

### Construction and Donation of Terminal Improvements

THIS AGREEMENT for the construction and donation of improvements in the Corpus Christi International Airport terminal ("**Agreement**") is made and entered into by and between the CITY OF CORPUS CHRISTI, a municipal corporation ("**City**"), and Horton Automatics, a division of Overhead Door Corporation, an Indiana corporation ("**Donor**").

1. **Term.** This Agreement commences on the date of the last signature and continues until the improvements described in this Agreement are accepted by the City's Director of Aviation or his designee ("**Director**") and the three-year warranty period has expired. Unless terminated as set forth herein, after the installation of the improvements and required inspections, if any, the Donor desires to and shall donate the improvements to the City, which improvements are subject to acceptance by the Director on behalf of the City. Following acceptance of the donation by the City, the City acquires clear and perpetual title to the improvements.
2. **Termination.** This Agreement may be terminated at any time by the City prior to acceptance of the improvements upon 10 days prior written notice.
3. **Improvements.** The improvements consist of a Secure Exit Lane, sidelites, electrical components, and installation of the foregoing inside the Corpus Christi International Airport terminal ("**Improvements**"), with such Improvements to be provided and completed by the Donor. More specifically, the Improvements include a 20' long, 5' wide passageway with doors on each end, with sensors and warning systems, designed for use as an exit from the secure area of a facility and deterring unauthorized entrance through said exit. The installation component of the Improvements is an integral part of the donation and cannot be severed from this Agreement and completed separately since the Donor has manufactured the Secure Exit Lane. Donor may utilize, at Donor's discretion and as needed, one or more subcontractors to complete Donor's installation work.
4. **Construction of Improvements.** Once this Agreement has been approved by the City Council, the parties will agree on a time and date on which the construction will be commenced. Donor shall conduct its operations under this Agreement in an orderly and proper manner, considering the nature of the City's airport operation, so as not to unreasonably annoy, disturb, or endanger others. Donor shall be responsible for disassembling the existing sliding door and the City shall be responsible for transporting and storing the door once removed. If any electricity or electrical connections are required or needed by the Donor for the installation of the Improvements, the City shall bear all costs, expenses, and fees for the same. Following completion of installation of the Improvements, Donor shall furnish the Director with any necessary plans and specifications pertinent to the electrical components and connections associated with the Improvements.
5. **Temporary Facilities.** Donor anticipates the Improvements will not take more than two (2) days to complete the installation once onsite. In light of the foregoing, City may select specific days and times in which Donor may perform the work. For the duration of the installation and during any subsequent maintenance or repairs, City shall be responsible for setting up temporary exits so as to provide Donor a traffic free area in which to perform. To the extent necessary, City shall also be

responsible for providing temporary partitions and coordinating the necessary TSA personnel to secure City's facility.

6. **Removal of the Improvements.** If for any reason the City is not satisfied with the Improvements during the three (3) year warranty period and elects to have the Improvements removed, Donor shall restore the existing sliding door to its pre-removal placement condition. If the City elects to have the original sliding door restored, City shall transfer title to the Improvements back to Donor. If the sliding door was damaged after being disassembled by Donor, City shall be responsible for the costs to repair any such damage. City acknowledges that Donor will be required to drill small holes into the terrazzo flooring and the support columns in order to install the Improvements. In the event City elects to have the original sliding door restored, City agrees that Donor shall only be required to patch these holes as opposed to returning the flooring and support columns to their original condition.
7. **Laws and Permits.** City shall arrange for any required City building/construction permits. Donor agrees that all work performed for, or associated with, the Improvements shall be done in full compliance and in accordance with all federal, state, and local laws, rules, regulations, ordinances, and codes including, but not limited to, the Americans with Disabilities Act and the Americans with Disabilities Act Accessibility Guidelines and that such installation work is subject to review and approval of the Director, the City's Engineering Services Department, and to inspection by the appropriate regulatory authorities during the performance thereof and after completion.
8. **Liens.** Donor shall discharge all obligations to contractors, subcontractors, materialmen, workmen, and other persons for work performed and materials furnished for or on account of the Donor as such obligations mature. Donor expressly agrees that it will neither give nor grant, nor purport to give or grant, any mechanic's or materialmen's lien upon the City's property or upon the Improvements in the process of construction or repair, nor will Donor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the City's property or Improvements thereon, and Donor affirmatively agrees to discharge any such lien within 30 days after the date of filing.
9. **Taxes.** Donor shall pay all taxes, special assessments, or levies, if any, assessed during the term of this Agreement against or relating to the Improvements on City's property, including ad valorem taxes and personal property taxes until such time as ownership of the Improvements is transferred to the City.
10. **Airport Security.** City shall be solely responsible for implementing any equipment, procedures, personnel, and systems to secure the Corpus Christi International Airport. Neither the Improvements nor any other provision of this Agreement is intended to impose a duty upon Donor to secure, or to otherwise provide security at the Corpus Christi International Airport. To the extent permitted by the Constitution and laws of the State of Texas, City shall indemnify, defend, and hold Donor harmless from and against any claim, loss, damage, or harm that arises out of or is the result of City's failure to comply with this section. The terms set forth in this section may only be modified by a written instrument signed by the party against whom any change is sought.
11. **Confidentiality.** As used herein, the term "Information" shall include all of the Donor's specifications and drawings, and all design, technical, manufacturing, process, financial, and other

