information required by section 2.9 of the Technical Provisions for US 181 Harbor Bridge Project Comprehensive Development Agreement.

ii. The Port agrees to close the channel as needed for the construction and operation of the Project on the terms and conditions described in Attachment “J,” which is attached hereto and incorporated herein.

iii. Structures associated with the new bridge shall be constructed so as to provide for the clearances shown in Attachment “K,” which is attached hereto and incorporated herein.

iv. Access to the channel will be provided as shown in Attachment “L,” which is attached hereto and incorporated herein. The “In Water Work Areas” may be used by

Developer at all times, without any additional charges. No permanent structures may be placed on the channel side of the Bulkhead Lines. Temporary structures may be located beyond the Bulkhead Lines, but not within the Federal Channel Limits, as approved by the Port and the United State Coast Guard (“USCG”). Developer may not operate any vessel within the Federal Channel Limits without the approval of the Port, the Harbormaster, and the USCG.

iv-v. The Port, with assistance as needed from TxDOT and/or the Developer, will coordinate with the USCG, the Harbormaster, and pilots regarding any such closure.

v-vi. During such periods of closure, the Developer will be permitted access to the Port channel as needed for the construction of the Project and/or the demolition of the Existing Harbor Bridge. During a full closure, all other traffic in the channel will be prohibited; during a partial closure, other traffic will be prohibited in that part of the channel subject to the partial closure.

F. Miscellaneous

- i. Developer shall ensure ~~C~~construction illumination ~~must be~~is directional and does not spill outside the construction zone ~~and/or~~ impede visibility of travelling vessels or vehicles on nearby travel ways.
- ii. Prior to hanging any bridge beams on or above Port property, TxDOT will require the Developer to provide fifteen (15) calendar days written or email notice to the Port, and the Developer shall coordinate with the Port regarding issues arising from the placement of such beams.
- iii. TxDOT shall require that any damage done by the Developer to Harbor Drive will be promptly repaired by the Developer to the Port’s reasonable satisfaction. Any damage to Port property caused by the Developer shall be promptly repaired by the Developer to the Port’s reasonable satisfaction.
- iv. The design loading in the areas around the bridge support structures should be up to 1500 pounds per square foot. The storage yard loading will vary over a wide range and will be transient.
- v. The mooring structure on the south side of the channel near the proposed location for the bridge pylon may be relocated by the Developer to the west of the existing location. The final location and the final design will be as approved by the Port. The design of the relocated mooring structure shall be in accordance with the Port’s Project Manual in effect at that time. For matters not covered by the Project Manual, standard marine design practice should be followed. All costs of the removal, relocation, and reconstruction of the mooring structure will be borne by the Developer.

6. Third Party Leases

The Port is a party, as lessor, to certain leases granting leasehold interests in Port property to third parties, which leasehold interests are, or may be, expected to interfere with the construction, operation, and/or maintenance of the Project (the "Leases"). The Leases which have been identified to date are shown on Attachment "M" which is attached hereto and incorporated herein. If, subsequent to the date of this agreement, other leasehold interests are determined, in the sole discretion of TxDOT and/or the Developer, to interfere with or potentially interfere with, the construction, operation, and/or maintenance of the Project, then the leases pertaining to those leasehold interests shall be added to Attachment M and shall be a "Lease" subject to the terms of this agreement.

With regard to each such Lease, the Port agrees as follows:

- i. To provide TxDOT a copy of all such Leases, including all amendments, extensions, and/or renewals of such leases.
- ii. To not renew or extend any Lease without the consent of TxDOT.
- iii. To not amend any Lease to enlarge the area covered by the Lease, or to otherwise increase the leasehold burden in such a fashion as to interfere with, or potentially interfere with, the construction, operation, and/or maintenance of the Project, without the consent of TxDOT.
- iv. If requested by TxDOT or the Developer, and if permitted by the terms of the Lease, to terminate the Lease, or to modify the Lease as necessary to accommodate the construction, operation, and/or maintenance of the Project, according to the terms of the Lease. TxDOT, either itself or by causing the Developer to pay, will pay to the Port all costs, fees, charges, and other expenses incurred by the Port in connection with the termination or modification of any Lease.
- v. If TxDOT and/or Developer determine, in their sole discretion, that a leasehold interest provided for in a Lease will interfere with the timely construction, operation, and/or maintenance of the Project, and such Lease is not, according to its terms, able to be modified or terminated so as to accommodate the construction, operation, and/or maintenance of the Project, then the Port, in consultation with TxDOT, agrees to negotiate with the lessee in an attempt to obtain a modification or early termination of the Lease as may be needed. The Port agrees not to enter into any such modification or termination without the consent of TxDOT. TxDOT, either itself or by causing the Developer to pay, will pay to the Port all costs, fees, charges, and other expenses incurred by the Port in connection with any such modification or termination of any Lease.

