

PROJECT SUBCONTRACT AGREEMENT

Subcontract No.: TBD

Date: 3/28/2023

THIS AGREEMENT made as of the date above, between **COMFORT SYSTEMS USA (SOUTH CENTRAL), INC.**, a Texas Corporation, herein called “**CSUSASC**”, and the Independent “**Subcontractor**” named below:

Subcontractor: National TAB
1329 E Kemper Rd, Suite 4210
Cincinnati, OH 45246

Project: Smart Financial Spring

PRIME CONTRACTOR: Comfort Systems USA South Central
9450 W Wingfoot Rd
Houston, TX 77041

Payment and Performance Bonds required per Article 7, if checked: Bond Required

Retention: 10%

SUBCONTRACT VALUE: \$2,000.00 Two Thousand Dollars and Zero Cents

SUBCONTRACT DESCRIPTION: Provide Testing, Adjusting and Balancing per plans and specifications dated _11-07-22_ to include but not be limited to:

- All Supply Air, Return Air and Outside Air required
- All Exhaust required
- Kitchen Area as required
- TAB report in timely manner per General Contractor’s Schedule
- Work with field team to resolve deficiencies onsite. If deficiencies aren’t resolved in a timely manner, issue accurate deficiency log.
- Commissioning Assist as required
- Comply with Prime Contractor’s Schedule
- Enroll in OCIP or CCIP if required
- All Safety and Badging Requirements
- **Excludes Living Units TAB – Unless otherwise noted above**
- **Excludes OA in Living Units – Unless otherwise noted above**

Subcontractor will NOT be permitted to work onsite without a fully executed copy of this agreement and Certificate of Insurance on file

Subcontractor’s application for payment will not be processed without a fully executed copy of this agreement and Certificate of Insurance on file

SUBCONTRACTOR IS RESPONSIBLE FOR ALL REQUIRED QUANTITIES PER ALL CONTRACT DOCUMENTS. QUANTITIES LISTED ON ANY BID PROPOSAL SHALL NOT BECOME PART OF THIS SUBCONTRACT.

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Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, TX 78765-4200, (800) 845-6584.
Master Plumber License Thomas Davis M-13636.

**COMFORT SYSTEMS USA (SOUTH CENTRAL), INC.
SUBCONTRACT TERMS AND CONDITIONS**

THIS SUBCONTRACT AGREEMENT (“Agreement”) is made by the undersigned (“Subcontractor”) in favor of Comfort Systems USA (South Central), Inc., a Texas corporation (“CSUSASC”), Prime Contractor, Owner, Architect, and each of their shareholders, directors, officers, employees, agents, representatives, subsidiaries, affiliates, successors and assigns (together with CSUSASC, “Indemnitees”).

WITNESSETH:

WHEREAS, CSUSASC is engaged in numerous business activities, including, but not limited to, the sale and installation of HVAC systems, and in activities related thereto;

WHEREAS, CSUSASC has or desires to (i) engage the services of Subcontractor from time to time in connection with its business activities and/or (ii) purchase, sell or rent goods, equipment or facilities from or to Subcontractor; and

WHEREAS, Subcontractor desires to perform such services and/or furnish or receive such goods, equipment or facilities to or from CSUSASC;

NOW, THEREFORE, in consideration of CSUSASC permitting Subcontractor or its agents, employees and representatives (including sub-subcontractors) to enter upon and to place, construct or service equipment or material upon premises owned or controlled by CSUSASC, and/or to use any equipment owned or controlled by CSUSASC, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Subcontractor, Subcontractor hereby agrees as follows:

1. ENGAGEMENT; GOODS AND SERVICES

1.1 CSUSASC may from time to time (a) employ the services of Subcontractor and/or (b) purchase, sell or rent goods, equipment, or facilities from or to Subcontractor. Unless CSUSASC otherwise specifically agrees in writing, this Agreement shall control and govern all work performed by Subcontractor for CSUSASC, and shall be deemed to be incorporated in full in every existing, contemporaneous and subsequent oral and/or written work or purchase orders and other agreements between Subcontractor and CSUSASC.

1.2 Upon CSUSASC notifying Subcontractor of the services and/or goods, equipment or facilities desired, Subcontractor will commence furnishing same at the agreed upon price, time and place, and continue such operations diligently and without delay, in a good and workmanlike manner, in strict conformity with the requirements contained herein and in any related work or purchase order or other agreement.

1.3 Subcontractor shall furnish and pay for, at its own expense, all labor, material, equipment, taxes, permits, and license fees, labor fringe benefits, insurance, and bond premiums and all other things and costs required to completely perform the Work in accordance with this Agreement.

1.4 All of Subcontractor’s workmanship, materials, submissions, and samples shall be subject to the approval of Owner, Architect, Prime Contractor and CSUSASC.

