

REQUEST FOR PROPOSALS
FOR
SUBCONTRACTORS

Lost Oaks, LP
810 Oak Street
Houston, Harris County, Texas 77018

September 11, 2024

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1. INTRODUCTION AND GENERAL INFORMATION

1.1 Background:

Koogler Construction of Texas, LLC has been in the affordable apartment construction business for over 21 years and has constructed over 1800 units of multifamily housing in Texas. Koogler Construction of Texas, LLC will serve as the “general contractor” or “master prime” or “master subcontractor” (hereinafter “**General Contractor**”) for the Lost Oaks apartment complex and is soliciting proposals from interested firms and individuals to provide subcontracting construction services for this development.

1.2 Project Description and MWBE Participation:

1.3 The Lost Oaks development (the “**Development**”) is located at 810 Oak Street, Houston, Texas 77018. The family development will consist of 78 low-income housing tax credit units (“**LIHTC**”). The Development is a Harris County Treasury ARPA funded new construction multifamily development project in Houston, Harris County, Texas. The project will serve households across a range of incomes and will provide various supportive services to residents. Units in the Development will include kitchens, living areas, bath and bedrooms and have 1, 2, and 3-bedroom floorplan options.

1.4 Specifically, General Contractor requests proposals from subcontractors to perform all scopes of work for the Development as outlined in the plans¹ provided at this link <http://www.kooglerconstruction.com/rfp> (the “**Work**”) including the following major categories of Work:

Civil Plan Scopes

- Underground Utilities (Labor & Materials)
- Concrete Paving (Turnkey)

Architectural Plan Scopes

- Roofing (Labor & Materials)
- Painting (Labor & Materials)
- Brick/Masonry (Labor & Materials)
- Drywall (Labor & Materials)
- Ceramic Tile & Accessories (Labor & Materials)
- Kitchen & Bath Cabinets (Labor & Materials)
- Flooring (Labor & Materials)

- Metals (i.e. stairs, rails, fencing, bollards, entry gates, etc.) (Labor & Materials)
- Elevator (Labor & Materials)

Structural Plan Scopes

- Concrete Foundations (Turnkey)
- Framing Carpentry (Turnkey)
- Trim Carpentry (Turnkey)
- Lightweight balcony, breezeway, and unit gypcrete (Labor & Materials)

MEP Plan Scopes

- Plumbing (Labor & Materials)
- Mechanical (Labor & Materials)
- Electrical (Labor & Materials)

¹ Note some scopes of work will require the review and analysis of the multiple plan sets, all of which are being made available to Proposers.

Fire Protection Plan Scopes

- Fire Protection (Labor & Materials)

Please submit a separate Proposal for each major category for which a scope of Work is being proposed.

As is the case in many multifamily affordable construction projects, the architect has not provided to the General Contractor identical specifications available for the subcontractors who will be competing for the opportunity to perform Work on this Development. Rather, potential subcontractors should include such specificity in their Proposal(s). For example, rather than providing a detailed prescribed scope of services for plumbing on the Development, the General Contractor requests each potential subcontractor to propose how they would best provide plumbing services to the Development. Such flexibility allows the subcontractors the freedom to present various solutions to the General Contractor so that the optimum proposal may be identified based on the scoring criteria.

A significant portion of the funding to be utilized for the construction of this Development, will be provided by Harris County, Texas using American Rescue Plan Act (“ARPA”) State and Local Fiscal Recovery Funds (“SLFRF”) which are administered by the U.S. Department of the Treasury.

1.5 **Timing:** General Contractor anticipates moving forward on construction in October of 2024 with a 12-14-month construction timeline.

1.6 **Compliance with 2 CFR 200 Procurement regulations:** 2 CFR Section 200.320 entitled “Methods of Procurement to be Followed” enumerates the methods that may be used to procure goods and services in accordance with the ARPA SLFRF requirements, including but not limited to the requirements provided in 2 CFR 200 and other applicable requirements of state, local and federal law (“**Federal Requirements**”). 2 CFR Section 200.320(b)(1) entitled “Sealed Bids” provides that the “sealed bids method is the *preferred* method for procuring construction. . .” (emphasis added). While the Sealed Bid method is preferable for many construction projects (such as street or infrastructure projects procured by local governmental entities in which full plans and specifications are available to prospective bidders and the central focus of the procurement is obtaining the lowest price possible from responsive and responsible bidders), it is critically important to the success of the construction of the Development, for the General Contractor and developer to choose subcontractors (hereinafter “**Subcontractor**” or “**Subcontractors**”) with the special skills, capabilities, and experience necessary to successfully perform the Work in a manner that complies with the Federal Requirements, LIHTC requirements and other regulations applicable to this affordable housing Development, including but not limited to construction schedules, budget constraints, affordable housing construction standards, energy efficiency requirements and compliance reporting. Additionally, the regulations in 2 CFR 200 provide further important guidance and parameters relating to when it is and is not appropriate to use the Sealed Bid methodology. 2 CFR 200.320(b)(1)(i)(A) provides that “in order for sealed bidding to be feasible” certain conditions “should be present.” The first condition enumerated is that “**A complete, adequate, and realistic specification or purchase description is available . . .** In this case, the plans and specifications produced for this project allow flexibility for the proposers to propose the scope of the work which they seek to undertake. Therefore, in this case, a “complete, adequate, and realistic specification” is not available which would be necessary for Sealed Bidding to be employed and the Proposal method is therefore more appropriate for this project. The Proposal method of procurement delineated in 2 CFR Section 320(b)(2) is a more effective and appropriate method of procuring the Subcontractors needed to construct an Affordable Multifamily Development

because this methodology allows the procurement to include consideration of critically important factors in addition to price. Such factors include those referenced in the selection scoring criteria and include but are not limited to: experience of the Subcontractors in constructing federally funded affordable multifamily properties; experience and track record in constructing such properties in full compliance with federal, state, and local laws, rules and regulations; experience in completing the construction of such projects on time and under budget; experience in constructing such projects in accord with relevant ADA and other accessibility standards; and experience in constructing such developments involving the challenges of funding and documenting construction “draws” given the added complexity involved with blending federal and other governmental funding with private equity and debt. In conclusion, the Proposal method enumerated in 2 CFR Section 320(b)(2) is the best and preferred method to procure the most qualified and effective Subcontractors for this Development. This Request For Proposals shall conform with the applicable federal requirements outlined in 2 CFR 200 by implementing the Proposal method.

- 1.7 **Sales Taxes.** Because General Contractor is a tax-exempt entity and is not required to pay sales, consumer use, or similar taxes (“**Sales Taxes**”) with respect to any equipment or materials incorporated by Subcontractor or sub-subcontractors into the Work, Contractor will provide Subcontractor with a sales tax exemption certificate, Subcontractor shall use (and cause its sub-subcontractors to use) such certificate correctly to prevent Sales Taxes from being charged to the Project or Contractor. In addition, where applicable and if so directed by Contractor, Subcontractor also shall purchase (and cause its sub-subcontractors to purchase) Materials to be incorporated into the Project by properly using resale certificates to document such purchases in order to prevent such Sales Taxes from being charged to the Project or Contractor. Except as provided in the foregoing sentences of this paragraph, Subcontractor shall pay all sales or use taxes and all other federal, state or local taxes and any penalties or additional charges of any nature in connection therewith applicable in any way to the Work, regardless of the person upon whom such tax is levied

1.8 MWBE Participation Encouraged.

General Contractor, in accordance with the provisions of 2 CFR 200.321, hereby notifies all Proposers that it has taken necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible and encourages such entities, along with any historically underutilized businesses, (collectively, “**MWBEs**”) to submit Proposals for Work on this Development. Further, General Contractor hereby notifies all Proposers that any contract entered into pursuant to this RFP will afford full and fair opportunity to MWBEs to submit Proposals in response to this RFP and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

2. INSTRUCTIONS TO PROPOSERS

- 2.1 Read all instructions carefully. If you **do not** comply with any part of this RFP, or fail to provide the required data, documents, plans and other materials specified in this RFP, the General Contractor may at its sole option **reject your proposal as non-responsive.**

- 2.2 General Contractor reserves the right to issue addendums to this RFP. Any and all addendums to the RFP will be provided via email to all those who submit questions or a Letter of Interest to the General Contractor at least 7 days prior to the proposal due date and notice of such addendum(s) shall be published in the same manner as publication of this RFP. **All interested parties are strongly encouraged to submit a Letter of Interest to the Project Manager at the following email address: info@kooglerconstruction.com.** Doing so will enable interested parties to be notified of any addendums to this RFP and will enable such parties to receive notification of questions posed by other interested parties and answered by the General Contractor.
- 2.3 All questions submitted during the Technical Assistance Period or the Final Question and Answer period, must be in writing and received by the General Contractor via email during the time frames referenced herein. Responses to questions will be made available via email to all who submit questions or a Letter of Interest to the General Contractor at info@kooglerconstruction.com at least 5 days prior to the proposal due date.
- 2.4 Only electronic submittals are acceptable. All proposals must be submitted as pdf files attached to email messages sent to the Project Manager at the following email address: info@kooglerconstruction.com. Each proposal should include a complete table of contents with corresponding sections and the major category of Work under which the scope of work is being proposed. Each page shall be numbered and contain the name of the Proposer in the header or the footer. RFP submission requirements are outlined in section 7 of this RFP.
- 2.5 Proprietary Information: The Proposer should clearly mark every page of any portion(s) of the proposal which contains proprietary information. The Proposer may not mark the entire proposal as proprietary or confidential. Proposals, which are marked in such a manner, will not be considered.
- 2.6 General Contractor reserves the right to waive minor irregularities contained in any proposal. General Contractor may, at any time and at its sole discretion reject any and all proposals, cancel the RFP, reissue an RFP and/or not execute a contract as a result of this RFP.

3. RESTRICTIONS

- 3.1 All information provided in and with this RFP is provided only for general information purposes. The information is not warranted to be accurate and it is not a part of the proposal documents. General Contractor does not guarantee either the accuracy or completeness of any of the information. The Proposer is responsible for independent verification of any and all information provided herein.
- 3.2 Developer and/or General Contractor shall disqualify any Proposals from a Proposer that has been, or whose principals have been, suspended or debarred by Harris County, or any federal or state agency.

4. PROJECT ELEMENTS

- 4.1 The Site: The development site (“Site”) is a parcel of approximately 1.69 acres located at 810 Oak Street, Houston, Texas 77018. A legal description of the Site is attached as Exhibit “A.”

4.2 Principal elements and components of the Development.

- 78 units of affordable LIHTC apartment units
- The bedroom size breakdown is as follows: 23 one-bedroom units, 50 two-bedroom units, and 5 three-bedroom units.
- The Development will include a pool, amenity center, business center, conference room, fitness room, mail room, activity room, laundry room and a grille house.

4.3 MWBE Requirements. Successful Proposers shall be required to take all affirmative steps necessary to subcontract with Minority and Women- owned Business Enterprises (MWBEs) to assure that MWBEs are used when possible. These affirmative steps include:

- 1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration.

The State of Texas maintains a Historically Underutilized Business Program, which identifies any business at least fifty-one percent (51%) owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity’s affairs as a Historically Underutilized Business (also considered MWBEs). Parties who wish to check the status of a firm may visit <https://comptroller.texas.gov/purchasing/vendor/hub/>.

5. REQUEST FOR PROPOSAL (RFP) SCHEDULE

5.1 Significant Dates

Below is a listing of significant dates. General Contractor, at its sole discretion, may change these dates. Notification of program schedule changes will be provided via email to all parties that have submitted a Letter of Interest via email to General Contractor at least 7 days before the proposal due date.

RFP Release Date	September 11, 2024
Technical Assistance Period	September 13, 2024 - September 23, 2024
Final Q & A Period	September 24, 2024 - September 30, 2024
RFP Proposal Due Date	October 10, 2024, 3:00 PM Central Time
Review of submitted proposals by scoring committee	October 11, 2024
Anticipated Final Selection and notification of award for successful Proposal(s) applicable for each major category of Work	October 11, 2024 - October 18, 2024

This part left blank intentionally

6. GENERAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA

- 6.1 Each Proposer’s Response will be evaluated by a selection committee (“**Selection Committee**”). Selection Committee members shall include four (4) representatives selected by General Contractor. The Selection Committee reserves the right to request additional information.
- 6.2 Proposer Responses will be ranked. The Selection Committee will determine and select the highest ranked Proposer Response. General Contractor reserves the right to reject any and/or all Proposers.

SELECTION CRITERIA SCORING:	
Financial Strength / Liquidity	10 points / 10%
Experience / Past Performance (including compliance history and ability to meet construction schedule)	25 points / 25%
Capacity and Qualifications to Perform the Work	15 points / 15%
Pricing	50 points / 50%
TOTAL SELECTION CRITERIA SCORE:	100 points / 100%

- 6.3 **RFP Submittal Instructions:** Each proposal shall include a Response addressing each of the following elements in the order stated below. Answer all parts of each question. Incomplete submittals may be rejected as non-responsive. Please use a legibly sized font (11 or 12 point sizes).
- 6.4 **Financial Strength/Liquidity Assessment:** Proposers must have at least the minimum financial strength and liquidity described by each of the following criteria:
- Submittal of a “**Subcontractor Information Form**” in form attached as **Attachment 3**.
 - Evidence of insurance coverage in the form of an Acord 25 Certificate of Liability Insurance of at least: Commercial General Liability of \$1 million per occurrence and \$2 million general aggregate; and workers compensation insurance in the statutory amount, Acord 25 must meet the investor’s insurance requirements outlined in Exhibit “D”.
 - A bid guarantee from each Proposer equivalent to five percent of the price provided in the Proposal shall be required. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a Proposal as assurance that the Proposer will, upon acceptance of the Proposal, execute such contract documents as may be required within the time specified by the General Contractor.
 - Submittal of supplier and vendor credit references.

- Performance & Payment Bond.. General Contractor shall provide the payment and performance bond for all work in accordance with 2 CFR 200.326; provided, however, responsible Proposers may provide evidence of the ability to obtain a payment and performance bond in the amount of the Proposal price from a surety authorized to do business in Texas to demonstrate adequate financial strength and liquidity.

6.5 **Experience & Past Performance:** Describe specialized experience and technical competence of the Proposer in constructing the Proposer’s specific scope(s) of Work (as enumerated below) on federally funded (i.e., Low Income Housing Tax Credits, HUD funding, ARPA funding) Affordable Multifamily Housing developments of 75 or more units, including but not limited to the following major categories of Work (Proposers with some but not all of the preferred experience are still encouraged to submit Proposals with a description of substantively equivalent experience where applicable, especially minority- and women-owned businesses and small business enterprises or labor surplus area firms pursuant to 2 CFR 200.321, including but not limited to historically underutilized businesses as such term is defined in Texas Government Code Chapter 2161):

Scopes of Work, including but not limited to:

Civil Plan Scopes

- Underground Utilities (Labor & Materials)
- Concrete Paving (Turnkey)

Architectural Plan Scopes

- Roofing (Labor & Materials)
- Painting (Labor & Materials)
- Brick/ Masonry (Labor & Materials)
- Drywall (Labor & Materials)
- Ceramic Tile & Accessories (Labor & Materials)
- Kitchen & Bath Cabinets (Labor & Materials)
- Flooring (Labor & Materials)

- Metals (i.e. stairs, rails, fencing, bollards, entry gates, etc.) (Labor & Materials)
- Elevator (Labor & Materials)

Structural Plan Scopes

- Concrete Foundations (Turnkey)
- Framing Carpentry (Turnkey)
- Trim Carpentry (Turnkey)
- Lightweight balcony, breezeway, and unit gypcrete (Labor & Materials)

MEP Plan Scopes

- Plumbing (Labor & Materials)
- Mechanical (Labor & Materials)
- Electrical (Labor & Materials)

Fire Protection Plan Scopes

- Fire Protection (Labor & Materials)
-

- Submit a copy of the Subcontractor Information Form included as Attachment 3.
- Submit a W-9 for your company.