The Port agrees not to enter into any new lease covering any portion of the property owned by the Port without the consent of TxDOT if such new lease would, or may, interfere with the construction, operation, and/or maintenance of the Project.

7. Insurance

TxDOT shall require the Developer to provide, or cause to be provided, watercraft liability insurance, including protection and indemnity and water pollution liability with minimum limits of \$15,000,000 per occurrence, whenever watercraft are utilized. Coverage shall include bodily injury (including death and mental anguish), property damage, defense costs, and cleanup costs. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to TxDOT or any employee or agent of TxDOT.

8. Termination

This agreement shall remain in effect until final acceptance of the Project by TxDOT, unless:

- i. The agreement is terminated in writing with the mutual consent of the parties;
- ii. The agreement is terminated by one party because of a material breach which is not timely cured, as provided for below; or
- iii. The Project does not proceed because of insufficient funds or other reason in the discretion of TxDOT.

In the event of a breach or claimed breach by one party to this agreement, the non-breaching party shall deliver written notice of default to the other party. Upon receipt of the notice of default, the breaching party shall have thirty (30) days to cure the default, provided that if the default is of such a nature that the cure cannot with diligence be completed within such time period and the breaching party has commenced meaningful steps to cure promptly after receiving the default notice, the breaching party shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect cure.

In the event the breaching party fails to cure the default within the cure period provided, then the non-breaching party may terminate this agreement by providing written notice of such termination to the breaching party. This remedy is not exclusive, and the non-breaching party retains all other remedies at law and in equity, including but not limited to the right to enforce this agreement and seek damages for its breach.

9. Amendments

This agreement may only be amended through a mutually agreed upon, written amendment executed by TxDOT and the Port.

10. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

11. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Port: John P. LaRue Executive Director Port of Corpus Christi Authority P.O. Box 1541 Corpus Christi, Texas 78403 Physical Address: 222 Power Street Corpus Christi, Texas 78401	State: [Title] Texas Department of Transportation 125 E. 11th Street Austin, Texas 78701
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All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

12. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

13. Responsibilities of the Parties

TxDOT and the Port agree that neither party is an agent, servant, or employee of the other party. Further, TxDOT and the Port agree that the Developer is an independent contractor of TxDOT, and as such, TxDOT is not responsible for any acts, errors, or omissions of the Developer. Further, the Port releases TxDOT from, and waives any claim against TxDOT for, any and all claims, damages, judgments, losses, penalties, costs, expenses, and any other loss, arising from, relating to, or caused by, any act or omission of the Developer in connection with the Developer's work on the Project.

14. Severability

If any provision of this agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

15. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by TxDOT shall remain the property of TxDOT. All data prepared under this agreement shall be made available to TxDOT without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Port shall be transmitted to TxDOT in electronic form or photocopy reproduction, at TxDOT's election, on a monthly basis as required by TxDOT. The originals shall remain the property of the Port.

16. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement.

17. Sole Agreement

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.

18. Successors and Assigns

TxDOT and the Port 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.

19. 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 the Port in duplicate.

THE PORT OF CORPUS CHRISTI AUTHORITY

John P. LaRue
Executive Director
Port of Corpus Christi Authority

Date

THE TEXAS DEPARTMENT OF TRANSPORTATION

[Name]
[Title]

Date

LIST OF ATTACHMENTS

ATTACHMENT NO.	ATTACHMENT DESCRIPTION	INCLUDED?
A	Project Map	y
B	Port Resolution	n
C	Legal Description of Easement	y
D	Item 669(C)(R) 04-15-2009 Access to Port Authority Property	y
E-1	North Side Fence Construction and Secured Areas	y
E-2	South Side Fence Construction and Secured Areas	y
F-1	Fencing Specifications	y
F-2	Port Gate and Fence Standard	y
G-1	North Side Security Cameras and Lighting	y
G-2	South Side Security Cameras and Lighting	y
G-3	Bridge Column Conduits	y
H	Cold Storage Facility Requirements Not Used	y
I-1	South Side Rail and Storage Yard Operations	y
I-2	North Side Proposed Rail Loops	y
I-3	Roadway Worker Protection & On Track Safety Rules	y
J	Channel Closure Restrictions	y
K	Bridge Structure Clearance Diagrams	y
L	Profile Along New Bridge ROW Construction Horizontal & Vertical Clearances	y
M	Third Party Leases	y