1.5 Subcontractor shall take necessary precautions to properly protect the Work of other Subcontractors from damage caused by operations under this Agreement. Subcontractor shall cooperate with CSUSASC and other Subcontractors whose work might interfere with Subcontractor’s Work, and shall participate in the preparation of coordination of drawings in areas of congestion, specifically noting and advising CSUSASC of any such interference. Subcontractor shall cooperate with CSUSASC, other Subcontractors, and the Owner’s own force who’s Work might interfere with the Subcontractor’s Work. Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising CSUSASC of potential conflicts between the Work of the Subcontractor and that of CSUSASC, other Subcontractors, or the Owner’s own forces.

1.6 The termination of any other contract or agreement by or involving Subcontractor (whether such work commenced under oral or written work or purchase orders) shall not terminate nor relieve Subcontractor of its obligations under this Agreement.

2. THE CONTRACT DOCUMENTS

2.1 The Contract Documents for this Contract consist of this Agreement and any Exhibits attached hereto, the Agreement between the Owner and the Prime Contractor, the Agreement between the Prime Contractor and CSUSASC, the Conditions of the Contract between the Owner and the Prime Contractor (General, Supplementary, and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and the Prime Contractor. Subcontractor agrees to be bound to CSUSASC by all of the terms of the Contract Documents, as described above, and to assume toward CSUSASC all of the obligations and the responsibilities that CSUSASC by those instruments assumes toward Prime Contractor and/or Owner.

2.2 All of the above documents are a part of this Contract and shall be available for inspection by Subcontractor upon request.

2.3 This “Contract” is issued as a binding contract between CSUSASC and the Subcontractor and is contingent on approved shop drawings, and the return to our office this signed contract with executed insurance certificate, within 14 days from date shown on the face of this document.

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2.4 The "Subcontractor" for the purpose of this contract is considered to be any individual, firm, manufacturer, manufacturer's representative, supplier, Subcontractor, or any other enterprise, or combination thereof, serving as a provider of labor and materials which are actually installed and incorporated by the Subcontractor into the improvements envisioned by the Mechanical Contract, as they are applicable to and stipulated in this Contract and in the Mechanical Contract documents. Subcontractor shall be an independent contractor and shall assume all of the rights, obligations, and liabilities applicable to it as such and any provisions in this Contract which may appear to give CSUSASC the right to direct Subcontractor as to the details of doing the Work, or to exercise any measure of control over the Work shall mean CSUSASC is exercising such control only to ensure the Work is being performed and results accomplished according to the terms of this Contract.

3. THE WORK

3.1 Subcontractor and CSUSASC agree that the "Work" to be done by Subcontractor is as described on page 1 of this subcontract.

3.2 Subcontractor shall Submit to CSUSASC, within 7 days after execution of this Agreement, complete shop drawings, data catalog cuts, and samples as required by the Contract Documents.

4. COMMENCEMENT AND COMPLETION

4.1 Subcontractor agrees to commence the Work when directed by CSUSASC and to diligently and continuously prosecute such Work, and to coordinate the Work with other work being done on the Project by other trades so that CSUSASC shall not be delayed by any act or omission of Subcontractor in completion of the Project within the time specified in the Contract Documents. Or, in the absence of a specified time, Work shall be scheduled to allow completion of the project within the time allotted by CSUSASC's schedule.

4.2 Time is of the essence of this Agreement and any breach of same shall go to the essence thereof, and Subcontractor, in agreeing to complete the Work within the times and sequences herein mentioned, has taken into consideration and made allowances for the entire hindrances and delays incident to the Work.

4.3 A project schedule shall be developed by CSUSASC, or Prime Contractor, which shall schedule and coordinate the times required for each area of work on this project. Subcontractor shall participate and cooperate in scheduling the times and a sequence required in Subcontractor's area of work and hereby agrees to perform such Work in accordance with the schedule, including all amendments thereto. Subcontractor shall continuously monitor the schedule and advise CSUSASC of the status of Subcontractor's progress on a regular basis, including information on the status of shop drawings, samples, submittals, and materials or equipment which may be in the course of preparation or manufacture.

4.4 Subcontractor shall immediately notify CSUSASC of any circumstance which may affect the times and sequences in the schedule, and shall make all requests for extensions of time, in writing, to CSUSASC sufficiently in advance to allow CSUSASC to forward the requests in compliance with the Contract Documents.

4.5 Subcontractor's Project Superintendent or Foreman shall report to CSUSASC's Project Superintendent prior to commencing any work on the Project and report again after any extended absence from the Project in order to advise CSUSASC's Project Superintendent of the particular phase of Work Subcontractor is about to perform. Subcontractor's Superintendent or Foreman shall attend meetings as scheduled by CSUSASC's Project Superintendent for the purpose of scheduling all activities on the Project.

4.6 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within forty-eight (48) hours after receipt of written notice from CSUSASC to commence and continue correction of such default or negligence with diligence and promptness, CSUSASC may, without prejudice to any other remedy CSUSASC may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor. After initial notice, CSUSASC may, without prejudice to any other remedy CSUSASC may have, terminate the Agreement and finish the Subcontractor's Work by whatever method CSUSASC may deem expedient. If the unpaid balance of the Agreement amount exceeds the expense of finishing the Subcontractor's Work, such excess shall be paid to the Subcontractor; but if such expense exceeds such unpaid balance, the Subcontractor shall pay the difference to CSUSASC.