- Provide a one-page summary of the Proposer’s firm, describing the firm’s relevant expertise, past project experience, and organizational depth and commitment to keep selected team through completion of the Development.
- Identify key staff assigned to the Development, including name, title, and responsibilities. Provide a synopsis describing each individual’s relevant expertise and past project experience.
- Submission of a Contractor Qualifications Statement.

6.6 **Capacity and Qualifications to Perform the Work:** Demonstrate the Proposer and its team’s capacity to perform the work within the time and budget limitations, considering the Proposer’s (and its team’s) current and planned workload. Additionally, demonstrate:

- Safety record on previous projects (OSHA verification);
- Insurance coverage demonstrated through submission of Certificate of Liability Insurance; Certificate of Liability insurance must meet the requirements outlined in Exhibit “D”.
- Insurance coverage must meet the investor’s insurance requirements as outlined in Exhibit “D”.
- Process capabilities: including value engineering, cost optimization, and project planning; and
- Schedule and timelines: including project schedule and milestones and schedule optimization.
- We strongly encourage that subcontractor Site Supervisors are OSHA 30 certified and site tradesmen are OSHA 10 certified. Submit evidence of the OSHA 30 and OSHA 10 certifications with your proposal.

6.7 **Pricing :** Pricing is based on the City Approved set of plans (“CA Set”), Geotechnical Report, Environmental Assessment, and General Contractor’s Clarifications. Please submit the following documentation for evaluation:

- Written Proposal on Company Letterhead detailing proposed work and cost thereof;
- Assumptions, Clarifications and Qualifications; and
- Value Engineering Options List.
- Pricing for Material and Labor should be broken out separately. Pricing for Materials should be listed as net of Sales Tax savings.
- Estimated Sales Tax savings should be shown in your proposal.

7. **RFP - SUBMISSION REQUIREMENTS/EVALUATION/ SCORING/SELECTION OF FINALIST**

- 7.1 Proposals must be received no later than 3:00 PM Central Time on October 11, 2024, at the following email address (info@kooglerconstruction.com).
- 7.2 A checklist to assist proposers is included as Attachment 4. Additionally, to assist proposers in understanding applicable federal requirements, Exhibit “B” is included which summarizes some of the applicable federal requirements for projects using funding from the United States government. Exhibit “B” will be incorporated into all subcontract agreements. As outlined further in the referenced Attachments, proposals shall include the following:
- One Signed Letter of Interest (**Attachment 1**)
 - One Signed Certification and Assurances (**Attachment 2**)
 - One Completed and Signed Subcontractor Information Form (**Attachment 3**)
 - An electronic copy of the proposal in pdf form to include:
 - Detailed cost of work proposed.
 - Experience/ Past Performance materials
 - Capacity to Perform the Work materials
 - Financial Information materials
 - All other information required to be submitted herein
- 7.3 Completeness of proposals: All required submissions outlined above in 7.2 must be included in proposals. **Any incomplete proposal may be rejected as non-responsive.**
- 7.4 Evaluation Criteria

Table 1: Evaluation Criteria Score Sheet

Selection Criteria Scoring	Element Description	Points
1.	Financial Strength / Liquidity	10
2.	Experience / Past Performance	25
3.	Capacity and Qualifications to Perform the Work	15
4.	Pricing	50
TOTAL	Possible Points	100

ATTACHMENT 1 – LETTER OF INTEREST

A Letter of Interest must accompany your proposal submitted in response to the RFP. Information in your letter should be placed in the same order as outlined below:

1. Organization's full legal name
2. Proposal contact and position with the company
3. Address
4. Office and mobile number of proposal contact
5. Fax number (if applicable)
6. E-mail address

ATTACHMENT 2 – CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award of Apparent Successful Proposer:

1. I/we understand that neither the Developer or General Contractor will reimburse me/us for any costs incurred in the preparation of this proposal.
2. I/we understand that any contract(s) awarded as a result of this RFP will incorporate the terms and conditions substantially similar to those included in the subcontract template attached hereto as Exhibit “E.” I/we certify that I/we will comply with these or substantially similar terms and conditions if awarded a contract based on a successful Proposal.
3. I/we understand that any person(s) selected will be required to comply with federal and state statutes relating to nondiscrimination and any other Federal Requirements. These include, but are not limited to, Chapter 21 of the Texas Labor Code which prohibits discrimination in employment.
4. I/we understand that any person(s) selected must comply with all legally applicable federal, state, and local funding requirements, including but not limited to those enumerated in the attached Exhibit B.
5. 2 CFR 200.324 prohibits “cost plus percentage of cost” and “percentage of construction cost” contracts. Contractor and subcontractors profit requires a fixed fee, and that profit be negotiated separately for all change orders as well. Additionally, Harris County limitations (not to exceed amounts) will apply to the General Requirements/Conditions (6%), Overhead (2%), and Profit (6%) categories. Change orders over \$250,000 must be reviewed by the General Contractor, Harris County and any other lenders or parties that require such prior approval as part of the financing and/or contracting documents associated with the Development
6. **Debarment and Suspension Certification:** I/we hereby certify that Subcontractor has not been “debarred” or “suspended” by any department, agency, or instrumentality of the United States government including, but not limited to, the United States Department of Housing and Urban Development or the United States Department of the Treasury. Additionally, subcontractor hereby certifies that it will not contract with or employ any subcontractors that have been debarred or suspended by any such agency of the United States government. Furthermore, subcontractor hereby certifies that it is not under investigation for debarment or suspension by any department, agency, or instrumentality of the United States government, including, but not limited to, the United States Department of Housing and Urban Development or the United States Department of the Treasury.
7. **Independent Cost Estimate (“ICE”):** I/we understand that the Developer or General Contractor will cause an Independent Cost Estimate (“ICE”) for this Development to be conducted to ensure that the cost of the Development is reasonable. The ICE will include a detailed cost breakdown for the overall cost estimate providing the elements, such as labor and materials, of the total cost.
8. **Conflicts of Interest Prohibited:** I/we hereby certify that subcontractor has no conflicts of interest prohibited by federal, state, or local laws, rules, regulations, orders, or ordinances. A conflict could arise if any employee, officer or agent of Developer or General Contractor or any member of their

immediate family or their partner or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award

Signature

Date

Print Name, Title, Organization Name

ATTACHMENT 3 - SUBCONTRACTOR INFORMATION FORM

All subcontractors are required to complete this questionnaire. The contents will be considered and used to determine your company's qualification to perform work for Koogler Construction of Texas, LLC. This form must be filled out completely. Missing information may result in disqualification of consideration.

Return completed form to: info@kooglerconstruction.com

Application Date:

Multifamily experience? Yes No

Background											
Company name			Type of company		Type of work Performed						
Street Address				Phone Number		Fax Number					
City, State, Zip Code		Contact Name			Email Address						
Year business was established		States where we work			Previous name of company, if applicable						
Number of Completed Projects		Number of Completed Projects in last five years			EIN #						
Contractor's License #, if applicable		Dun & Bradstreet #			<input type="checkbox"/> Union		<input type="checkbox"/> Non-Union				
Safety											
Please check if your Company implements the following safety controls:							Yes		No		
Has a written safety program							<input type="checkbox"/>		<input type="checkbox"/>		
Has an implemented drug screening policy for all employees							<input type="checkbox"/>		<input type="checkbox"/>		
Performs safety orientation and training for all employees							<input type="checkbox"/>		<input type="checkbox"/>		
Performs continuing safety education for all employees							<input type="checkbox"/>		<input type="checkbox"/>		
Does your Company provide OSHA 10 training?							<input type="checkbox"/>		<input type="checkbox"/>		
Does your Company provide OSHA 30 training?							<input type="checkbox"/>		<input type="checkbox"/>		
If not, is your Company willing to provide OSHA 10/ 30 training, if necessary?							<input type="checkbox"/>		<input type="checkbox"/>		
Certification											
Please check if your Company has any of the following certifications:							Yes		No		
Qualified minority business AND/OR Section 3 certified business?							<input type="checkbox"/>		<input type="checkbox"/>		
**IMPORTANT: If yes, please list all certifications:											
Does your Company utilize apprenticeship programs?							<input type="checkbox"/>		<input type="checkbox"/>		
If no, is your Company willing to utilize apprenticeship programs, if necessary?							<input type="checkbox"/>		<input type="checkbox"/>		
If YES for any of the above, attach proof and/ or certifications to pre-qualification form.											
Compliance											
Is your Company familiar with the following?											
Davis Bacon Wage Rates?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	City of Houston Pay or Play program?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Certified Payroll?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	Section 3 labor goal requirements?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
LCP Tracker?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO	MWSBE goal requirements?		<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Has your Company done work on a HUD funded project that required certified payroll within the past 2 years?								<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

Has your Company, or any of its principals, been sued by, or debarred from working with Harris County or any other Federal, State or Local Government during the last five (5) years?				<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Compliance Contact		Phone number		Email address			

Provide summary of the 3 most recent Affordable Housing projects completed (i.e. LIHTC, HUD, ARPA)				
Project Name	No. of Units	Location	Start/ Completion	Amount

Banking Information		
Please provide financial references		
Name of current bank	Contact	Phone Number
Line of credit	Amount	

References (The below references may be contacted by Koogler Construction of Texas for verification purposes)		
Please provide 3 client/ supplier references		
Company name	Contact	Phone Number
Company name	Contact	Phone Number
Company name	Contact	Phone Number

Owners & Officers			
Please provide the principal owners and officers of your company			
Name	Position	Email	Phone Number
Name	Position	Email	Phone Number
Name	Position	Email	Phone Number

Key Staff			
Please provide key staff members assigned to project			
Name	Position	Email	Phone Number
Name	Position	Email	Phone Number
Name	Position	Email	Phone Number

I hereby certify that to the best of my knowledge, the information submitted herein, including any attachments, is true and sufficiently complete so as not to be misleading.

Completed by: _____
(Print)

(Signature)

Title: _____

Date: _____

Koogler Construction of Texas, LLC will use this documentation, in part, to pre-qualify subcontractors. Therefore, if you intend to work with us, it is essential that you return the documentation. This document should not be construed to constitute a commitment, or a request to perform any work. Disclaimer: the information on this form will be shared with KCTX's affiliates and their respective advisors, consultants, investors, and lenders outside of Koogler Construction of Texas, LLC.

ATTACHMENT 4 – PROPOSER CHECKLIST

Request for Proposals: Lost Oaks

General Information & Certifications

- Attachment 1: Letter of Interest
- Attachment 2: Certifications and Assurances
- Attachment 3: Subcontractor Information Form
- Attachment 4: Proposer Checklist

Financial Strength/Liquidity Assessment

- Evidence of Insurance Coverage
 - Commercial General Liability of at least \$1MM per occurrence and \$2MM general aggregate
 - Workers Compensation Insurance of \$1MM/accident
 - Insurance Coverage must meet the investor's insurance requirements as outlined in Exhibit "D"
- Bid Guarantee, cashier's check, or other negotiable instrument.
- Supplier Account References

Experience & Past Performance

- One-page summary including Narrative.
- Key Staff & Resumes
- Qualifications Statement

Capacity and Qualifications to Perform the Work

- Safety Record on previous projects (OSHA verification)
- Certificate of Liability Insurance
- Process Capabilities
- Schedule of Work

Pricing

- Written Proposal on Company Letterhead
- Schedule of Values
- Assumptions, Clarifications & Qualifications
- VE Options List

EXHIBIT A - LEGAL DESCRIPTION OF PROJECT SITE

PROPERTY DESCRIPTION

Lots 26 and 32, of LOWELL ACRES, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 655, Page 426, of the Deed Records of Harris County, Texas.

AND BEING MORE PARTICULARLY DESCRIBED BY SURVEYED DESCRIPTION AS FOLLOWS:

BEING a 1.671 acre (72,804 square foot) tract of land situated in the Samuel W Allen Survey, Abstract No. 94 of Harris County, Texas and being all of Lot 26 and 32, Block D of LOWELL HEIGHTS, a subdivision per plat recorded under Volume (Vol.) 14, Pg. 72 of the Harris County Map Records (H.C.M.R.), same being Lots 26 and 32 of LOWELL ACRES, a subdivision per plat recorded under Vol. 655, Pg. 426 of the Harris County Deed Records (H.C.D.R.), Lot 26 further described in an instrument to Hundkoja LLC recorded under File Number (F.N.) 20130625930 of the Official Public Records of Harris County (O.P.R.H.C.) and Lot 32 further described in an instrument to Hundkoja LLC recorded under F.N. 20130450313 of the O.P.R.H.C.

EXHIBIT B - FEDERAL REQUIREMENTS FOR SUBCONTRACTOR(S)

To the extent legally applicable, the Subcontractors shall comply with all applicable federal statutes, regulations, and executive orders, including but not limited to those summarized and referenced in this exhibit and such requirements shall be included in the final contract between General Contractor and Subcontractor(s).

Subcontractor (“**Obligated Party**”) acknowledges the agreement to which this exhibit is attached (the “**Contract**”), is funded in whole or in part through a subaward under that certain Subrecipient Agreement by and between the Harris County Housing Finance Corporation and Harris County, Texas (the “**County**”), which is funded with Coronavirus State and Local Fiscal Recovery Funds (“**SLFRF**”) established and governed by sections 602(c) and 603(c) of the Social Security Act (the “**Act**”), regulations adopted by U.S. Department of the Treasury (the “**Treasury**”) pursuant to sections 602(f) and 603(f) of the Act (31 CFR Part 35), and guidance issued by Treasury regarding the foregoing (collectively, the “**SLFRF Requirements**”), which includes the requirements summarized in this Exhibit.

Governmentwide Requirements for Drug-Free Workplace (31 CFR Part 20).

Obligated Party will encourage its subcontractors to comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, title v, subtitle D; 41 U.S.C. 701 *et seq.*) and implementing regulations at 2 CFR part 182, and maintain a drug-free work environment.

New Restrictions On Lobbying (31 CFR Part 21). Obligated Party will encourage its subcontractors to comply, as applicable, with the New Restrictions on Lobbying (31 CFR Part 21), including completion of the Anti-Lobbying Certificate if the Contract amount is over \$100,000.

Increasing Seat Belt Use in the United States (Executive Order 13043 (Apr. 18, 1997)).

Obligated Party is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

Reducing Text Messaging While Driving (Executive Order 13513 (Oct. 6, 2009)).

Obligated Party is encouraged to adopt and will encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.

Participation by Minority & Women-Owned Business Enterprises (2 CFR 200.321).