information disclosed to or acquired by City in any manner directly or indirectly from the Donor, and Information shall also include all design and development information provided to the Donor by the City; provided that Information shall not include any information that the City can demonstrate: (1) was at the time obtained from the Donor part of the public domain or thereafter becomes part of the public domain through no act or omission of City or its employees or agents; (2) was in the possession of City prior to being obtained from the Donor, as demonstrated by written records; or (3) is hereafter lawfully disclosed to City, under conditions which do not restrict further disclosure, by a third party which did not acquire it under an obligation of confidentiality to the Donor. In exchange for the benefits contemplated by this transaction and Donor permitting City access to the Information, City hereby agrees to be bound by the obligations set forth in this Agreement. For a period of five (5) years from the date hereof, City shall not disclose any Information to any third party and City shall take all reasonable precautions to prevent the same from being obtained in any manner by third parties. Upon request of the Donor, City shall promptly return to the Donor any and all documents containing any Information together with any copies thereof, and shall destroy all documents generated by City containing any Information. The parties recognize that it may be difficult or impossible to prove damages in the event this Agreement is violated, and that the only practical recourse may be application for a restraining order, injunction, or other equitable relief. In the event of such application by the Donor, the City hereby waives any requirement of proof of inadequate remedy at law or irreparable harm or any requirement for a bond. Nothing stated herein shall preclude the City from disclosing Information that the City is legally compelled to disclose by court order, subpoena, or pursuant to the Texas Public Information Act.

12. **Ownership of Inventions.** For a period of five (5) years from the date hereof, City shall only use Information for the purpose of providing the Donor customer and user oriented comments with regard to the Information. The Donor may, in its sole discretion, implement and use any ideas, concepts or information related by or through the City's comments in connection with the Donor's Improvements, without limitation and at no cost. All data, ideas, improvements, and inventions conceived of and/or reduced to practice by City on the Donor's behalf or incorporating or using any of the Donor's specifications or other Information shall exclusively be the Donor's property.
13. **Insurance.** Prior to the commencement of any work on City property, Donor shall furnish, and require any subcontractors for the Improvements to furnish, insurance in such amounts as specified on the attached Exhibit A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any subcontractors of the Donor shall similarly provide the same proof of insurance and permits prior to performing any work on City property.
14. **Indemnification. DONOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AND ALL OF ITS OFFICERS, EMPLOYEES, AND AGENTS ("INDEMNITIES") FROM ANY AND ALL LIABILITY, LOSSES, CLAIMS, SUITS, DEMANDS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING DEATH), PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, ATTORNEYS' FEES, AND EXPERT WITNESS FEES, TO THE EXTENT CAUSED BY A DEFECT**

**IN THE PRODUCT OR THE NEGLIGENT ACTS OR OMISSION OF THE DONOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS IN CONNECTION WITH DONOR'S PERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT BUT NOT TO THE EXTENT THE INJURY, LOSS, OR DAMAGE IS CAUSED BY THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF INDEMNITIES OR ANY THIRD PARTY. SUBJECT TO THE FOREGOING LIMITATIONS, DONOR WILL, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS, AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM SAID LIABILITY, LOSSES, CLAIMS, SUITS, DEMANDS AND ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF DONOR UNDER THIS SECTION SURVIVES THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

15. **Maintenance.** City shall be responsible for performing daily inspections to ensure the equipment is operating properly. In the event the door is not operating properly, City shall take the door out of service immediately and contact Donor to perform an inspection and repair as applicable. Donor shall not be liable for claims arising out of City's failure to comply with this section.
16. **Warranty.** Donor warrants and guarantees that all materials and equipment incorporated in Donor's Improvements shall be new and that all work shall be of good quality, free from faults and defects and in conformance with the requirements of this Agreement. City shall have the right to inspect Donor's Improvements and to reject any portion thereof not in accordance with the requirements of this Agreement, and Donor, at its sole expense, shall promptly replace rejected portions of Donor's Improvements in a manner satisfactory to City. Further, in accordance with the Donor's manufacturer's warranty, the Improvements shall be free from defects for a period not to exceed three (3) years following the installation of the Improvements. Any replacement or repairs needed and occasioned by normal use during the three-year warranty period shall be provided by Donor.
17. **Innovative Task Force Program.** In consideration of the Improvements contemplated by this Agreement, City agrees that it will take the necessary steps to apply for, and make all reasonable efforts to become, an approved Innovative Task Force Site. (Office of Requirements, Capabilities and Analysis, Email: [Brian.Miller3@tsa.dhs.gov](mailto:Brian.Miller3@tsa.dhs.gov), Office: 571-227-3125, Cell: 202-725-6203). To the extent the City fails to or refuses to take the necessary steps, Donor reserve the right to remove the Improvements, provided that Donor restores the original sliding door to operating condition. The foregoing shall not be applicable to the extent the City is not approved for the TSA program despite its reasonable efforts to do so.
18. **Signage.** During the term of this Agreement, Donor may display signage at the location of the installation of the Improvements with the prior written approval of the Director. Following acceptance of the Improvements by the City, the City shall recognize the Donor's gift of the