4.7 If Subcontractor is responsible for any delays in the time and sequence of the schedule, Subcontractor shall pay CSUSASC for all costs and damages suffered by CSUSASC as a result of such delays, including any damages assessed against CSUSASC under the Contract Documents.

4.8 In the event that Subcontractor's performance of the Work is delayed or interfered with for any reason and for any period of time, by acts or omissions of Owner, CSUSASC, or other Subcontractors, Subcontractor may request an extension of time for performance of the Work, but shall not be entitled to any increase in the Agreement price or to damages or additional compensation as a consequence of such delays or interference, except to the extent that the Contract Documents entitled CSUSASC to compensation for such delays, and then only to the extent of any amounts that CSUSASC may, on behalf of Subcontractor, actually receive from Owner for such delays.

4.9 Any time Subcontractor is behind schedule in its Work, Subcontractor shall, at its own expense, perform any overtime work necessary to bring its Work back on schedule. CSUSASC may, at any other time, direct Subcontractor to perform additional overtime work; and CSUSASC shall pay any costs above those associated with routine work, including premium time but not additional profit.

5. **PROGRESS PAYMENTS.** CSUSASC shall pay Subcontractor monthly Progress Payments as follows:

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5.1 Progress Payments will be made to Subcontractor payable in Houston, Texas, in an amount equal to 90 percent of the value of labor and materials incorporated by Subcontractor in the Work and, where authorized by the Contract Documents, of materials stored in a manner acceptable to Owner, Architect, and CSUSASC, less the aggregate of previous payments. CSUSASC shall pay the Subcontractor each Progress Payment within five working days after CSUSASC receives payment from the Prime Contractor, or Owner.

5.2 Subcontractor shall, within thirty (30) days after execution of this Agreement, and before the first Application for Progress Payments, submit to CSUSASC a Schedule of Values of the various parts of the Work aggregating the total sum of this Agreement made out in such detail as CSUSASC or Contract Documents may require, and supported by such evidence as to its correctness as CSUSASC may direct. This schedule, when approved by CSUSASC and Architect, shall be used as a basis for Applications for Progress Payments, unless later found to be in error. In applying for each Progress Payment, Subcontractor shall submit a statement based upon this schedule, and on forms approved by CSUSASC.

5.3 Subcontractor shall submit to CSUSASC Applications for Progress Payments complete with sufficient breakdown data to permit checking and approval, and in a form acceptable to CSUSASC, sufficiently in advance to permit CSUSASC to forward the Applications as required by the Contract Documents, but not later than the 15th day of each month. CERTIFIED PAYROLLS, IF REQUIRED, SHALL BE SUBMITTED WITH PAY APPLICATIONS. Payments are made from original invoices only.

5.4 Payments for materials or equipment not incorporated into the Work, but delivered and suitably stored at the site, or elsewhere, shall only be made where permitted by, and in accordance with, the terms and conditions of the Contract Documents. In the event of any loss or damage to stored items, any insurance covering loss or damage shall insure and protect CSUSASC's or Owner's title and right of possession to such materials.

5.5 The amount of each Progress Payment to Subcontractor shall not exceed the percentage of completion allowed to CSUSASC by Architect for the Work of Subcontractor, less the specified retainage.

5.6 Subcontractor shall pay for all materials, equipment, and labor used in or in connection with the performance of this Agreement through the period covered by previous payments received from CSUSASC; and no Progress Payments shall become due until Subcontractor has furnished satisfactory evidence to verify compliance with this requirement.

5.7 Payments otherwise due, either Progress Payments or Final Payment, may be withheld by CSUSASC because of defective work not remedied, claims filed, failure of Subcontractor to make payments properly to its Subcontractors for materials or labor, or for applicable taxes, fees, and fringe benefits or reasonable doubt that the Agreement can be completed for the balance of the Agreement Amount then unpaid, or for any other breach of this Agreement. If the said causes are not removed, on written notice, CSUSASC may rectify the same at Subcontractor's expense. CSUSASC may offset any sums due Subcontractor hereunder the amount of any liquidated or unliquidated obligations of Subcontractor to CSUSASC. Subcontractor agrees that all Progress Payments and Final Payment mentioned in this Agreement are subject to Owner's acceptance of all Work performed by Subcontractor and CSUSASC's receipt of payment from Prime Contractor, or Owner, for Subcontractor's Work and CSUSASC's Work.

5.8 No payment to Subcontractor, either Progress Payments or Final Payment, shall be construed as approval of Subcontractor's Work or material, or any part thereof.

5.9 No payment hereunder shall become due until after Subcontractor has fully complied with Articles 7 and 16 of this Agreement.