Obligated Party must comply with the Minority and Women-owned Business Enterprise participation requirements under 2 CFR 200.321. Obligated Party must take all affirmative steps necessary to contract or subcontract with Minority and Women-owned Business Enterprises (MWBs) to assure that MWBs are used when possible. These affirmative steps shall include:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration.

The State of Texas maintains a Historically Underutilized Business Program, which identifies any business at least fifty-one percent (51%) owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity's affairs as a Historically Underutilized Business (also considered MWBEs). Parties who wish to check the status of a firm may visit <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Procurement of Recovered Materials (2 CFR 200.323). Obligated Party must comply, to the extent applicable, with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Minimum Bonding Requirements (2 CFR 200.326). If the Contract involves construction or facility improvements in excess of the simplified acquisition threshold, as that term is defined in 2 CFR Part 200, subpart A, Obligated Party shall maintain, or cause to be maintained, a performance bond for 100 percent (100%) of the contract price to secure fulfillment of all the Contract requirements.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216). Obligated Party shall not contract (or extend or renew a

contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under the Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (2) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Non-Collusion (The Sherman Act). Obligated Party must comply with the requirements of The Sherman Act, which prohibit collusion. Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers, or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony.

Obligated Party shall not in any way, directly or indirectly:

- a. Collude, conspire, or agree with any other person, firm, corporation, bidder, or potential bidder to the amount of a bid or the terms or conditions of a bid.
- b. Pay or agree to pay any other person, firm, corporation, bidder, or potential bidder any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in its bid or the bid of any other bidder.
- c. Assemble in coordination with any other organization in an attempt to fix the price of the work.

Obligated Party is expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

2 CFR PART 200 Appendix II Requirements

Remedies (2 CFR Part 200, Appendix II(A)). The administrative, contractual, or legal remedies in the Contract apply when the Obligated Party defaults, violates, or breaches the Contract.

Termination For Cause/Convenience (2 CFR Part 200, Appendix II(B)). Federal law requires the Contract address termination for cause and convenience, and the parties shall comply with such provisions.

Equal Employment Opportunity (41 CFR Part 60; 2 CFR 200, Appendix II (C)). To the extent the Contract meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3, the Contract must contain and Obligated Party must comply with the following provisions:

“During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

Davis-Bacon Act (2 CFR Part 200, Appendix II (D)). Under the SLFRF program, the requirements of the Davis-Bacon Act (40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708) and applicable regulations at 29 CFR Part 5 do not apply to projects solely funded with SLFRF funds, and such requirements are not expected to apply to the Contract.

Copeland “Anti-Kickback” Act (2 CFR Part 200, Appendix II (D)). Obligated Party shall comply with the applicable requirements of the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) and the requirements of 29 CFR part 3, which prohibits Obligated Party from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Obligated Party shall notify County of any suspected or reported violations of this provision.

Contract Work Hours and Safety Standards Act (2 CFR Part 200, Appendix II (E)). If at any time during the Contract term, the contract amount exceeds \$100,000 and the Contract involves the employment of mechanics or laborers, Obligated Party must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including particularly 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Obligated Party must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to the Contract

and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Rights to Inventions Made Under a Contract or Agreement (2 CFR Part 200, Appendix II(F)). Obligated Party agrees that if the Federal award funding all or part of the Contract meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the Contract concerns the substitution of parties, assignment, or performance of experimental, developmental, or research work under that “funding agreement,” the parties must comply with the applicable requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act and the Federal Water Pollution Control Act (2 CFR Part 200, Appendix II (G)). Obligated Party must comply with all applicable provisions of the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Obligated Party agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act, as amended.

Obligated Party agrees to report each violation of the Clean Air Act or Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.

REQUIRED CONTRACT PROVISIONS

Obligated Party shall comply with all of the following contract provisions. Obligated Party shall insert in any subcontracts the provisions set forth in this Exhibit as indicated, and such other provisions as the County may require, and a clause requiring its subcontractors to include these provisions in any lower tier contracts or subcontracts. Failure to comply by Obligated Party or by any subcontractor may be grounds for termination of the Contract and for debarment as a contractor or subcontractor, as applicable.

For purposes of these required contract provisions, “Contract” shall include any contract or subcontract between Obligated Party and a contractor or subcontractor for the acquisition of property or services paid for, directly or indirectly, in whole or in part, with SLFRF funds.

NO OBLIGATION OF THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non- Federal entity, Contractor, or any other party pertaining to any matter resulting from this Contract.

DISCRIMINATION

Contractor must comply with the statues and regulations prohibiting excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, religion, national origin, sex, disability, or age, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) (31 CFR Part 22); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (24 CFR Parts 8-9); The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.) (31 CFR Part 23).

DISABILITIES

Contractor must comply with all applicable federal, state, and local laws and regulations that prohibit recipients of federal funding from discriminating against individuals with disabilities. Applicable laws and regulations may include, but are not limited to, the following: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (24 CFR Parts 8-9); The Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101 et seq.); the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); the Uniform Federal Accessibility Standards in Title 24, U.S.C. and associated regulations (24 CFR Part 40); the Architectural Barriers Rules; and the Texas Accessibility Standards.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS (49 CFR Part 24)

To the extent applicable, Contractor must comply with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ENVIRONMENTAL LAWS

Contractor must comply with all applicable environmental standards that may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.), and U.S. Environmental Protection City regulations pursuant to 40 CFR Part 50, as amended; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

FAIR LABOR STANDARDS ACT

Contractor must comply the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) (29 CFR Parts 1, 3, 5, 6 and 7) as now or hereafter amended, which regulates wage, hour, and other employment practices that govern the use of funds provided and the employment of personnel under this Contract. Contractor will pay all its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act; the Texas Payday Law; the Equal Pay Act; Title VII of the Civil Rights Act of 1964; or any provisions of the Texas Labor Code, as amended.

WHISTLEBLOWER PROTECTION ACT

In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for contract or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency; A court or grand jury; or
- vi. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

2 CFR PART 200 REQUIRED CONTRACT PROVISIONS

MANDATORY DISCLOSURES (2 CFR 200.113)

Contractor must disclose, and require its subcontractors to disclose, in a timely manner, in writing to the Federal awarding agency or the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award funding all or part of this Contract. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339.

POTENTIAL CONFLICTS OF INTEREST (2 CFR 200.318(c))

Contractor must comply, and cause its subcontractors to comply, with conflicts-of-interest requirements imposed under this Contract in accordance with the standards set forth in 2 CFR 200.318(c). No employee, officer, or agent of Contractor may participate in the selection, award, or administration of this Contract or any other contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Conflicts of interest would also arise because of Contractor's relationship with a parent company, affiliate, or subsidiary organization and the Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

DOMESTIC PREFERENCE REQUIREMENTS (2 CFR 200.322)

As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Contract. For purposes of this paragraph:

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

COST PLUS CONTRACTING PROHIBITED (2 CFR 200.324(D))

The cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited by 2 CFR 200.324(d), including in subcontracts and third-party contracts.

RECORDS AND ACCESS (2 CFR 200.334-.338)

Contractor shall maintain records and financial documents sufficient to evidence compliance with the Act, Treasury's regulations and guidance, and this Exhibit, in accordance with 2 CFR 200.332(a)(5) and 200.334-.338.

Contractor shall prepare and submit financial, progress, monitoring, evaluation, personnel, property, and financial records and other reports as required by this Contract and the County (in the format acceptable to County) to assure proper accounting of all Federal project funds. Contractor shall furnish such information that, in the judgment of the County, may be relevant to questions of compliance with contractual conditions hereunder or granting agency directives, or with the effectiveness, legality, and goals of this Contract.

Contractor shall provide the Treasury, Inspector General, the Government Accountability Office, County, or any of their authorized representatives access to any documents, papers, or other records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions and to allow such parties to reproduce by any means whatsoever, to copy excerpts and transcriptions as reasonably needed, and to access construction, or work sites pertaining to the services/work being completed under this Contract.

Records shall be maintained by Contractor for a period of three (3) years after all federal funds have been expended or returned to Treasury, whichever is later; provided, however, if any litigation, claim, negotiation, audit, or other action or event has been started before the expiration of the required record retention period, records must be retained until completion of the action or event and resolution of all issues that arise from it.

Contractor acknowledges that all federal funds may not be expended until September 30, 2026 to meet the federal deadline of December 31, 2026.

DEBARMENT / SUSPENSION AND VOLUNTARY EXCLUSION (2 CFR Part 200, Appendix II (H); 2 CFR Part 180; 31 CFR Part 19)

Contractor, for itself and its principals, warrants it is eligible or otherwise not disqualified or prohibited from participation in federal or state assistance programs. Contractor must verify that all of its subcontractors performing work under this Contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further must notify the County in writing immediately if Contractor or its subcontractors are not in compliance with this paragraph during the term of this Contract. If it is later determined that Contractor did not comply with this paragraph, the County or the Federal Government may pursue any and all available remedies (which shall be cumulative and not exclusive), including, but not limited to, suspension and/or debarment of Contractor or its subcontractors.

BYRD ANTI-LOBBYING AGREEMENT (31 U.S.C. § 1352; 2 CFR 200, APPENDIX II(I))

Pursuant to the Byrd Anti-Lobbying Agreement (31 U.S.C. § 1352), if at any time during the Contract term the funding to such contract exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying” as laid out in a form available from County upon request.

Each tier of subcontractor certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any covered federal award. Contractor shall ensure each subcontractor requires such disclosures be forwarded from tier to tier up to the County.

EXHIBIT C – PROTEST PROCEDURES

- I. **Who May File the Protest.** A proposer or prospective proposer or prospective subcontractor who is aggrieved in connection with the request for proposals (RFP) or award of the subcontract may file a protest. No protest may be filed if the request for proposals (RFP) is cancelled or if all proposals received in response to the RFP are rejected.

- II. **Place for Filing.** A protest must be filed by emailing the protest to the email address identified in the RFP for submission of proposals.

- III. **Time for Filing.**
 - A. A prospective proposer who is considering filing a proposal must file the protest within seven (7) days after the prospective proposer knew or should have known of the facts giving rise to the protest, but in no event later than the proposal submission deadline specified in the RFP.
 - B. A protest filed by a proposer who submits a proposal must be filed within seven (7) days after the protesting proposer knew or should have known of the facts giving rise to the protest, but in no event may a proposer file a protest later than seven (7) days after the date the notice of award of the contract is made available to the public.
 - C. The date of filing is the date of receipt of the protest.

- IV. **Contents of Protest.**
 - A. A protest must be in writing.
 - B. A protest shall state all grounds upon which the protesting party asserts the RFP or contractor selection was improper.
 - C. The protesting party may submit with the protest any documents or information it deems relevant.

- V. **Notice of Protest.**
 - A. The General Contractor will notify the successful proposer of the protest if subcontractor selection has already been made.
 - B. If the General Contractor receives the protest before selection, and it determines that substantial issues are raised by the protest, the General Contractor will notify all proposers who appear to have a substantial and reasonable prospect of selection.
 - C. Any proposer notified of a protest pursuant to this Section V. may file its agreement/disagreement with the General Contractor within the time period specified in the acknowledgement of protest letter sent by the General Contractor.

VI. Stay of Procurement.

- A. The General Contractor will promptly decide upon receipt of a timely protest whether or not the award of a subcontract shall be delayed, or if the protest is timely received after the award, whether the performance of the subcontract should be suspended.
- B. The General Contractor shall not proceed further with the RFP unless the General Contractor makes a written determination that the protest is clearly without merit or that award of the subcontract without delay is necessary to protect the substantial interests of the General Contractor.

VII. Response and Reply.

- A. Within seven (7) days of receipt of the protest, the General Contractor may submit to the protesting party a response to the protest.
- B. The protesting party may file a reply to the General Contractor's response within five (5) days of the date of the response.

VIII. Procedures.

- A. The General Contractor shall review the protest and any response or reply.
- B. The General Contractor may decide the merits of the protest on the written, submitted documentation; request and review any additional documents or information deemed necessary to render a determination; or, in its sole discretion, conduct a hearing.

IX. Determination. The General Contractor shall promptly, but in no event later than 60 days from the filing of the protest unless both parties agree to an extension, issue a written determination. The determination shall state the reason for the decision.

Additionally, the General Contractor shall send a copy of the determination to the protesting party and any other person determined by the General Contractor to be affected by the determination.

EXHIBIT D – INVESTOR INSURANCE REQUIREMENTS

General Contractor's and Subcontractor's Liability (including *Bodily Injury, Personal/Advertising Injury, Products & Completed Operations, and Broad Form Property Damage*) and *Property Damage Insurance* of the construction exposure class.

1. Amounts to be no less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate. Such policies shall be written on an Occurrence form (CG 00 01 or carrier's equivalent).
2. Automobile liability insurance to be provided with no less than \$1,000,000 combined single limit per accident for owned, hired and non-owned autos.
3. Employer's Liability insurance is to be provided with a \$1,000,000 limit, and workers' compensation in the statutory amount.
4. A per location aggregate endorsement is to be included on an unlimited basis for any policy that has multiple locations. A per policy limit may be allowable if an umbrella policy in an amount acceptable to the Limited Partner/Investor Member is provided.
5. Maximum deductible is \$25,000 and issued on a per occurrence basis in lieu of a per claim basis.
6. Policy shall not contain an exclusion or sublimit for loss or damage caused by assault and battery or firearms.
7. Completed operations coverage to be maintained for a minimum of three years after project completion.
8. Coverage to include Explosion/Collapse/Underground.
9. General Contractor's and Subcontractor's Pollution Liability insurance is to be provided covering losses caused by pollution conditions that arise from the ongoing or completed operations of the General Contractor or any Subcontractors. Completed operations coverage shall remain in effect for at least five (5) years after final completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims.
10. Policy must be primary and provide that any such insurance maintained by the Partnership/Company, Limited Partner/Investor Member, or any other additional insured included in this Exhibit is excess and non-contributory.

11. Subcontractors, General Contractor and insurers must waive their rights of subrogation against Partnership/Company and Limited Partner/Investor Member.

12. Partnership/Company and Limited Partner/Investor Member are to be named as Additional Insureds for General Contractor's and Subcontractor's on-going operations and products/completed operations via both CG 2010 AND CG 2037, or carrier's equivalent. Umbrella/Excess policy(ies) shall follow form to the underlying insurance as respects Additional Insureds and Waiver of Subrogation (or Partnership/Company and Limited Partner/Investor Member shall be manually endorsed thereunder).

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***EVIDENCE OF INSURANCE, GENERAL INSURANCE
REQUIREMENTS, AND ADDITIONAL INSURED:***

Insurance coverage must be evidenced by Certificates of Insurance and properly endorsed policies certified as true and correct by the insurance agent. The Limited Partner/Investor Member reserves the right to be provided with binders, endorsements, and full policy copies as it deems necessary. All Liability insurance to be evidence on form ACORD 25; all Property/Builder's Risk/Catastrophic Perils to be evidenced on form ACORD 28. All evidence of insurance must satisfy the following requirements unless otherwise stipulated above.

1. **Lost Oaks, LP** is to be the named insured or additional named insured if under a master policy.