Improvements by signage either displayed on the Improvements or in close proximity to the Improvements during the period of time the Improvements remain in place and operational.

19. **Notices.** Notices and communications will be deemed received on the date delivered when sent via personal delivery or a delivery service and on the third business day when sent via First Class mail. Any notices or communications required under this Agreement or desired to be given by either party must be in writing and either delivered in person, sent by overnight express delivery service, or sent by First Class mail, and addressed to the recipient as follows:

If to the City:

Corpus Christi International Airport  
Attn: Director  
1000 International Drive  
Corpus Christi, TX 78406

If to Donor:

Horton Automatics  
Attn: President  
4242 Baldwin Blvd.  
Corpus Christi, TX 78405

CC: Overhead Door Corporation  
Attn: Legal Department  
2501 S. State Hwy 121, Ste. 200,  
Lewisville, TX 75067

20. **Independent Contractor.** Donor covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of the City. In addition, the Donor covenants and agrees that the employees participating in the construction and installation of the Improvements, or participating in any other activity arising under or related to this Agreement, are solely employees of the Donor and are not employees of the City nor under the control, supervision, or direction of the City.
21. **Authority.** Each of the undersigned, by the execution of this Agreement, warrants that he/she has full power, authority, and legal right to enter into this Agreement on behalf of the party for whom he/she is executing this instrument and to consummate the transaction contemplated under this Agreement.
22. **Successors and Assigns.** This Agreement and all of the terms and provisions hereof is binding upon and inures to the benefit of each of the parties hereto and their respective legal representatives, heirs, successors, and assigns.
23. **Assignment.** This Agreement may not be, in whole or in part, assigned or transferred directly or indirectly by the Donor to a third party without the prior written consent of the City.
24. **Jurisdiction; Venue.** This Agreement is governed by and is to be construed in accordance with the laws of the State of Texas and ordinances, rules, and regulations of the City. This Agreement requires performance in Nueces County, Texas, wherein jurisdiction and venue for any dispute arising out of or related to this Agreement shall be brought in the appropriate court.
25. **Entire Agreement.** This Agreement embodies the complete donation agreement of the parties and supersedes all oral or written previous agreements between the parties relating to the matters herein and cannot be modified without written agreement of the parties.

[SIGNATURE PAGE FOLLOWS]

(Donor)

By: R. Kirk Brunson

Printed Name: R. KIRK BRUNSON

Title: PRESIDENT, HORTON AUTOMATICS

Date: NOVEMBER 1, 2017

City of Corpus Christi

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Approved as to legal form: November 1<sup>st</sup>, 2017

Elizabeth Hundley  
Elizabeth Hundley, Assistant City Attorney  
for Mñes Risley, City Attorney

Attached and Incorporated by Reference:

Exhibit A – Insurance Requirements

## EXHIBIT A

### INSURANCE REQUIREMENTS

#### I. DONOR'S LIABILITY INSURANCE

- A. Donor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Donor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Donor must furnish to the City's Risk Manager and Engineering Director one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit.  \$500,000/\$500,000/\$500,000

- C. In the event of accidents of any kind related to this contract, Donor must furnish the Risk Manager with copies of all reports of any accidents within 10 days following the Risk Manager's written request to provide the same.

## II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Donor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Donor is not domiciled in the State of Texas.
- B. Donor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Donor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Donor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi  
Attn: Risk Manager  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

- D. **Donor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
  - List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
  - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
  - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Donor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Donor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Donor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the



right to order Donor to stop work hereunder, until Donor demonstrates compliance with the requirements hereof.

- G. Nothing herein contained shall be construed as limiting in any way the extent to which Donor may be held responsible for payments of damages to persons or property resulting from Donor's or its subcontractor's performance of the work covered under this contract.
- H. To the extent a claim is the result of Donor's negligent acts or omissions or willful misconduct, it is agreed that Donor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2017 Insurance Requirements  
Legal – Airport  
Installation of Horton Secure Exit Lane  
10/11/2017 sw Risk Management