5.10 CSUSASC may deduct from any amounts due, or to become due to Subcontractor, whether pursuant to this Agreement or any other agreement, or relationship between CSUSASC and Subcontractor; any sum or sums owing by Subcontractor in the event of any breach by Subcontractor of any provision or obligation of this Agreement, or any other agreement, or in the event of the assertion by other parties of any claim or lien against Owner, CSUSASC's surety, or the premises upon which the Work was performed, or all legal offsets of sums owed to CSUSASC from Subcontractor, whether related to this, or any other agreement.

5.11 **Subcontractor has agreed and does hereby agree to accept the risk of non-payment by the owner and/or prime contractor for items covered in the scope of work of this subcontract. It is specifically understood that payment by the owner and/or prime contractor to Comfort Systems USA (South Central), Inc., for the subcontract work or any work performed by subcontractor, whether for progress payments or final payment, is a condition precedent to CSUSASC's liability to pay subcontractor. The subcontract sum for the subcontract work includes the assumption of this risk.**

6. FINAL PAYMENT. Final Payment of the balance of the Agreement shall be made in Houston, Texas, as follows:

6.1 Final Payment shall be the unpaid balance of the Agreement Amount, and shall become due when the Work described in this Agreement is fully completed and performed in accordance with the Agreement and the Contract Documents and is satisfactory to Owner, Prime Contractor, Architect, Engineer, and CSUSASC.

6.2 Final Payment, constituting the entire unpaid balance of the Agreement Amount, shall be made by CSUSASC to the Subcontractor when: (a) Subcontractor's Work is approved and accepted by Owner, Architect, Engineer, and CSUSASC, (b) Subcontractor delivers to CSUSASC all manuals, "as-built" drawings, guarantees, and warranties for material and equipment furnished by Subcontractor, or any other documents required by the Contract Documents, (c) Subcontractor complies with all close-out requirements of the Contract Documents; (d) Subcontractor furnishes to CSUSASC satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with his Work have been paid in full, (e) Subcontractor furnishes to CSUSASC a complete Affidavit, Release of Lien, and Waiver of Claim in a form satisfactory to CSUSASC or as required by the Contract

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Documents; (f) Subcontractor furnishes written consent of the surety of Subcontractor for final payment if the Subcontractor is required to be bonded in this Agreement; and (g) receipt of Final Payment for Subcontractor's Work, by CSUSASC from Prime Contractor, or Owner.

7. PAYMENT AND PERFORMANCE BONDS

7.1 Subcontractor shall provide Payment and Performance Bonds in the full amount of this Agreement, if required on the face of this document. Bonds shall be written with a surety acceptable to CSUSASC.

7.2 The premiums for these Bonds shall be paid by Subcontractor, and the cost thereof is included in the Agreement Amount.

7.3 Subcontractor shall include the cost of any increase in bond premiums in any Change Order Requests submitted to CSUSASC, and shall pay the increased premium applicable to an approved Change Order.

8. CHANGES

8.1 The Work to be performed under this Agreement may be modified by changes required by Owner, Architect, Prime Contractor, or CSUSASC; and the Agreement Sum shall be adjusted by written Change Order in accordance with this Agreement.

8.2 No alterations, increases, or decreases shall be made in the Work as shown or described by the Contract Documents, except on the written order of CSUSASC; and when so made, the value of the Work or materials added or omitted shall be computed and determined by Subcontractor, subject to the written approval and acceptance by CSUSASC, and the amount so determined shall be added or deducted from the Agreement Amount. Subcontractor shall have no claim for additional Work, or changed Work unless such Work has been done in pursuance of a written order from CSUSASC. Any extra work performed without such written order will be at Subcontractor's expense.

8.3 For changes in the Work that affect the cost of the Work, or construction time, Subcontractor shall notify CSUSASC of the scope of any change in cost or time within five (5) days after receipt of the proposed change and shall submit the actual Change Order Request within ten (10) days.

8.4 The Change Order Request shall consist of the detailed cost estimate outlining the changes in the Work and detailed documentation justifying proposed changes in time. This estimate shall be computed in accordance with accepted estimating procedures and in accordance with terms of the Contract Documents, and the costs for labor and materials shall be at prevailing rates in the Project area. Percentages for overhead or profit shall be per the Contract Documents.

8.5 If Owner, Architect, or CSUSASC disputes the validity or amount of a Change Order Request submitted by Subcontractor, but instructs Subcontractor to proceed with the Work pending resolution of the dispute, Subcontractor shall promptly commence such disputed Work and expeditiously complete it.

9. TEMPORARY FACILITIES AND SERVICES

9.1 Subcontractor shall be responsible for unloading and hoisting all of its materials, supplies, tools, and equipment in order to ensure the timely completion of Subcontractor's Work. Subcontractor's temporary facilities will be approved by CSUSASC. Additional costs to the Subcontractor resulting from relocation of such facilities at the direction of CSUSASC, except as previously agreed upon, shall be reimbursed by CSUSASC.

9.2 Except as otherwise provided, CSUSASC's equipment will be available to the Subcontractor only at CSUSASC's discretion and on mutually satisfactory terms.