2. **Wincopin Circle LLLP and its successors, assigns and transferees** (Limited Partner/Investor Member) and **Enterprise Housing Partners 44 Limited Partnership** (and/or subsequently specified investor(s)) are to be named as an additional insured(s) and should appear in the certificate holder/additional interest box with the following address:

c/o Enterprise Community Asset Management, Inc.
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attention: Asset Management
enterprisecerts@traxlertong.com

3. Policies must be written with an A.M. Best rated Company of “A, VII” or better.

4. Excepting Professional Liability policies, all Liability policies must be written on an “occurrence policy form.”

5. All binders and policies are to contain a cancellation clause stating that the policy will not be canceled, non-renewed, or contain a material change without at least **thirty (30)** days prior written notice to the Limited Partner/Investor Member, ten (10) days for non-payment of premium. No policy can be cancelled without the prior written consent of the Limited Partner/Investor Member. Limited Partner/Investor Member will require a copy of any reinstatement notice, if applicable. Regardless of whether or not such an endorsement or policy provision providing direct advanced notice of cancellation to the Limited Partner/Investor Member is available from a given insurer providing any of the policies required above, the General Partner/Managing Member shall (a) relay any such notice it receives to the Limited Partner/Investor Member within five (5) days of receipt and (b) shall cause the General Contractor and Management Agent to agree to do the same.

6. Certificates must document the amount of all deductibles.
7. All binders and policies must be accompanied by evidence of premium payment.
8. Policy numbers and effective dates must be evidenced on the certificates.
9. Each certificate or binder must set forth the producer's name, telephone number, and email address.
10. Property address/location must be clearly shown on each certificate.
11. At least seven (7) days prior to the expiration of the applicable policy, General Partner/Managing Member shall provide Limited Partner/Investor Member the required evidence of coverage to reflect that such policy has been renewed (or replaced, as applicable).

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EXHIBIT E – SUBCONTRACTOR CONTRACT TEMPLATE

SUBCONTRACT

THIS Subcontract is executed effective as of _____, 2024, by and between **KOOGLER CONSTRUCTION OF TEXAS, LLC** (the "Contractor"), whose principal address is 26302 Oak Ridge Dr., Suite 100, Spring, TX 77380 and _____ (the "Subcontractor"), Subcontractor, whose principal address is _____, whose principal contact for the purposes of this Subcontract is _____, whose telephone numbers are _____ office, _____ mobile, and _____ facsimile.

WITNESSETH:

WHEREAS, Harris County Housing Finance Corporation ("General Contractor"), whose principal place of business is 8410 Lantern Point Drive, Houston, TX 77054, has heretofore entered into a contract (the "Prime Contract"), dated as of _____, 2024 to perform certain labor and furnish certain materials in connection with the construction of Lost Oaks (the "Project"), with Lost Oaks, LP (the "Owner") according to plans and specifications prepared by Ward, Getz & Associates, LLP (the "Civil Engineer"), HGE Consulting, Inc. (the "MEP Engineer"), Gerald T. Wynne, P.E Consulting Structural Engineer (the "Structural Engineer") and Mucasey & Associates Architects (the "Architect"); and Contractor and General Contractor have heretofore entered into a contract (the "Contract") of even date with the Prime Contract to perform the covenants and obligations of General Contractor under the Prime Contract in accordance with the terms and conditions of the Prime Contract.

NOW, THEREFORE, for and in consideration of the premises, and the obligations contained herein, it is agreed as follows:

A. **CONTRACT DOCUMENTS.** The "Contract Documents" consist of this Subcontract and all exhibits, addenda, and attachments hereto, including, without limitation, the General Conditions and Exhibits A through K, all drawings, plans, specifications and addenda to each, issued prior to the execution of this Subcontract, and all modifications issued subsequent to the execution of this Subcontract, all of which are hereby incorporated herein for all purposes by this reference and made a part of this Subcontract. A list of the items included in the plans and specifications as of the date of the execution of this Subcontract is attached hereto as Exhibit A.

B. **THE WORK.** Subcontractor covenants and agrees to furnish all labor, material, tools, equipment, services, and supplies in order to timely complete all of the work described on Exhibit B (the "Work").

C. **SUBCONTRACT PRICE.** Contractor hereby agrees to pay Subcontractor _____ and 00/100 Dollars (\$_____) for the complete and timely performance of the Work and the discharge by Subcontractor of all other obligations and liabilities of Subcontractor under this Subcontract. Such amount shall be paid, subject to additions and deductions, in the manner and at the time provided in the General Conditions (together with such additions and deletions, the "Subcontract Price"). The Subcontract Price is estimated to be allocated as follows: (a) _____ and 00/100 Dollars (\$_____) of the Subcontract Price is estimated to be allocated to and payable for the skill and labor to be provided by Subcontractor and its sub-subcontractors (the "Services"), including fabrication, installation and any other labor performed by Subcontractor and/or its sub-subcontractors (the "Services Payment"), and (b) _____ and 00/100 Dollars (\$_____) of the Subcontract Price is estimated to be allocated to and payable for all construction materials (the "Materials") to be incorporated into the Project (the "Materials Payment"). Due to potential changes in construction costs, neither Contractor nor Subcontractor warrants the exactness of the amounts allocated to the Services Payment and the Materials Payment, and both parties agree to enter into amendments to this Subcontract should adjustments to the Services Payment and/or the Materials Payment be determined necessary. In addition to the foregoing, Subcontract Price shall be broken down as follows:

<u>COST CODE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
_____-LO	_____	<u>\$0.00</u>
	TOTAL	<u>\$0.00</u>

D. **RETAINAGE.** Retainage is an amount equal to Ten percent (10%) of the amount of the Subcontract Price payable to Subcontractor pursuant to each draw request and shall be retained, held, and disbursed by Contractor in accordance with the provisions of this Subcontract.

E. **INCORPORATION BY REFERENCE.** The General Conditions, together with Exhibits A through K, attached hereto are hereby incorporated herein in their entirety for all purposes.

[SIGNATURES ARE ON THE NEXT PAGE; REMAINDER OF THIS PAGE LEFT BLANK]

SUBCONTRACT NO. _____-LO;

SUBCONTRACTOR:

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the date above set forth.

CONTRACTOR:
KOGLER CONSTRUCTION OF TEXAS, LLC

By: _____
Name: _____
Title: _____

SUBCONTRACTOR:

By: _____
Name: _____
Title: _____

IMPORTANT; SUBCONTRACTOR AGREES TO EXECUTE AND RETURN SUBCONTRACT TO CONTRACTOR WITHIN TEN (10) DAYS FROM RECEIPT OF THIS SUBCONTRACT. IN THE EVENT THAT SUBCONTRACTOR PERFORMS ANY OF THE WORK AND FAILS TO EXECUTE AND RETURN SUCH SUBCONTRACT WITHIN FOURTEEN (14) DAYS OF THE DATE OF MAILING OR DELIVERY, SUBCONTRACTOR SHALL BE BOUND TO ALL TERMS AND CONDITIONS OF THE SUBCONTRACT AS THOUGH IT WERE IN FULL FORCE AND EFFECT AND, BY FAILURE TO EXECUTE WITHIN THE APPROPRIATE TIME, WAIVES ALL RIGHTS IT MIGHT HAVE TO OBJECT TO THE SPECIFIC LANGUAGE, TERMS AND CONDITIONS OF THIS SUBCONTRACT

GENERAL CONDITIONS**ARTICLE 1**
CONTRACT DOCUMENTS

1.1 General. The Work to be performed by Subcontractor pursuant to this Subcontract shall be carried out in strict compliance with all terms of this Subcontract and in accordance with the Contract Documents. Copies of the Contract Documents will be on file at the office of Contractor and will be available for inspection by Subcontractor or any of its employees or authorized representatives at all reasonable times.

1.2 Third Party Beneficiary. Subcontractor has read and is thoroughly familiar with the Prime Contract, the Contract and the Contract Documents and agrees to be bound to Contractor by the terms of the Contract insofar as they relate in any part or in any way to the Work undertaken pursuant to this Subcontract. Subcontractor hereby assumes towards Contractor, in connection with the Work hereunder, all of the obligations and responsibilities which Contractor by the Contract and the Prime Contract assumes toward General Contractor and Owner or anyone else. Subcontractor acknowledges and deems that each of Owner and General Contractor is and shall be a third party beneficiary of this Subcontract. All of the rights, title, and interest of Owner and/or General Contractor under this Subcontract shall be assignable by it to Owner's lender or any purchaser of the Project. Subcontractor expressly agrees to perform under this Subcontract directly for the benefit of any such lender or purchaser to the same extent as provided above with regard to the Contractor and/or General Contractor.

ARTICLE 2
INDEMNITY AND INSURANCE

2.1 GENERAL. EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE AS DEFINED IN THE PARAGRAPH BELOW, TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, GENERAL CONTRACTOR, OWNER, CIVIL ENGINEER, MEP ENGINEER, STRUCTURAL ENGINEER, AND ARCHITECT (IF ANY, AND ALL OF THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES, LICENSEES, COUNSEL, SHAREHOLDERS, PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES) (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, EXPENSES, AND LIABILITIES FOR BODILY INJURY, SICKNESS, DISEASE, DEATH, OR FOR INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING WITHOUT LIMITATION THE PROJECT), INCLUDING LOSS OF USE RESULTING THEREFROM, NOW OR HEREAFTER ASSERTED AGAINST, SUFFERED, OR INCURRED BY ANY INDEMNIFIED PARTY, WHETHER ACCRUED OR CONTINGENT, WHICH ARISE, DIRECTLY OR INDIRECTLY, OUT OF, ARE INCIDENTAL TO, OR RESULT FROM THE PERFORMANCE, OR FAILURE IN PERFORMANCE BY SUBCONTRACTOR (ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SUBCONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SUBCONTRACTOR IS LIABLE) OF THE WORK, OR WHICH ARISE, DIRECTLY OR INDIRECTLY, OUT OF OR ARE RELATED TO THIS SUBCONTRACT. SUCH INDEMNITY SHALL COVER ALL COSTS, INCLUDING ALL ATTORNEYS' FEES (AT ALL LEVELS), INCURRED BY ANY OF THE INDEMNIFIED PARTIES AND SHALL COVER EACH OF THE INDEMNIFIED PARTIES FOR ANY CLAIM OF ITS OWN NEGLIGENCE IF SUCH CLAIM AROSE FROM OR IS CAUSED IN WHOLE OR IN PART BY SUBCONTRACTOR'S ACTS OR FAILURE TO ACT. NOTWITHSTANDING THE FOREGOING, IF SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLIES TO THE SUBCONTRACT, THIS INDEMNITY PROVISION SHALL NOT APPLY TO THE EXTENT THAT IT REQUIRES SUBCONTRACTOR TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

2.2 INDEMNITY FOR EMPLOYEE CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, GENERAL CONTRACTOR, OWNER, CIVIL ENGINEER, MEP ENGINEER, STRUCTURAL ENGINEER, AND ARCHITECT (IF ANY, AND ALL OF THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES, LICENSEES, COUNSEL, SHAREHOLDERS, PARTNERS, PRINCIPALS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES) (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, EXPENSES, AND LIABILITIES FOR BODILY INJURY, SICKNESS, DISEASE, DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS PARAGRAPH), NOW OR HEREAFTER ASSERTED AGAINST, SUFFERED, OR INCURRED BY ANY INDEMNIFIED PARTY, WHETHER ACCRUED OR CONTINGENT, WHICH ARISE, DIRECTLY OR INDIRECTLY, OUT OF, ARE INCIDENTAL TO, OR RESULT FROM THE PERFORMANCE, OR

FAILURE IN PERFORMANCE BY SUBCONTRACTOR (ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SUBCONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SUBCONTRACTOR IS LIABLE) OF THE WORK, OR WHICH ARISE, DIRECTLY OR INDIRECTLY, OUT OF OR ARE RELATED TO THIS SUBCONTRACT. SUCH INDEMNITY SHALL COVER ALL COSTS, INCLUDING ALL ATTORNEYS' FEES (AT ALL LEVELS), INCURRED BY ANY OF THE INDEMNIFIED PARTIES AND SHALL COVER EACH OF THE INDEMNIFIED PARTIES FOR ANY CLAIM OF ITS OWN NEGLIGENCE IF SUCH CLAIM AROSE FROM OR IS CAUSED IN WHOLE OR IN PART BY SUBCONTRACTOR'S ACTS OR FAILURE TO ACT.

2.3 The defense, hold harmless and indemnification obligations under this Subcontract shall not be restricted in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation act, disability benefit act, or other employee benefit act and shall extend to and include any actions brought by or in the name of any employee of the Subcontractor or of any third party to whom the Subcontractor may subcontract a part or all of the Work.

2.4 These indemnity obligations shall survive termination of this Subcontract.

2.5 Liens. Subcontractor shall defend and indemnify Contractor, General Contractor and Owner against all lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorneys' fees related to such claims, which may be asserted by (i) mechanics, materialmen, suppliers, subcontractors or equipment lessors of Subcontractors, at all tiers, (ii) anyone claiming under any of the foregoing, or (iii) any other person claiming by, through or under Subcontractor (all of the foregoing being hereinafter collectively referred to as "Claimants"). In the event liens are placed on the Work or the Project, by any of the Claimants, Subcontractor shall immediately obtain a bond to remove such lien, or provide such other alternative security, as Contractor, General Contractor and Owner deem appropriate. Further, if bond claims or lien claims are by any of the Claimants, Contractor shall have the right to suspend all payments to Subcontractor (whether entitlement to same arises under this Subcontract or otherwise) and to either hold such money or to make payments to said Claimants and charge the payments against Subcontractor, without prejudice to the payment bond, if any, required by Contractor under Section 5.1 hereof.

2.6 Attorneys' Fees. Subcontractor's obligation to indemnify the Indemnified Parties against any attorneys' fees or other costs or expenses incurred by the Indemnified Parties in connection with the defense of any claims or causes of action within the scope of this Article 2 shall be construed as a separate item of indemnification which shall be an absolute obligation of Subcontractor even if such claims or causes of action are invalid or groundless.

2.7. Basic Insurance. Subcontractor shall maintain the insurance coverages and limits set forth in Exhibit C attached hereto. Subcontractor shall be solely responsible for any desired coverage against theft, damage, loss and every other risk to its own materials, supplies, facilities, tools, equipment, plants, scaffolds, bracing and similar items (including deductibles). Subcontractor hereby waives subrogation of claims against Contractor, General Contractor, Owner, other subcontractors and their agents, employees or insurers to the extent that such claims are covered by any insurance maintained by Subcontractor and to the extent such claims would be covered if Subcontractor maintained all insurance which it is required to maintain pursuant to the provisions of this Subcontract.