10. INDEPENDENT CONTRACTOR

10.1 Subcontractor shall be an independent contractor with respect to the performance of all work and services for CSUSASC, and neither Subcontractor nor anyone employed by Subcontractor shall be deemed for any purpose to be the employee, agent, servant or representative of CSUSASC in the performance of any work or service.

10.2 CSUSASC shall have no direction or control of Subcontractor or its employees, agents, representatives and sub-subcontractors, except in the results to be obtained. Any work for or on behalf of CSUSASC shall meet the approval of CSUSASC and be subject to the general right of inspection of CSUSASC to secure the satisfactory completion thereof. The actual performance and superintendence of all work contemplated herein shall be by Subcontractor, but CSUSASC and its representatives shall have reasonable access to such operations.

10.3 No provisions herein shall be construed as creating a partnership, joint venture or other association between the parties whereby any party shall be liable for the acts, either of omission or commission, of the other.

11. STANDARD OF PERFORMANCE; SAFETY

11.1 Subcontractor shall, at Subcontractor's sole cost and expense, furnish supervision, labor, equipment, machinery, tools, materials and supplies necessary for the performance of the work in a diligent, good and workmanlike manner.

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- 11.2** Subcontractor shall not employ in any work for CSUSASC any employee whose employment violates applicable labor laws.
- 11.3** All materials, equipment, machinery, tools, supplies or manufactured articles furnished by Subcontractor in the performance of the work or services hereunder shall be the best quality for their respective purposes and shall be free from all defects, latent or otherwise. Any portion of the work found defective or unsuitable shall be promptly removed, replaced or corrected by Subcontractor without additional charge to CSUSASC.
- 11.4** Subcontractor further covenants, warrants and represents that all work performed by it shall be conducted in accordance with all applicable safety statutes, regulations, precautions and procedures and by utilizing all necessary or desirable protective equipment and devices, whether suggested or required by safety associations, government agencies, municipalities, or otherwise.
- 11.5** Subcontractor further covenants, warrants and represents that it is qualified to perform the work, that its employees (and any sub-subcontractors) are suitably trained to safely perform the work and that all work performed shall be conducted safely.
- 11.6** Subcontractor further covenants, warrants and represents that its employees (and any sub-subcontractors) will adhere to all posted safety rules and regulations.
- 11.7** Subcontractor agrees that CSUSASC may, at its sole discretion, either back-charge or withhold from any payments due to the Subcontractor under the terms of this contract the total amount of all OSHA fines levied against CSUSASC that are a result of the Subcontractor's failure to comply with OSHA standards.

12. WEAPONS, DRUGS AND ALCOHOL

- 12.1** The possession of firearms or other weapons, or illegal drugs or controlled substances or alcohol on any CSUSASC facilities or property or work sites is strictly forbidden. Subcontractor will do all within its power to prevent violation of this rule.
- 12.2** Subcontractor agrees that any employee of Subcontractor who violates this rule shall be immediately removed from the work site or premises and shall not return to a CSUSASC work site or premises.
- 12.3** CSUSASC shall have the right to inspect, including the right to search, any of Subcontractor's equipment or vehicles brought onto any CSUSASC property or any work site where Subcontractor is working under contract to CSUSASC, for weapons or other dangerous instrumentalities, illegal drugs or controlled substances or alcohol.
- 12.4** Further, Subcontractor agrees that it will only use employees who will consent to CSUSASC's drug-screening program (urinalysis drug testing), and agrees that any of its employees who refuse consent, or who test positive, showing drug or alcohol use, shall be immediately removed from CSUSASC premises or work site and replaced, at the expense of Subcontractor, with other acceptable personnel.

13. PROTECTION FROM LIENS

- 13.1** Subcontractor shall timely pay and discharge all claims for labor and materials to be supplied by Subcontractor of any of its sub-subcontractors or vendors and Subcontractor will save and keep the Project, and the lands upon which it is situated, free from all mechanic's liens and all other liens by reason of the Work or any labor, materials, or other things used therein.
- 13.2** Subcontractor shall defend, indemnify and hold harmless CSUSASC against any such claim or lien. If Subcontractor fails to remove any lien by bonding it, or otherwise, CSUSASC may retain sufficient funds, out of any money due or thereafter to become due by CSUSASC to Subcontractor, to pay the same and all costs incurred by reason thereof, and may pay, or bond said lien or liens and costs out of any funds at any time in the hands of CSUSASC owing to Subcontractor; nothing herein shall prevent Subcontractor from filing its own lien if otherwise entitled to do so.
- 13.3** Subcontractor shall furnish to CSUSASC, at CSUSASC's request and option, proof satisfactory to CSUSASC that there are no unsatisfied claims for labor or material.

- 14. ACCIDENT REPORTS.** Subcontractor shall immediately notify CSUSASC upon the occurrence of any accident arising out of or during the course of services performed for CSUSASC by Subcontractor, its agents, employees or representatives or by any sub-subcontractor of Subcontractor, and shall prepare and furnish CSUSASC a copy of an accident report for each accident within five (5) days of the occurrence of said accident and, when requested, shall furnish CSUSASC a copy of reports made by Subcontractor to Subcontractor's insurer or by any sub-subcontractor of Subcontractor to its insurer.

15. WARRANTY AND GUARANTY

- 15.1** Subcontractor warrants to the Owner, Prime Contractor, Architect, and CSUSASC that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work of this Agreement will be free from defects and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

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15.2 Subcontractor unconditionally guarantees all work performed and materials furnished by it for a period of one (1) year (or such longer period as may be required by law) from the date of acceptance by CSUSASC of the work or any portion thereof. Subcontractor shall, to CSUSASC's satisfaction and at Subcontractor's expense, make good any defect or deficiency in the work and will defend, indemnify and save harmless CSUSASC from and against any and all claims, loss damage and expense arising from any such defect or deficiency.

16. INSURANCE

INSURANCE AND BONDS:

(a) Subcontractor, at its own expense, shall procure, carry and maintain on all its operation hereunder the bonds and policies of insurance in the amount specified with insurance companies licensed to do business in the State of Texas, rated no less than A: VIII as shown in the most current issue of A. M. Best's Key Rating Guide, and under forms of policies satisfactory to Comfort Systems USA (South Central), Inc. The bonds and policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to Prime Contractor. Subcontractor shall cause to be furnished to CSUSASC certificates of insurance from the assuring companies which shall include the following clause: "Thirty (30) days" advance notice shall be given in writing to Comfort Systems USA (South Central), Inc., 9745 Bent Oak, Houston, Texas 77040, on cancellation, termination, or any alteration of the policy or policies evidenced by this certificate.

(b) Subcontractor shall carry Comprehensive General Liability, Comprehensive Auto Liability, Workmen's Compensation; Employer's Liability and such other insurance as may be required by the General Contract in companies acceptable to Owner and General Contractor. Prior to commencement of the work, Subcontractor shall furnish Prime Contractor with certificates evidencing the applicable policies and coverage and specifying that such insurance shall not be canceled, reduced nor allowed to expire except upon the expiration of thirty (30) days after written notice of the intent to cancel is delivered to Prime Contractor.

(c) Insurance policies shall contain at least the following limits and coverage:

(1) COMMERCIAL GENERAL LIABILITY & AUTOMOBILE LIABILITY

Contractors / Subcontractors	\$2,000,000 per occurrence
Leased Operators	\$2,000,000 per occurrence

(2) WORKER'S COMPENSATION

All workers' compensation coverage must conform to applicable state statutes. The requirement for this coverage is compulsory and not elective.

(3) EMPLOYER'S LIABILITY

Each Accident	\$1,000,000
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Current Certificates of Insurance must be on file for each sub-contractor before a contract will be issued.

Certificates of insurance must have a waiver of subrogation and additional insured in favor of Comfort Systems USA (South Central), Inc.

16.1 It is expressly understood and agreed that the coverage's required above (i) represent CSUSASC's minimum requirements and are not to be construed to void or limit Subcontractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Subcontractor should or should not maintain for its own protection and (ii) are being, or have been, obtained by Subcontractor in support of Subcontractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.

16.2 Failure to obtain and maintain the required insurance shall constitute a breach of, and default under, this Agreement. Subcontractor will be liable for any and all costs, liabilities, damages and penalties resulting to CSUSASC from such termination, unless a written waiver of the specific insurance requirement(s) is provided to Subcontractor by CSUSASC. In the event of any failure by Subcontractor to comply with the provisions of this Agreement, CSUSASC may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Subcontractor, purchase such insurance, at Subcontractor's expense, provided that CSUSASC shall have no obligation to do so and if CSUSASC shall do so, Subcontractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

17. CONFIDENTIALITY. Information obtained by Subcontractor while performing work for CSUSASC is proprietary to CSUSASC and confidential and shall not be divulged by Subcontractor or Subcontractor's employees, agents, representatives or sub-subcontractors to any person or entity other than designated representatives of CSUSASC.

18. HAZARDOUS SUBSTANCES. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by Subcontractor, or anyone directly or indirectly employed by Subcontractor, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to CSUSASC in sufficient detail and time to permit compliance with such laws by CSUSASC, other Subcontractors, and other employers on the site. In the event the Subcontractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Subcontractor shall immediately stop the Work in the area affected and report the condition to CSUSASC in writing. The Work in the affected area shall resume in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of CSUSASC and Subcontractor, or by arbitration as provided in this Agreement. The Subcontractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

19. HOUSEKEEPING. Subcontractor will clean-up and haul away all debris occasioned by the Work done hereunder, and will at all times keep the Project and premises clean. Any trash, debris, or liquid that poses a possible threat of fire or safety shall be removed from the premises

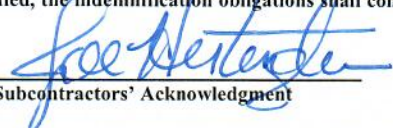
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immediately. If after twenty-four (24) hours' notice by CSUSASC to Subcontractor, Subcontractor has not diligently proceeded with the clean-up as outlined in this paragraph, then CSUSASC has the right to proceed with the clean-up work at Subcontractor's cost and expense.