2.8 Other Insurance. Subcontractor shall carry all other insurance required by the law of the place where the Work is to be performed. Prior to commencing the Work hereunder, Subcontractor shall furnish Contractor with a valid certificate evidencing that all insurance required in the Contract Documents has been obtained and paid for and will continue in force until the completion of all Work hereunder. No payment will be due or made under this Subcontract, nor shall Subcontractor enter the job site to perform any Work under this Subcontract until Subcontractor has furnished Contractor with such certificate substantively identical to the form set forth in Exhibit C attached hereto, together with renewals of any previously delivered certificate, delivered to Contractor at least thirty (30) days prior to the stated expiration date of the prior certificate/policy. To the fullest extent of the law, said certificate, as well as the actual policies, shall be endorsed to name Contractor and General Contractor as additional insureds thereunder and to require that Contractor be given written notice at least thirty (30) days in advance of cancellation or modification of any of the policies in accordance with applicable laws. If Subcontractor should subcontract any of the Work to a third party, Subcontractor shall require that such third party carry the same insurance Subcontractor is required to carry and furnish evidence thereof to Contractor in the manner specified. The cancellation either by the insured or the insurer of any portion of the insurance required to be carried by this Subcontract, or the failure to timely deliver any of the items required by this Section, or the lapse or suspension of the required insurance for any reason shall be considered a material breach of this Subcontract and Contractor shall be entitled to immediately exercise the termination rights set forth in Article 15 of this Subcontract and any other right contained in this Subcontract and the law. Contractor shall also, in such event, have the right to prohibit Subcontractor from further entry to the job site. Subcontractor's obtaining of the insurance required herein shall in no manner lessen or affect Subcontractor's obligations as set forth in Section 2.1 hereof, or in any of the other provisions of this Subcontract.

2.9 Disclaimer. Neither Contractor, Owner nor any Indemnified Parties shall be required to provide insurance

against loss, theft, disappearance or any other risk to any materials, supplies, facilities, tools, equipment, plant, scaffolds, bracing and similar items of Subcontractor, any subcontractor, any other person furnishing labor or materials for Subcontractor's Work and Subcontractor agrees to indemnify, defend and hold Contractor, Owner and all Indemnified Parties harmless from any and all claims, demands, causes of actions and costs asserted against or suffered by it as a result of any such loss, theft, disappearance or other casualty.

ARTICLE 3 **CODES, LAWS, AND REGULATIONS**

3.1 **General.** Subcontractor shall comply with all federal, state and municipal laws, codes, regulations and ordinances in effect where the Work is to be performed, and will pay all taxes and contributions imposed or required by any law for any employment insurance, unemployment insurance, pensions, old age retirement funds, or similar purposes, and all contributions or other charges to and for union welfare or other funds, with respect to the Work, and with regard to the employees of Subcontractor taking part in the performance of the Work.

3.2 **Employment Taxes.** Subcontractor accepts exclusive liability for all taxes and contributions required of Subcontractor, including federal withholding taxes, taxes under the Federal Social Security Act and any unemployment compensation law or similar law of any state, with respect to the employees of Subcontractor taking part in the performance of the Work hereunder, and shall, if requested, furnish Contractor with suitable written evidence that Subcontractor has discharged such liability. If Subcontractor fails to furnish such evidence, Contractor may (at its option and without any obligation to do so) pay or reserve for payment said taxes and contributions and deduct the amount so paid or reserved from payments due or to become due Subcontractor by Contractor (whether hereunder or otherwise) or require Subcontractor or its surety, if any, to reimburse Contractor for such expenditures.

3.3 **Sales Taxes.** Because General Contractor is a tax-exempt entity and is not required to pay sales, consumer use, or similar taxes ("Sales Taxes") with respect to any equipment or materials incorporated by Subcontractor or sub-subcontractors into the Work, Contractor will provide Subcontractor with a sales tax exemption certificate, Subcontractor shall use (and cause its sub-subcontractors to use) such certificate correctly to prevent Sales Taxes from being charged to the Project or Contractor. In addition, where applicable and if so directed by Contractor, Subcontractor also shall purchase (and cause its sub-subcontractors to purchase) Materials to be incorporated into the Project by properly using resale certificates to document such purchases in order to prevent such Sales Taxes from being charged to the Project or Contractor. Except as provided in the foregoing sentences of this paragraph, Subcontractor shall pay all sales or use taxes and all other federal, state or local taxes and any penalties or additional charges of any nature in connection therewith applicable in any way to the Work, regardless of the person upon whom such tax is levied. In the event Subcontractor does not make such payment, Contractor (at Contractor's option and without any obligation to do so) may make the payment and deduct the amounts thereof from any sums due or to become due Subcontractor or require Subcontractor or its surety, if any, to reimburse Contractor for such expenditures.

3.4 **Governmental Fees.** Subcontractor shall secure and pay for any and all fees, permits or licenses required for the prosecution of the Work.

3.5 **OSHA and other Federal Requirements.** Without limiting the generality of Section 3.1 hereof, Subcontractor shall comply with the Occupational Safety and Health Act, together with all rules and regulations thereunder and any amendments thereof (hereinafter collectively referred to as "OSHA"). Prior to commencement of Work, Subcontractor shall supply Contractor, General Contractor and Owner with copies of all MSDS's for materials used by Subcontractor or its subcontractors and materialmen. All parties to this subcontract acknowledge that this subcontract is funded in whole or in part through a subaward of Coronavirus State and Local Fiscal Recovery Funds (aka. ARPA SLFRF) and hereby agree to comply, and cause all their subcontractors to comply, with all applicable federal, state, and local laws, rules, and regulations, including but not limited to the requirements of Exhibit F, (collectively, the "Federal Requirements").

3.6 **Indemnity.** Subcontractor shall, to the fullest extent permitted by law, defend, indemnify, and hold Contractor, General Contractor and Owner harmless from any costs, claims or liabilities with respect to any of the taxes, charges, contributions or fees mentioned in this Article 3 and from any costs, claims or liabilities with respect to any violations of any governmental law or requirement mentioned in this Article 3, and any penalties, fines, or other charges in connection therewith. Without limiting the generality of the foregoing, Subcontractor specifically agrees to indemnify, defend, and hold harmless the Contractor, and Owner from and against all loss, cost, liability, and expense asserted by any governmental agency directly or indirectly related to a violation or alleged violation by Subcontractor (or anyone acting under Subcontractor) of OSHA and/or a violation or alleged violation of the Fair Labor Standards Act.

ARTICLE 4 **SUBMITTALS, GUARANTIES, AND DEFECTIVE WORK**

4.1 Requested Submittals. Subcontractor shall furnish prior to the commencement of any manufacturing, delivery or other work, any and all submittals, shop drawings, engineering drawings, and manufacturer cut sheets as may be expressly required by Contractor for Contractor's prior approval in connection with the Work. Approval of the same by Contractor or Architect shall not relieve Subcontractor of its responsibility for complying with the requirements of the Contract Documents. All transportation, delivery, and similar charges and costs for the delivery of the foregoing (or any other items delivered hereunder) will be borne solely by Subcontractor.

4.2 Other Items. Subcontractor shall furnish all items such as equipment guaranties, warranties, bonds, operating manuals, as-built drawings and instructions as may be customarily provided or otherwise required by the Contract Documents in connection with the Work.

4.3 Payment Does Not Waive Defects. No payment under this Subcontract shall be construed to be an acceptance of Work or materials, which are defective or fail to conform to the requirements of the Contract Documents.

4.4 Guaranty. Subcontractor guarantees that the Work shall be free from defects, shall be performed in a good and workmanlike manner, and shall conform to and meet the requirements of the Contract Documents, and shall furnish any separate guarantee for the Work, or portion thereof, as may be required by the Contract Documents. Subcontractor agrees to replace or repair to the satisfaction of the Owner, any portion or portions of the Work proving defective within one (1) year (or such longer period as may be specified in the Contract Documents or prescribed by law) from the date of the issuance in final form of the last certificate of occupancy for the improvements comprising the Project; however, that this obligation shall in no respect diminish the duration of the aforesaid warranty which shall exist for the longest period provided by law, or exclude other warranties provided by law or the Contract Documents.

4.5 Defective Work. In accordance with the instructions of Contractor, General Contractor or Owner, in a manner acceptable to Contractor, General Contractor and Owner, and without expense to Contractor, General Contractor or Owner, Subcontractor shall during the construction warranty periods: (i) promptly (which in no event shall be later than the end of the application notice period provided for in Article 15 hereof) commence and diligently pursue without delay of interruption (to the extent within the control of the Subcontractor) the correction of any defective Work or, if correction is not promptly practicable, the removal from the site and replacement of any defective Work; and (ii) shall thereafter promptly complete such correction or replacement. If Subcontractor does not promptly comply with the terms of such instructions and an emergency develops or has developed where delay would cause significant risk of loss or damage, Contractor may (at its option and without any obligation to do so) have the defective Work corrected or removed and replaced, and all direct and indirect costs of such correction, removal, and replacement, including compensation for additional professional services, shall be paid by Subcontractor promptly upon demand of Contractor, General Contractor or Owner. Whether pursuant to an emergency or Subcontractor's failure or inability to act, all expenses, costs, losses, and damages incurred by Contractor as a result of Subcontractor's breach of its guaranty shall be recoverable from Subcontractor (or its surety, if any) as provided in Article 15 hereof. Subcontractor (and its surety, if any) hereby promise to pay to the order to Contractor an amount equal to any and all expense, cost, loss, and damage paid or incurred by Contractor in correcting and replacing defective Work.

ARTICLE 5 BONDS

5.1 General. To the extent (if at all) required by Contractor pursuant to the Special Conditions set forth in Exhibit B attached hereto (or otherwise), Subcontractor shall arrange for and furnish, at Subcontractor's sole cost and expense, separate performance and payment bonds, each for the full amount of this Subcontract. The bonds shall be delivered to Contractor prior to (i) the expiration of twenty-one (21) days after this Subcontract is executed or (ii) the day Subcontractor is required to commence work hereunder, whichever occurs first. The bond shall be issued in favor of Contractor and shall be executed by a surety company acceptable to the Contractor (in its sole discretion) and on forms furnished or approved by Contractor and in accordance with the Texas Property Code. No payment whatsoever shall be due, or be made to, Subcontractor under this Subcontract until the provisions of this Article 5 have been met to Contractor's satisfaction.

5.2 Changes. No changes, alterations or modification in the terms and conditions of this Subcontract, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished by or on behalf of Subcontractor.

5.3 Premiums. The cost of the bonds is included in the amount of the Subcontract Price. Any additions to this Subcontract occasioned by Change Orders shall include additional bond premiums, if any.

5.4 Failure of Surety. Notwithstanding Contractor's acceptance of bonds from a particular surety, if that surety becomes subject to supervision, receivership, or liquidation proceedings in any state, then, Contractor may require Subcontractor to post new surety bonds written by another surety acceptable to Contractor at no additional cost to Contractor.

ARTICLE 6
RESOLUTION OF CLAIMS AND DISPUTES

6.1 Arbitration Election. All claims, disputes, and other matters in question arising out of, or relating to, this Subcontract or the breach thereof shall, at the sole option of the Contractor, be decided by arbitration governed by the Construction Industry Rules of the American Arbitration Association. The exclusive venue for any hearings or proceedings with respect to arbitration shall be in the County of Harris, State of Texas.

6.2 Judicial Proceedings. In the event arbitration is not elected by Contractor as set out in Section 6.1, the exclusive venue for any lawsuits or other court proceedings with respect to this Subcontract shall be in the County of Harris, State of Texas.

ARTICLE 7
COMMENCEMENT AND COMPLETION OF THE WORK

7.1 General. Completion of the Work and its several parts within the time allotted or reasonably contemplated under the Contract is of the essence of this Subcontract. Therefore, Subcontractor agrees: (i) to provide at the Project site the appropriate materials, equipment, laborers and supervision necessary to begin or resume the Work upon Contractor's order to do so; (ii) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as Contractor may direct to assure the efficient, expeditious and timely prosecution of Contractor's entire work under the Contract; and (iii) to furnish sufficient forces, supervision, equipment and materials, at such times and for such periods, as will result in progress according to the approved progress schedule of Contractor or any modification thereof (the "Progress Schedule"). Contractor reserves the right to modify any such Progress Schedule with respect to the required sequence or duration of the Work or any portion thereof, and Contractor makes no representation that Subcontractor will be able to commence, perform or complete the Work in accordance with any Progress Schedule. Contractor shall have the right to decide the time and order in which the various portions of the Work under the Contract shall be installed or the priority of the work of other subcontractors, and in general, all matters representing the timely and orderly conduct of the Work by Subcontractor on the job site.

7.2 Disclaimer. To the fullest extent of the law, Contractor shall not be liable to Subcontractor for any damages due to any delay in the Work resulting from the act, omission, negligence or default of Contractor, Owner, Civil Engineer, MEP Engineer, Structural Engineer, Architect, or any other person or by reason of fire or other casualty, on account of riots, strikes or other combined action of workers or others, on account of any acts of God or any other causes beyond Contractor's control, or on account of any circumstances caused or contributed to by Subcontractor.

7.3 Commencement and Completion of Work; Damages. The Work shall be commenced on the date designated in Contractor's order to commence, shall proceed in accordance with the Progress Schedule, and shall be completed by Subcontractor on or before the deadline set out in the Progress Schedule for the Project contemplated in Section 7.1 hereof (the "Completion Date"). Subcontractor shall be liable to Contractor for any direct, indirect, actual or consequential costs and damages resulting from any delay in the commencement or completion of any part of the Work (including, but not limited to, delay to the Completion Date) caused by Subcontractor, or its sub-subcontractors, agents or employees. The amount of such costs and damages may, at the option of Contractor, be withheld from any progress payment due Subcontractor or collected from Subcontractor or its surety, if any.

7.4 Weekends; Holidays. Subcontractor agrees to perform the Work on Saturdays, Sundays and legal holidays to the extent requested by Contractor.

ARTICLE 8
CHANGES

8.1 Prior Writing Required. Subcontractor shall make all alterations, furnish materials and labor for and perform all extra Work or omit any of the Work Contractor may require, at a reasonable addition to, or deduction from the time for performance, the amount of the Subcontract Price or both. NO ALTERATIONS OR CHANGES SHALL BE MADE EXCEPT UPON CONTRACTOR'S PRIOR WRITTEN ORDER, SIGNED BY ONE OF THE OFFICERS OF CONTRACTOR NAMED IN EXHIBIT B ATTACHED HERETO AS AN AUTHORIZED SIGNATORY. Contractor shall not be bound by any changes or alterations made by Subcontractor in violation of this provision, and Subcontractor waives any claim to an adjustment to the Subcontract Price and the Completion Date for any changes or alterations made by Subcontractor in violation of this provision. No course of conduct, dealings or oral agreements between the parties, nor express or implied acceptance of additions, deletions, suspensions or modifications to the Contract Documents, including any Work, and no claim that Contractor, General Contractor or Owner has been unjustly enriched by any such addition, deletion, suspension or modification to this Subcontract, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim for an adjustment in the Subcontract Price and the Complete Date. Subcontractor shall submit proposals for alterations in the manner provided by the Contract Documents or as instructed by Contractor. In the event that an addition or deduction to the Subcontract Price is approved, Contractor and

Subcontractor shall jointly designate the portion of each such adjustment that is attributable to the Materials Payment and/or Services Payment.

8.2 Price Change. The amount to be paid or deducted as a result of such changes or alterations shall be stated in Contractor's written order. Subcontractor's special attention is directed to the provisions of Section 11.2 hereof governing and strictly limiting Subcontractor's rights with respect to changes related to governmental requirements.