20. INDEMNIFICATION AND HOLD HARMLESS

20.1 To the fullest extent permitted by applicable law, Subcontractor shall and does hereby agree to indemnify, protect, hold harmless and defend Indemnitees from and against all claims, demands, damages, injuries, losses, liens, causes of action, suits, judgments, penalties, liabilities, debts, costs and expenses, including court costs and attorneys' fees (collectively, "Liabilities"), of any nature, kind or description, whether known or unknown, whether predating this Agreement or not, and whether arising out of contract, tort, strict liability, misrepresentation, violation of applicable law and/or any cause whatsoever (including without limitation, claims for injuries to or death of any person, or damages to or loss of any property) of any person or entity (including but not limited to employees, agents, and sub-subcontractors of Subcontractor, and their dependents and personal representatives, and other third parties), directly or indirectly arising out of, caused by, in connection with, or resulting from (in whole or in part), (i) the performance of Subcontractor's Work or of other project Work undertaken by Subcontractor, (ii) the ingress, egress or presence or activity of Subcontractor, its employees, agents and representatives (including sub-subcontractors) on CSUSASC's premises or worksite, (iii) the condition of CSUSASC's premises or worksite, the adjoining land, or any of the driveways, streets, or alleys used in connection with the goods or services provided by or on behalf of Subcontractor, (iv) the use of any equipment by Subcontractor on CSUSASC's premises or worksite, whether belonging to Subcontractor, any Indemnitee, or otherwise, or the condition of said equipment, or (v) any act or omission of Subcontractor, any sub-subcontractor, any of their respective employees, agents, servants, officers, directors, partners, shareholders or anyone directly or indirectly employed by Subcontractor or any sub-subcontractor, or anyone that either Subcontractor or any sub-subcontractor controls or exercises control over. The obligations of Subcontractor under this Article 20 shall apply to liabilities even if such liabilities are caused in whole or in part by the sole, joint or concurrent negligence, fault or strict liability of any Indemnitee, whether or not such sole, joint or concurrent negligence, fault or strict liability was active or passive.

20.2 Subcontractor shall promptly advise CSUSASC in writing of any action, administrative or legal proceeding or investigation as to which indemnification may apply, and Subcontractor, at Subcontractor's expense, shall assume on behalf of Indemnitees and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to CSUSASC; provided, however, that CSUSASC shall have the right, at their option, to be represented therein by advisory counsel of their own selection and at their own expense. In the event of the failure by Subcontractor to fully perform its obligations in accordance with this Agreement, Indemnitees, at their option, and without relieving Subcontractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Indemnitees in that event shall be reimbursed by Subcontractor to Indemnitees, together with interest on the same from the date any such expense was paid by Indemnitees until reimbursed by Subcontractor, at the highest lawful rate of interest allowed under applicable usury laws of the State of Texas (or if no maximum rate is applicable, at the rate of eighteen percent [18%] per annum). The indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employee benefit acts. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Article 20, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.


Subcontractors' Acknowledgment

20.3 In the event Subcontractor subcontracts any of the work to be performed or services to be rendered or contracts for the furnishing of any services for CSUSASC, then Subcontractor represents that such contracts will contain defense, indemnity and hold harmless provisions equal to those set forth in this Article 20 in favor of Indemnitees and insurance protection identical to that required in Article 16 hereto in favor of Indemnitees. Unless such contracts contain said identical provisions, any personnel engaged in the furnishing of such services or work shall be deemed to be employees of Subcontractor for all purposes of Articles 16 and 20 hereof.

20.4 The obligations of Subcontractor under this Article 20 shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving of or the failure to give directions or instructions by Architects, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage.

21. COMPLIANCE WITH LAW

21.1 Subcontractor shall comply with all federal, state, and local tax laws, social security acts, unemployment compensation acts, and worker's compensation acts, insofar as applicable to the performance of this Agreement, and shall comply with all procedures, rules, and regulations with regard to nondiscrimination issued or to be issued by any local, state, or federal government or agency, including the Equal Employment Opportunity Commission, insofar as they may apply to the Work.

21.2 Subcontractor shall promptly review all Contract Documents and report in writing to CSUSASC any variance to such codes, laws, ordinances, rules and regulations. If Subcontractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules and regulations, and without giving such notice to CSUSASC, Subcontractor shall assume full responsibility therefore, and shall bear all costs and damages attributable thereto. Subcontractor shall pay all prevailing wages as described in the Contract Documents, or as required by any governmental agency governing the project.

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21.3 Subcontractor agrees, at its sole cost and expense, to give all notices and comply with all applicable governmental regulations, law, statutes, codes, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Agreement. Subcontractor also warrants and represents that it shall obtain and maintain in full force and effect, at its sole cost and expense, all necessary permits, fees, licenses, certificates, or approvals necessary for the execution of the Work under all state, federal and local laws and ordinances, and agrees that all costs thereof are included in the Contract Amount.

21.4 Subcontractor agrees that it shall be responsible for and shall defend, indemnify and hold CSUSASC harmless from and against any loss, costs, damages or expense (including payment of attorneys' fees and litigation costs) or delay caused by or arising from any violation of any such law, orders, ordinances, rules or regulations arising out of or resulting from, or connected with directly or indirectly, or related to any incident arising from Subcontractor's performance of any services for CSUSASC or sale of any goods or materials to CSUSASC, whether or not any such incident or violation or any claim resulting therefrom is based, in whole or in part, on the negligence or fault of CSUSASC.

22. MEDIATION OR ARBITRATION

22.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation, administered by the American Arbitration Association under its Construction Industry Mediation Rules before having recourse to arbitration or a judicial forum. The option of whether or not to arbitrate is left solely to the discretion of CSUSASC.

22.2 If Arbitration is agreed upon, the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

22.3 This Article 22 shall not be deemed a limitation of rights or remedies which the Subcontractor may have under federal law, under state mechanics' lien laws, or under applicable labor or material payment bonds, unless such rights or remedies are expressly waived by the Subcontractor.

23. TERMINATION BY CSUSASC. CSUSASC, at any time and for any reason, may terminate the service, in whole or in part, by giving notice to Subcontractor and in such event CSUSASC shall, subject to CSUSASC's rights under this agreement, pay Subcontractor for the percentage of work completed in proportion to the contemplated services, less damages sustained by CSUSASC as a result of any default by Subcontractor, if any.

24. NON ASSIGNABILITY OF CONTRACT BY SUBCONTRACTOR. Neither the services to be performed by Subcontractor nor any money due Subcontractor hereunder shall be assigned, subcontracted or transferred, in whole or in part, by Subcontractor, voluntarily or by operation of law, except with the prior written consent of CSUSASC, and any attempt to do so without such consent shall be void.

25. MODIFICATION OF AGREEMENT. No change, modification, extension, renewal, ratification, revision, discharge, abandonment or waiver of this Agreement or any of the provisions hereof or any representation, promise or condition relating to this Agreement shall be binding upon CSUSASC unless made in writing and signed by CSUSASC.

26. ENFORCEMENT OF RIGHTS. Should it become necessary for any Indemnitee to incur any cost or expenses, whether direct or indirect, including, but not limited to, attorneys' fees, investigators' fees, collection costs, court costs or other fees and expenses, in connection with any claim or demand for which indemnification is provided by this Agreement, or in connection with any attempt to recover losses incurred on such claims or demands, or in connection with the enforcement of this Agreement, Subcontractor agrees to fully reimburse Indemnitee for such costs and expenses.

27. NOTICES. Any and all notices or demands to be given with respect to this Agreement shall be considered as validly given or made to CSUSASC and to Subcontractor, respectively, if given in writing and (a) personally delivered, (b) delivered and confirmed by facsimile or like instantaneous transmission service, or by Federal Express or other overnight courier delivery service, which shall be effective as of confirmation of receipt by the courier at the address for notice hereafter stated, or (c) deposited in the United States mail, first class, postage prepaid, certified or registered, return receipt requested, addressed as follows:

If to CSUSASC: Comfort Systems USA (South Central), Inc. 9745 Bent Oak Dr. Houston, TX 77040-2689

If to Subcontractor, as set forth on the signature page hereof, notice which is mailed in the manner specified shall be conclusively deemed given three (3) days after the date postmarked or upon receipt, whichever is sooner. Notwithstanding the foregoing notice provisions, general correspondence pertaining to applicable work or purchase orders may be sent by regular mail. Any party hereto may change its address for the purpose of receiving notices or demands by notice given as herein provided.

28. GOVERNING LAW; JURISDICTION. This agreement shall be governed by, construed and enforced in accordance with the laws of the state of Texas, without giving effect to principles of conflicts of laws. Subcontractor agrees that the state of Texas shall have sole and exclusive jurisdiction over any action brought to enforce the terms of this agreement. Venue shall be Harris County, Texas.

29. SEVERABILITY. In the event that any provision of this Agreement is inconsistent with or contrary to any applicable federal, state or local law, rule or regulation, said provision shall be deemed to be modified to the extent required to comply with said law, rule or regulation, and as so modified said provision and this Agreement shall continue in full force and effect.

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South Central

30. HEADINGS; EXHIBITS. Sections of this Agreement have been labeled for the convenience of the parties, and such headings are not to be utilized for the purpose of construing the meaning of any provision of this Agreement. Any and all exhibits referred to in this agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement EFFECTIVE FOR ALL PURPOSES as of the 28 day of March, 2023.

COMFORT SYSTEMS USA (SOUTH CENTRAL), INC.:
By:

Name: Justin Harr

Title: Project Manager

National TAB
By:

Name:

Title:

Joe Hertenstein

Resident

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