8.3 Change Orders. Change orders will be subject to Owner's and Harris County requirements and approvals.

ARTICLE 9 PAYMENT

9.1 Draw Requests. The Draw Schedule prepared and approved by Contractor (as evidenced by Contractor's initials thereon) and set forth as a part of Exhibit B attached hereto shall be the payment method used to pay Subcontractor for its performance of the Work as it progresses. Subcontractor shall submit to Contractor for approval an itemized draw request in accordance with the Draw Schedule for the value of the Work completed to the satisfaction of Contractor, General Contractor and Owner during the month ending on the relevant specified submission date. Draw requests that are submitted after the specified submission date in any month may be retained by Contractor until the next submission date before they are processed. The specified submission date for draw requests under this Subcontract shall be as set forth in Exhibit B attached hereto or, if not set forth therein, as determined and modified from time-to-time by the Contractor, in its sole discretion. Contractor shall have the right, at any time, to request from Subcontractor such data, vouchers, receipts, invoices or other documents or information as it may require in order to verify the information contained in Subcontractor's draw request.

9.2 Completion. Notwithstanding the foregoing, Contractor shall not be required to remit payment to Subcontractor in the event, in Contractor's estimation, a sufficient balance of the Subcontract Price shall not remain after the remittance of such payment in order to enable Subcontractor to discharge all of its obligations for labor, materials, and equipment previously furnished or to be furnished by Subcontractor under this Subcontract (with adequate reserve for contingent items) and all other liabilities and obligations of Subcontractor hereunder. Final payment shall be made as provided in Section 9.7.

9.3 Stored Materials. No payment to Subcontractor shall be made and no provision in any draw request shall be allowed for (i) any materials, supplies, or equipment stored at the site or elsewhere or (ii) any other materials, supplies or equipment not permanently installed and incorporated into the improvements and finally accepted by Contractor, General Contractor or Owner.

9.4 Title. Subcontractor warrants that title to all materials, equipment and Work covered by draw requests shall pass to Contractor (or to Owner, if the contracts between Contractor and General Contractor and between General Contractor and Owner so provides) either at the time of permanent installation and incorporation into the Project or upon receipt of payment by the Subcontractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. This provision shall not be considered as relieving Subcontractor from the responsibility to protect and preserve all materials and Work upon which payments have been made, the restoration, repair or replacement of any damaged or defective Work, and the maintenance of insurance thereon if required by other provisions of this Subcontract, nor shall it be considered as a waiver of the right of Contractor, General Contractor or Owner to require full performance of all of the obligations of Subcontractor hereunder.

9.5 Payment by Owner. Notwithstanding anything in this Subcontract to the contrary, all progress payments and the final payment under this Subcontract are contingent upon Contractor's, General Contractor's and Owner's acceptance of all Work performed and upon Contractor's receipt of payment from Owner and/or General Contractor for Subcontractor's Work. Subcontractor agrees to accept the risk of nonpayment if Contractor is not paid progress payments or the final payment from Owner for any reason, including, without limitation, Owner's insolvency or inability to pay. Subcontractor further agrees that Owner's payment to General Contractor and Contractor of all progress payments and the final payment for any Work performed by Subcontractor shall be an express condition precedent to any obligation of Contractor to pay any progress payments, retainage, or the final payment to Subcontractor. Subcontractor hereby assumes the risk of non-payment by Owner.

9.6 Payments to Others. Subcontractor shall hold the payments made by Contractor as a trust fund to be applied to the payment of any persons furnishing labor, materials or services for the Work, and Subcontractor will so apply the payments from Contractor before using any part thereof for any other purpose. If required by Contractor, Subcontractor shall execute the Joint Check Agreement attached hereto as Exhibit D. Regardless of whether any such Joint Check Agreement is requested or executed, progress payments may, in the discretion of Contractor (without any obligation to do so), be made in the form of checks payable jointly to Subcontractor and such persons. If Subcontractor shall fail to promptly pay when due, for all labor, services, equipment and materials furnished in connection with the performance of the Work, Contractor may (without any obligation to do so) after five (5) days' written notice to Subcontractor, or such longer period as is required by applicable law, (i) pay the amount of such liabilities for Subcontractor's account and recover the amount thereof from Subcontractor or its surety, if any, (ii) deduct all or any part of such amount from any monies then, or thereafter becoming, due Subcontractor hereunder or

otherwise, (iii) exercise any other rights, powers or remedies afforded Contractor by law or the Contract Documents, or (iv) exercise any of the foregoing rights in combination with any or all of the others.

9.7 Final Payment. Final payment, consisting of the unpaid balance of the Subcontract Price shall be paid within a reasonable period of time (which in every case shall be at least forty-five (45) days) after the last of the following to occur: (i) full completion of the Work by Subcontractor (including all punch list items); (ii) final acceptance of the completed Project by Architect and Owner; (iii) final payment by Owner to General Contractor under the Prime Contract and final payment by General Contractor to Contractor under the Contract; (iv) final disbursement by Owner's lender to Owner of the last of Owner's construction loan funds; (v) the furnishing of satisfactory evidence by Subcontractor to Contractor that Subcontractor has fully paid all persons furnishing labor, materials or services in connection with the Work and that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to maintain a lien or other claim against Owner, Contractor, Contractor's surety, if any, or the Project premises; (vi) the final expiration of the last possible mechanic's or materialmen's lien filing period for work performed or for materials, services, or equipment furnished by the employees, agents, subcontractors, sub-subcontractors, suppliers, vendors, and materialmen of Subcontractor in connection with any Work at the Project; (vii) the delivery to Contractor of such releases as it may require from Subcontractor pursuant to the provisions contained herein; (viii) the delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items with respect to the Work as is required by Article 4 hereof, and (ix) if applicable to this Subcontract, completion of all additional requirements and satisfaction of all conditions contained in Harris County's closeout requirements.

9.8 Lien Releases. In connection with each draw request submitted by Subcontractor to Contractor, Subcontractor shall deliver to Contractor executed and acknowledged original Affidavits of All Bills Paid, Waivers of Lien, and Partial Lien Release/Indemnity Agreements from Subcontractor and Subcontractor's materialmen, subcontractors, suppliers, and creditors, as required by Contractor and in each case in the specific form available from and required by Contractor and in accordance with the Texas Property Code. In addition, Subcontractor shall furnish to Contractor in connection with Subcontractor's final draw request (and as an additional express condition precedent to final payment), executed and acknowledged Affidavits of All Bills Paid, Waivers of Lien, and Final Lien Release/Indemnity Agreements from all of the above-described parties, in each case in the specific form available from and required by Contractor.

9.9 List of Suppliers. Subcontractor shall provide to Contractor a list (in the form set forth in Exhibit E attached hereto) of all of the subcontractors, sub-subcontractors, independent contractors, equipment lessors, materialmen, and suppliers that Subcontractor proposes to utilize in connection with performance of the Work. Such list initially shall be provided by Subcontractor concurrently with Subcontractor's execution of this Subcontract, and thereafter shall be maintained on a current basis by Subcontractor's prompt delivery to Contractor of updated lists reflecting any additions, name changes, address changes, or similar modifications of the list.

9.10 Affidavits. Subcontractor shall furnish promptly upon request by Contractor, General Contractor or Owner, sworn affidavits in the form provided by Contractor, General Contractor or Owner, which shall state amounts due, amounts paid, obligations incurred and any other information clearly indicating the financial condition of Subcontractor insofar as it relates to labor and material furnished or to be furnished, under this Subcontract, and Contractor, General Contractor or Owner may take such measures pursuant thereto as such party may deem necessary in order to protect itself against any claims.

ARTICLE 10 **STORAGE AND EQUIPMENT**

10.1 Storage and safekeeping. Subcontractor agrees to abide by Contractor's decision as to the allotment of all storage and working space on the job site or in the improvements thereon. Subcontractor shall provide at its own expense whatever storage sheds, workshops, utilities and offices are necessary for its performance hereunder, and shall remove the same and thoroughly clean and restore the premises to a condition satisfactory to Contractor, General Contractor and Owner at the completion of the Work. Subcontractor shall secure and protect its materials and the Work and shall bear the cost of and be liable to Contractor for any and all loss or damage thereto or to any other parties' work or property resulting directly or indirectly from an act, a failure to act, or faulty workmanship on the part of Subcontractor, its subcontractors, suppliers, agents or employees.

10.2 Labor Only. In the event labor only is furnished by Subcontractor hereunder, Subcontractor agrees to use Contractor's material without unreasonable waste, and agrees to reimburse Contractor for any material ruined or damaged on account of its negligence or carelessness. Unless otherwise provided, material furnished by Contractor shall be considered as delivered to Subcontractor when placed at any place on the job site designated by Contractor. Quantities of material used daily shall be reported to Contractor, and empty sacks, boxes, scraps, waste, and other refuse shall be placed in the area designated by Contractor for the same.

10.3 Tools and Equipment. Subcontractor shall at all times supply and furnish adequate tools and equipment, in good and safe working order to perform the Work efficiently and promptly. Subcontractor shall not place on the job site any equipment of which it is not the sole owner unless it obtains written permission from Contractor; provided however that

Contractor shall not unreasonably withhold permission for Subcontractor's use of properly and formally leased equipment meeting Contractor's requirements for leased equipment, as amended from time to time. Subcontractor shall route all equipment to be used in the execution of the Subcontract as designated by Contractor.

ARTICLE 11 INSPECTION

11.1 General. Subcontractor represents that it has inspected and thoroughly examined the premises or property where or upon which the Work is to be performed, has satisfied itself as to the condition thereof, and that the Subcontract Price is just and reasonable compensation for all the Work, including all foreseen and foreseeable risks, hazards and difficulties in connection therewith. Subcontractor's failure to so inspect and examine the premises or property resulting in additional expenses to Subcontractor or its subsequent inability to perform the Work hereunder or any portion thereof, according to the terms and conditions of this Subcontract, for the Subcontract Price, shall in no way relieve the Subcontractor of its obligations under this Subcontract. No oral agreements, representations or conversations with any officers, agents or employees of the Contractor, General Contractor, Owner or Architect, or any of them prior to or after the execution of this Subcontract, shall supersede, limit or otherwise affect any of the terms or obligations contained herein.

11.2 Governmental Changes and Requirements. Without limiting the generality of Section 11.1 hereof, Subcontractor specifically confirms that Subcontractor (i) has familiarized itself fully with all applicable federal, state, local, and community building, supply, construction, and similar conditions and requirements under applicable codes, ordinances, statutes, regulations, declarations, and restrictions, including those of the City of Houston, Harris County, Texas Department of Housing and Community Affairs, and the State of Texas, as applicable; and (ii) has thoroughly compared such conditions and requirements to the Contract Documents governing the Work (specifically including, without limitation, the plans, drawings, and specifications for the Work). Subcontractor acknowledges that Contractor has and is specifically relying on the foregoing confirmation as a substantial inducement in Contractor's decision to execute and deliver this Subcontract. Accordingly, Subcontractor hereby assumes the risk of, and indemnifies Contractor from the cost and expense of, all changes, supplemental provisions, and other revisions required by any such law or governmental or quasi-governmental entity. In no event shall Subcontractor submit or be entitled to any change order for all or any part of any such change.

11.3 Unsuitable Conditions. If Subcontractor deems that any surfaces to which the Work is to be applied or affixed are unsatisfactory or unsuitable, written notification thereof shall be given to Contractor before proceeding with any such Work or taking remedial action as the result thereof. Failure to give such notice prior to performing Work shall relieve Contractor of all liability for any and all expenses, loss or damage resulting to it or to others from said condition. Subcontractor shall bear all costs incurred as a result of proceeding without giving the notice required.

ARTICLE 12 MISCELLANEOUS

12.1 Payroll. Subcontractor shall pay its workers not less than the scale of wages prescribed by law and shall make such payments at the times prescribed by the Contract Documents or by law.

12.2 Employment Laws. Neither Subcontractor nor any of its subcontractors shall employ any workers to whom Contractor objects. Subcontractor shall comply with all applicable immigration laws, including, without limitation, the Immigration and Nationality Act, the Immigration Reform and Control Act of 1986, the Immigration of Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and shall, upon request of Contractor, furnish Contractor with evidence of Subcontractor's compliance therewith. In addition, Subcontractor certifies that it does not and will not knowingly employ an undocumented worker. "Undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. Subcontractor shall defend, indemnify and hold Contractor, General Contractor and Owner harmless of and from any fines, costs, penalties, or damages of any kind relating to or arising out of Subcontractor's noncompliance with such law or any other laws affecting employment.

12.3 No Overtime. No overtime shall be paid by Contractor to Subcontractor unless specifically agreed to in writing by Contractor.

12.4 Unions. It is understood that contracts will be awarded and labor will be employed on the Project without discrimination as to whether employees of any contractor, subcontractor, or those employed by the Owner of the Project are members or non-members of any labor organization, and Subcontractor accepts this Subcontract with that understanding. Subcontractor shall only employ persons for the Work who will work at all times in harmony with all other persons and mechanics on the Project. Subcontractor shall not participate in or accede to any cessation of work, which may occur as a result of any labor disputes, whether lawful or unlawful, authorized or unauthorized.

12.5 Labor Disputes. In the event that Subcontractor or any other person, firm, or corporation involved in the Work becomes involved in any labor dispute, whether lawful or unlawful, authorized or unauthorized, which causes, or threatens to cause, Subcontractor, any union, or any other person, firm, or corporation to strike, picket, walk out, boycott, engage in stoppages of work, slow downs, sit-downs, refusals to work, jurisdictional disputes, or take any similar action, then Contractor shall have the right to exercise the remedies contained in Article 15.

12.6 Delivery Fees. Subcontractor agrees to pay all transportation charges of whatsoever nature in connection with the shipment of persons, material or equipment to the job and from the job, and to defend, indemnify and save harmless Owner and Contractor from any and all costs and claims arising therefrom.

12.7 Safe Conditions. Subcontractor shall provide sufficient safe and proper facilities at all times for the inspection of Work by Contractor, General Contractor, Owner and Architect or their authorized representatives, and shall within twenty-four (24) hours after receiving written notice from Contractor to such effect, proceed to dismantle or take down all portions of the Work and remove from the grounds and buildings all materials, whether worked or unworked, which Contractor, General Contractor, Owner or Architect shall condemn as unsound or improper or which shall fail to conform in any way to the Contract Documents. Subcontractor shall remedy all such Work condemned and shall repair or replace all other Work damaged or destroyed in removing or remedying such condemned Work. The failure of Contractor to direct the removal of any Work not in compliance with the Contract Documents shall not release or lessen Subcontractor's sole responsibility for the compliance of the Work with the Contract Documents or Subcontractor's continuing liability for the Work under all warranties hereunder; however, Subcontractor shall not remove any other material from the job site without Contractor's written permission.

12.8 Safety Devices. Subcontractor agrees not to remove any guards or safety devices on or about the job site, except upon the prior written instruction of Contractor's superintendent, and to replace such guards and devices promptly. In the event Subcontractor fails to make such replacements Contractor may do so and charge the cost thereof to Subcontractor, and Subcontractor shall be solely liable for any injury, loss or damage occurring as a result thereof.

12.9 Patent Violations. Subcontractor agrees to defend, indemnify, and hold Contractor, General Contractor and Owner harmless from any and all claims or suits for infringement of patents, or violations of patent rights by Subcontractor, and further agrees to pay all losses and expenses incurred by Contractor, General Contractor and Owner by reason of any such claims or suits, including attorneys' fees and court costs in connection therewith.

12.10 Cleanup. In addition to whatever cleanup requirements may be specifically set forth in Exhibit B attached hereto, Subcontractor shall clean up and deliver to the area designated by Contractor all rubbish and debris resulting from the Work, and shall clean up to the satisfaction of Contractor, General Contractor and Owner all dirt, grease, marks and any other material from walls, ceilings, floors, fixtures and any other portion of any building located on the job site placed thereon or left by Subcontractor in connection with the Work. If Subcontractor fails or refuses to perform as directed pursuant to this Section 12.10, Contractor may then proceed to perform such duties and Subcontractor will, on demand, repay to Contractor by deduction from amounts due Subcontractor hereunder or by way of recovery from Subcontractor or its surety, if any, all costs incurred in connection with Contractor's performance of such duties.

12.11 No Discrimination. Subcontractor, in performing the Work shall not discriminate against any employees or applicants for employment because of race, color, religion, sex, national origin, disability, age, or genetics and Subcontractor shall comply with all applicable equal employment opportunity and employment non-discrimination laws. Subcontractor agrees to include this provision in all of its subcontracts. For the purpose of this Section 12.11, the term "subcontracts" means all contracts entered into by Subcontractor with individuals, partnerships, associations, corporations, estates or trusts, or other business enterprises or legal entities for specific parts of the Work to be performed in connection with the supplies and services furnished under this Subcontract; provided, however, that contracts for furnishing standard commercial articles or raw materials shall not be considered "subcontracts" within this Section 12.11.

12.12 Safety. Subcontractor shall comply with Contractor's Safety Program, including drug-testing procedures, if any, which is on file in Contractor's offices.

12.13 Subordination. Subcontractor hereby agrees that any lien, lien rights, constitutional claims, or rights to removables which Subcontractor may acquire with regard to the Work performed under this Subcontract to secure the unpaid portion of the Subcontract Price or any other amount claimed by Subcontractor hereunder (or otherwise in connection with the Project), shall be, and hereby are, wholly subject and fully subordinate to the liens of any mortgages, deeds of trust, security agreements or assignments of rents covering the Project for the full principal amount of the loans secured thereby, the full amount of all advances heretofore or which hereafter may be made under such loan (including, but not limited to, fees, disbursements and charges in connection therewith) and the full amount of interest which accrues on such principal and advances as the same may be consolidated, extended, modified, renewed, replaced, or supplemented and to all consolidations, extensions, renewals and replacements thereof and supplements thereto. In preparing or executing any lower-tier subcontract between Subcontractor and any lower tier subcontractor or supplier, Subcontractor shall include subordination language parallel to the

foregoing with the effect that all such lien claims of such lower tier person shall be subordinate and inferior to the above described lender liens. Any such lower-tier subcontract incorporating by reference the terms of this Subcontract shall be deemed to expressly include such parallel subordination language.

ARTICLE 13 **ASSIGNMENT**

13.1 **General.** Subcontractor shall not subcontract, assign, pledge, or transfer this Subcontract or any part hereof, without first obtaining the written consent of Contractor. Such consent by Contractor shall not in any way release Subcontractor from its primary responsibility for the performance of its obligations hereunder, but Subcontractor shall remain fully obligated to Contractor to the same extent as if such subcontractor, assignment or transfer had not taken place. Any subcontracting, assignment, or transfer of this Subcontract, or any part hereof, permitted by Contractor shall be subject to the provisions hereof and to the provisions of the other Contract Documents where applicable.

13.2 **Financing.** Subcontractor shall not assign or pledge any funds due or to become due hereunder without first obtaining the written consent of Contractor. Any such attempted assignment which is made without such prior consent shall not be binding on Contractor. Contractor's consent may be conditioned upon the assignee or secured party agreeing in writing that such assignment is subject to all the terms and conditions of this Subcontract, and that costs of performing the Work contemplated by this Subcontract shall have priority over all claims of the assignee or secured party.

ARTICLE 14 **BANKRUPTCY**

14.1 **Bankruptcy.** It is recognized that if Subcontractor becomes a party to voluntary or involuntary bankruptcy proceedings, makes a general assignment for the benefit of creditors, or a receiver is appointed for all or any of Subcontractor's assets or affairs, such events could seriously impair or frustrate Subcontractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of such event, Contractor shall be entitled to request of Subcontractor or its successors, trustees, or receivers, adequate assurances of future performance in accordance with the terms of this Subcontract. In the event such assurances are not given to the reasonable satisfaction of Contractor within ten (10) days after such request, or such longer period of time as is required by applicable law, Contractor shall have the right to immediately invoke the remedies provided in this Subcontract, including Article 15, or as provided by law. Pending receipt of such adequate assurances, Contractor may, without prejudicing any other rights or remedies herein, proceed to perform the Work on a temporary basis and deduct the costs, plus reasonable overhead and profit, from any amounts due or which may become due to Subcontractor. In this regard, Contractor and Subcontractor agree that delays in performance could result in greater damages to Subcontractor than would be sustained if Contractor failed to exercise such remedies.

ARTICLE 15 **REMEDIES**

15.1. **General.** If Subcontractor shall at any time fail to comply fully with any provision of this Subcontract, including without limitation (i) failure to promptly discharge Subcontractor's indemnification obligations under this Subcontract and (ii) failure to supply enough properly skilled workers, materials, equipment, supplies or submittals in order to permit Subcontractor to perform hereunder to the satisfaction of Contractor with reasonable promptness, diligence and efficiency, or to meet the Progress Schedule as set out in Article 7 hereof, Contractor may (without limiting or eliminating any other remedy afforded by law or any other provision of this Subcontract) proceed as follows:

a. After providing Subcontractor with forty-eight (48) hours' notice of default, or such longer period as may be required by applicable law, given in accordance with the provisions of Section 17.7, Contractor may provide (at Contractor's option and without any obligation to do so) such labor, materials, equipment, supplies or submittals as may be necessary or reasonable to correct, remove and replace, and otherwise carry on or complete the Work and cure any other defaults of Subcontractor, pay for same and deduct the amount paid therefore from the balance of the Subcontract Price and from any other amount owed by Contractor to Subcontractor from whatever source; or

b. After forty-eight (48) hours' notice of default, or such longer period as may be required by applicable law, given in accordance with the provisions of Section 17.7, Contractor may withhold any payments in whole or in part until such breach or failure is remedied to Contractor's satisfaction, but such retention shall in no way relieve Subcontractor from the performance of its obligations under this Subcontract; or

c. After forty-eight (48) hours' notice of default, or such longer period as may be required by applicable law, given in accordance with the provisions of Section 17.7, Contractor may terminate Subcontractor's right to proceed with performance of the Work, in whole or in part, and take any and all actions which Contractor deems necessary, including contracting with others, to remedy Subcontractor's default and to correct and complete the Work or any portion thereof covered by such termination. If

Contractor terminates Subcontractor's right to proceed, Contractor shall not be liable to Subcontractor for any further payments under this Subcontract until final payment by Owner under the Contract, and shall then be liable only to the extent, if any, that the unpaid balance of the Subcontract price exceeds the sum of all losses, liabilities, expenses, and damages suffered by Contractor as a result of Subcontractor's default and from having remedied Subcontractor's default, including without limitation the costs of correcting and completing, or having others correct and complete, the Work, or any portion thereof covered by the termination and losses resulting from the delay of the performance of the Work. In the event of any such termination, Subcontractor shall deliver to Contractor such supplies, materials, Work in progress and finished Work, and such other items as have been purchased, fabricated, constructed or acquired by Subcontractor in the performance of or for the purpose of performing the Work, or the portion thereof covered by the termination, and Contractor may (at its option and without any obligation to do so) take possession of and use in completing the Work, or the terminated portion thereof, any or all subcontracts and purchase orders or any supplies, tools, equipment, parts or materials of Subcontractor that are on the job site.

15.2 Continuing Work. Any action taken by Contractor under this Article 15, as to any portion of the Work, shall not relieve Subcontractor of the obligation to continue and complete performance (i) of the Work with respect to any remaining portion of the Work as to which such action is not taken and (ii) of any other contract of Subcontractor with Contractor.

15.3 Recovery of Damages. No action taken by Contractor under this Article 15 shall relieve Subcontractor from any liability for damages, including damages resulting from a delay in the performance of Work, sustained by Contractor as a result of any breaches or defaults of Subcontractor hereunder. If the amount expended by Contractor, or any other party performing at the instigation of Contractor, in completing all or any portion of the Work to be performed hereunder and any damages sustained by Contractor as a result of Subcontractor breach or default hereunder exceeds the unpaid balance of the Subcontract Price, Subcontractor and its surety, if any, shall pay Contractor the full amount of such excess or Contractor may deduct said excess from any sums then due or thereafter due Subcontractor under any other agreements between Contractor and Subcontractor. A breach by Subcontractor of this Subcontract or any other subcontracts with Contractor may, at the option of Contractor, be considered a breach of all such subcontracts and Contractor may exercise its remedies accordingly. Contractor may offset against any sums to become due Subcontractor hereunder the amount of any liquidated or unliquidated damages owed by Subcontractor to Contractor, whether arising out of this Subcontract, any other subcontracts between Contractor and Subcontractor, or otherwise.

15.4 Termination for Convenience. Contractor may, by written notice to Subcontractor given in accordance with Section 17.7, terminate the whole or any part of this Subcontract without cause or for its convenience, including the occasion of a partial or complete suspension or cancellation of the Project. Upon termination pursuant to this Section 15.4, Subcontractor agrees to waive any claim for damages resulting therefrom, including loss of anticipated profits on Work not performed, and as the sole right and remedy of Subcontractor, Contractor shall pay Subcontractor in accordance with Subsection 15.4(c) below. The provisions of this Subcontract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination.

a. Upon receipt of said termination notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work on the date and to the extent specified in the notice, place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued, promptly make every reasonable effort to cancel, upon terms satisfactory to Contractor, all orders and subcontracts to the extent they relate to the performance of Work discontinued, and shall thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants and equipment on the job site or in transit thereto.

b. Upon such termination, the obligations of this Subcontract, including warranty obligations, shall continue as to Work already performed and as to bona fide obligations assumed by Subcontractor prior to the date of termination.

c. Subject to backcharges for costs and damages owing by Subcontractor to Contractor, upon termination under this Section 15.4, Subcontractor shall be entitled to be paid the full value, for all Work permanently installed by Subcontractor and accepted by Contractor, General Contractor or Owner, less such amounts as Subcontractor has already received on account of the Work performed. If at the date of such termination Subcontractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Subcontractor delivers such goods to such place as Contractor shall reasonably direct within seven (7) days from the date of termination, or such longer period of time as is required under applicable law, Subcontractor shall be paid for such goods or materials. Subcontractor shall, as a condition to receiving the payments referred to in this provision, execute and deliver a complete release of all claims against Contractor.

15.5 Rights Cumulative. The rights and remedies provided Contractor under this Article 15, and pursuant to any other provisions of this Subcontract and the other Contract Documents, shall be cumulative and are not intended to prevent resort by Contractor to any other remedy afforded by law.

ARTICLE 16
ATTORNEYS' FEES AND INTEREST

16.1 Attorney's Fees. If Contractor shall be required to engage an attorney (whether in-house or independent) to enforce any of the provisions hereof, or to protect its interest in any matter arising hereunder, or to collect damages for the breach of this Subcontract, or to prosecute or defend any suit or other legal action resulting herefrom or in connection herewith, or to recover on any bond given by Subcontractor hereunder, Subcontractor and his surety, if any, jointly and severally, shall pay Contractor all reasonable costs, charges, expenses and attorney's fees (at all levels) expended or incurred in connection therewith.

16.2 Interest. All amounts due Contractor under this Subcontract and unpaid shall bear interest from their due date at the lesser of the following rates: (1) The Wall Street Journal prime rate plus two percent (2%) per annum; or (2) the maximum lawful rate that can be charged.

ARTICLE 17
GENERAL

17.1 Choice of Law. All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the laws of the State of Texas.

17.2 Entire Agreement. As regards the subject matter hereof, this writing, including documents incorporated herein by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral agreements or representations between the parties. In entering into the Subcontract, the parties covenant that they are not relying on any written or oral representations by the other party other than those contained herein.

17.3 Conflicting Provisions. This Subcontract and the Contract Documents are intended to supplement and complement each other and shall where possible be thus interpreted. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Subcontractor shall govern.

17.4 Modifications. This Subcontract shall not be modified or amended in any way, except by writing executed by both parties.

17.5 Succession and Assigns. This Subcontract shall be binding upon and shall insure to the benefit of the parties hereto and their heirs, successors and permitted assigns.

17.6 Waivers. Waiver by Contractor of any breach by Subcontractor of any provision of this Subcontract shall not constitute a waiver of any other provision of this Subcontract or any subsequent breach by Subcontractor of any provision hereof.

17.7 Notices. All notices, demands, or other communications of any type given by Contractor to Subcontractor or by Subcontractor to Contractor, whether required by this Subcontract or in any way related to the Work, shall be in writing and deemed effective for all purposes on the earliest of (i) actual receipt; (ii) the second business day following the deposit of same in a United States Postal Service receptacle, addressed to the intended recipient at the address set forth in this Subcontract (or such other address of which the sender shall have been notified in accordance with the provisions hereof) with the proper postage affixed thereto, certified mail with return receipt requested; or (iii) with respect to notices given to Subcontractor only, the posting of any such notice by Contractor at the Project jobsite.

17.8 Headings. The descriptive headings of the several Articles and Sections contained in this Subcontract are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

17.9 Severability. If any provision of this Subcontract is held to be illegal, invalid or unenforceable under present or future applicable law, such provision shall be fully severable. This Subcontract shall be construed and empowered as if such illegal, invalid or unenforceable provision had never comprised a part thereof, and the remaining provision hereof shall remain in full force and effect unaffected by such illegal, invalid or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Subcontract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

17.10 Counterparts. This Contract may be executed in one or more counterparts all of which will, when taken together, constitute but one original.

17.11 Independent Contractor. It is expressly understood and agreed by the parties hereto that Subcontractor is an independent contractor and nothing in the Contract Documents shall be deemed to constitute Subcontractor, including Subcontractor's subcontractors, employees, representatives, and agents, to be a partner, agent, representative, or employee of Contractor, General Contractor or Owner.

17.12 Separated Contract. It is the intent of the Contractor and Subcontractor that this Subcontract constitute a separated contract for purposes of the rules of the Texas Comptroller of Public Accounts located at 34 Texas Administrative Code Section 3.291(a)(13), as reflected by the separation of the Materials Payment and Services Payment of the Subcontract Price set forth in paragraph C on the first page of this Subcontract.

ARTICLE 18
OTHER PROVISIONS

18.1 MWSBE. [To Come from Harris County counsel].

18.2 COST PLUS CONTRACTS PROHIBITED. [To come from Harris County counsel.]

18.2 Exhibits. The following Exhibits are attached to this Subcontract and are made a part hereof for all purposes.

- Exhibit A: Plans and Specifications
- Exhibit B: Special Conditions and Scope of Work
- Exhibit C: Liability Insurance Specifications
- Exhibit D: Joint Check Agreement
- Exhibit E: Subcontractor and Supplier Information
- Exhibit F: FEDERAL REQUIREMENTS FOR CONTRACTORS
- Exhibit G: _____

EXHIBIT A
Lost Oaks

<p>ARCHITECT: MUCASEY & ASSOCIATES, ARCHITECTS 4800 Gibson, Suite #200 Houston, TX 77007 713-521-1233</p> <p>CIVIL ENGINEER: Ward Getz & Associates, LLP 2500 Tanglewilde St #120 Houston, TX 77063 713-789-1900</p>	<p>STRUCTURAL ENGINEER: Gerald T. Wynne, P.E. 832-334-3260</p> <p>MECHANICAL/ELECTRICAL ENG: H G E CONSULTING, INC. 7171 Hwy 6 N., Suite #206 Houston, TX 77095 281-856-7682</p>
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<p>SOILS REPORT: Geotechnical Investigation for Lost Oaks Prepared by The Murillo Company Report Number GEO _____ Reported to Lost Oaks, LP Date: _____, 20____</p>
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Drawing #	Drawing Title	Issue Date	Revision Date
ARCHITECTURAL DRAWINGS			
A0.0	List of Drawings		
A1.0	Code Summary	04-15-24	
A1.1	Site Plan, Landscape Plan & Project Summary	04-15-24	
A1.2	Site Details	04-15-24	
A1.3	Pool Plan And Details	04-15-24	
A2.1	Unit Plans – Units A1, A2, A4 & A5	04-15-24	
A2.2	Unit Plans – Units B1	04-15-24	
A2.3	Unit Plans – Units B1h & B2c	04-15-24	
A2.4	Unit Plans – Unit C1 & C2	04-15-24	
A3.1	First Floor Plan	04-15-24	
A3.2	Second floor plan	04-15-24	
A3.3	Third floor plan	04-15-24	
A3.4	Fourth Floor Plan	04-15-24	
A3.5	Fifth Floor Plan	04-15-24	
A3.6	Roof Plan	04-15-24	
A3.7	Podium Plan	04-15-24	
A3.8	Enlarged Plans- Stair A & Elev. #1	04-15-24	
A3.9	Enlarged Plans- Stair B	04-15-24	
A3.10	Enlarged Plans- Stair C & Elev. #2	04-15-24	
A3.11	Enlarged Plans- Stair D	04-15-24	
A3.12	Life Safety Exit Plan	04-15-24	
A4.1	Oak Avenue Elevation (Partial)	04-15-24	
A4.2	Oak Avenue Elevation (Partial)	04-15-24	
A4.3	East Elevation	04-15-24	
A4.4	North Elevation (Partial)	04-15-24	

A4.5	North Elevation (Partial)	04-15-24	
A4.6	West Elevation	04-15-24	
A4.7	East Courtyard Elevation	04-15-24	
A4.8	South Courtyard Elevation & North Courtyard Elevation	04-15-24	
A4.9	West Elevation	04-15-24	
A5.1	Interior Elevations	04-15-24	
A5.2	Interior Elevations	04-15-24	
A5.3	Interior Elevations	04-15-24	
A6.1	Stair A Section	04-15-24	
A6.2	Stair B Section	04-15-24	
A6.3	Stair C Section	04-15-24	
A6.4	Stair D Section	04-15-24	
A6.5	Elevator #1 Sections	04-15-24	
A6.6	Elevator #2 & Trash Room Sections	04-15-24	
A6.7	Elevator #2 Section	04-15-24	
A7.1	Wall Sections	04-15-24	
A7.2	Wall Sections & Details	04-15-24	
A7.3	Wall Sections	04-15-24	
A7.4	Balcony Sections	04-15-24	
A7.5	Balcony Sections & Wall Sections	04-15-24	
A7.6	Wall Sections & Balcony Sections	04-15-24	
A8.1	Details	04-15-24	
A8.2	Details	04-15-24	
A8.3	Details	04-15-24	
A8.4	Details	04-15-24	
A8.5	Details	04-15-24	
A8.6	Details	04-15-24	
A8.7	Details	04-15-24	
A8.8	Details	04-15-24	
A9.1	Amenity Center – 1 st Floor Plan	04-15-24	
A9.2	Amenity Center – 2 nd Floor Plan	04-15-24	
A9.3	Amenity Center – 3 rd Floor Plan	04-15-24	
A9.4	Amenity Center – Building Section	04-15-24	
A9.5	Amenity Center – Building Sections	04-15-24	
A9.6	Amenity Center – Building Sections	04-15-24	
A9.7	Amenity Center – Building Sections	04-15-24	
A9.8	Amenity Center – Building Sections	04-15-24	
A9.9	Amenity Center – Building Sections	04-15-24	
A9.10	Amenity Center – Interior Elevations	04-15-24	
A9.11	Amenity Center – Interior Elevations	04-15-24	
A10.1	Door, Window & Finish Schedules	04-15-24	
A10.2	Fire Assembly Legend, Fire Assemblies	04-15-24	
A10.3	Fire Assembly Legend, Fire Assemblies	04-15-24	
A10.4	Fire Assembly Legend, Fire Assemblies	04-15-24	
A10.5	Fire Assembly Legend, Fire Assemblies	04-15-24	
A10.6	Fire Assembly Legend, Fire Assemblies	04-15-24	
A10.7	Penetration Fire Assemblies	04-15-24	
A10.8	Penetration Fire Assemblies	04-15-24	
A11.1	Fair Housing & TAS (Texas Accessibility Standards)	04-15-24	
A11.2	TAS Texas Accessibility Standards	04-15-24	
A11.3	TAS Texas Accessibility Standards	04-15-24	
A11.4	TAS Texas Accessibility Standards	04-15-24	

Drawing #	Drawing Title	Issue Date	Revision Date
CIVIL DRAWINGS			
C0.1	Topographic survey	04-19-2024	
C0.2	Plat	04-19-2024	
C1.1	General Notes	04-19-2024	
C1.2	Overall Site Plan	04-19-2024	
C1.3	Demolition Plan	04-19-2024	
C2.1	Storm Water Pollution Prevention and Storm Water Quality Plan	04-19-2024	
C2.2	Storm Water Pollution Prevention Plan Details	04-19-2024	
C2.3	Storm Water Quality Feature Detail	04-19-2024	
C3.1	Dimension Control Plan	04-19-2024	
C4.1	Grading Plan	04-19-2024	
C5.1	Utility Plan	04-19-2024	
C6.1	Drainage Area Map	04-19-2024	
C6.2	Drainage and Detention Calculations	04-19-2024	
C7.1	Underground Detention Details (Partial)	04-19-2024	
C7.2	Underground Detention Details (Partial)	04-19-2024	
C8.1	Paving Details (Partial)	04-19-2024	
C8.2	Paving Details (Partial)	04-19-2024	
C9.1	Water Details	04-19-2024	
C10.1	Storm Sewer & Sanitary Sewer Details	04-19-2024	

Drawing#	Drawing Title	Issue Date	Revision Date
STRUCTURAL DRAWINGS			
S0-10	General Notes & Specifications	04-19-2024	
S0-20	General Notes & Specifications	04-19-2024	
S0-30	General Notes & Specifications	04-19-2024	
S0-40	General Notes & Specifications	04-19-2024	
S1-10	Foundation Plan	04-19-2024	
S1-20	Second Floor Podium Forming Plan	04-19-2024	
S1-21	Second Floor Podium PT Layout Plan	04-19-2024	
S1-22	Second Floor Podium Reinf Plan	04-19-2024	
S2-10	Second Floor Framing Plan	04-19-2024	
S2-20	3rd Floor Framing Plan	04-19-2024	
S2-30	4th Floor Framing Plan	04-19-2024	
S2-40	5th Floor Framing Plan	04-19-2024	
S2-50	Roof Framing Plan	04-19-2024	
S3-10	1 st Floor Bracing Plan	04-19-2024	
S3-20	2 nd Floor Bracing Plan	04-19-2024	
S3-30	3 rd Floor Bracing Plan	04-19-2024	
S3-40	4 th Floor Bracing Plan	04-19-2024	
S3-50	5 th Floor Bracing Plan	04-19-2024	
SD-00	Foundation Details	04-19-2024	

SD-01	Foundation Details	04-19-2024	
SD-02	Concrete Column & Schedules	04-19-2024	
SD-10	Elevated PT Slab Details	04-19-2024	
SD-11	Elevated PT Slab Details	04-19-2024	
SD-12	Elevated PT Slab Details	04-19-2024	
SD-13	Elevated PT Slab Details	04-19-2024	
SD-20	Floor Framing Details	04-19-2024	
SD-21	Floor Framing Details	04-19-2024	
SD-30	Roof Framing Details	04-19-2024	
SD-31	Roof Framing Details	04-19-2024	
SD-40	Shearwall Details	04-19-2024	
SD-41	Shearwall Details	04-19-2024	
SD-50	Structural Site Details	04-19-2024	

Drawing #	Drawing Title	Issue Date	Revision Date
MECHANICAL DRAWINGS			
M001	MEP Notes	04-15-2024	
M002	Commissioning Statement	04-15-2024	
M003	Energy Compliance	04-15-2024	
M100	Mechanical Site Plan	04-15-2024	
M200.1	Mechanical Unit Plans: Notes	04-15-2024	
M200.2	Mechanical Unit Plans: Notes	04-15-2024	
M200.3	Mechanical Unit Plans: Notes	04-15-2024	
M201	Mechanical Unit Plans: Unit A1, A2, A3 HC,A4 &A5	04-15-2024	
M202	Mechanical Unit Plans: Unit B1a, B1b, B1c, B1d, B1e, B1f, & B1g	04-15-2024	
M203	Mechanical Unit Plans: Unit B2a, B2b, B3a HC, B3b, & B4	04-15-2024	
M204	Mechanical Unit Plans: Unit C1a, C1b, C2-HC	04-15-2024	
M-300.1	Mechanical Clubhouse: Notes	04-15-2024	
M-301	Mechanical Club: Amenity Center 1 st Floor Plan, Maintenance, & Pool Equipment Floor Plan	04-15-2024	
M-302	Mechanical Club: Amenity Center 2 nd & 3 rd Floor Plans	04-15-2024	
M-400	Mechanical Building Plans: Notes	04-15-2024	
M-401	Mechanical Building Plans: 1 st Floor Plan	04-15-2024	
M-402	Mechanical Building Plans: 2 nd Floor Plan	04-15-2024	
M-403	Mechanical Building Plans: 3 rd Floor Plan	04-15-2024	
M-404	Mechanical Building Plans: 4 th Floor Plan	04-15-2024	
M-405	Mechanical Building Plans: 5 th Floor Plan	04-15-2024	
M-406	Mechanical Building Plans: Roof Plan	04-15-2024	
		04-15-2024	
E-01	MEP Notes	04-15-2024	
E-02	Commissioning Statement	04-15-2024	
E-03	Energy Compliance	04-15-2024	
E-1.0	Site Plans: Electrical Notes	04-15-2024	
E-1.1	Site Plans: Electrical	04-15-2024	
E-2.0	Electrical Unit Plans: Notes	04-15-2024	
E-2.1	Electrical Unit Plans: Unit A1, A2, A3 HC, A4 & A5,	04-15-2024	
E-2.2	Electrical Unit Plans: Unit B1a, B1b, B1c, B1d, B1e, B1f, & B1g	04-15-2024	
E-2.3	Electrical Unit Plans: B2a, B2b, B3a HC, B2b, & B4a	04-15-2024	
E-2.4	Electrical Unit Plans: Unit C1a, C1b, C2-HC	04-15-2024	
E-3.0	Electric Club: Notes	04-15-2024	

E-3.1.1	Electrical Club: Amenity Center 1 st Floor Plan, Maintenance & Pool Equipment Floor Plan-Lighting	04-15-2024	
E-3.1.2	Electrical Club: Amenity Center 1 st Floor Plan, Maintenance & Pool Equipment Floor Plan-Power	04-15-2024	
E-3.2.1	Electrical Club: Amenity Center 2 nd & 3 rd Floor Plans- Lighting	04-15-2024	
E-3.2.2	Electrical Club: Amenity Center 2 nd & 3 rd Floor Plans- Power	04-15-2024	
E-4.0	Electrical Building Plans: Notes	04-15-2024	
E-4.1	Electrical Building Plans: 1 st Floor Plan	04-15-2024	
E-4.2	Electrical Building Plans: 2 nd Floor Plan	04-15-2024	
E-4.3	Electrical Building Plans: 3 rd Floor Plan	04-15-2024	
E-4.4	Electrical Building Plans: 4 th Floor Plan	04-15-2024	
E-4.5	Electrical Building Plans: 5 th Floor Plan	04-15-2024	
E-4.6	Electrical Building Plans: Roof Plan	04-15-2024	
E-5.0	Electrical Calculations	04-15-2024	
E-5.1	Electrical Calculations	04-15-2024	
E-5.2	Electrical Calculations	04-15-2024	
E-5.3	Electrical Calculations	04-15-2024	
P-01	MEP Notes	04-15-2024	
P-02	Commissioning Statement	04-15-2024	
P-03	Energy Compliance	04-15-2024	
P-1.0	Plumbing Site Plan	04-15-2024	
P-2.0	Plumbing Unit Plans: Notes	04-15-2024	
P-2.1	Plumbing Unit Plans: Unit A1, A2, A3 HC, A4 & A5	04-15-2024	
P-2.2	Plumbing Unit Plans: Unit B1a, B1b, B1c, B1d, B1e, B1f, & B1g	04-15-2024	
P-2.3	Plumbing Unit Plans: B2a, B2b, B3a HC, B2b, & B4a	04-15-2024	
P-2.4	Plumbing Unit Plans: Unit C1a, C1b, C2-HC	04-15-2024	
P-3.0	Plumbing Club: Notes	04-15-2024	
P-3.1	Plumbing Club: Amenity Center 1 st Floor Plan, Maintenance & Pool Equipment Floor Plan	04-15-2024	
P-3.2	Plumbing Club: Amenity Center 2 nd & 3 rd Floor Plans	04-15-2024	
P-4.0	Plumbing I Building Plans: Notes	04-15-2024	
P-4.1	Plumbing Building Plans: 1 st Floor Plan	04-15-2024	
P-4.2	Plumbing Building Plans: 2 nd Floor Plan	04-15-2024	
P-4.3	Plumbing Building Plans: 3 rd Floor Plan	04-15-2024	
P-4.4	Plumbing Building Plans: 4 th Floor Plan	04-15-2024	
P-4.5	Plumbing Building Plans: 5 th Floor Plan	04-15-2024	
P-5.0	Plumbing Risers – Sanitary Sewer	04-15-2024	
P-5.1	Plumbing Risers – Sanitary Sewer	04-15-2024	
P-5.2	Plumbing Risers – Sanitary Sewer	04-15-2024	
P-5.3	Plumbing Risers – Sanitary Sewer	04-15-2024	
P-5.4	Plumbing Risers – Sanitary Sewer	04-15-2024	
P-5.5	Plumbing Risers – Domestic Water	04-15-2024	

EXHIBIT B

TO SUBCONTRACT

DATED _____, 2024

BY AND BETWEEN

KOGLER CONSTRUCTION OF TEXAS, LLC

AND

For: _____

AT LOST OAKS

SPECIAL CONDITIONS AND SCOPE OF WORK

I. These Special Conditions and Scope of Work are in addition to the requirements of the General Conditions of this Subcontract and do not limit in any manner nor waive any provision of the General Conditions.

II. **SPECIAL CONDITIONS:**

A. Subcontractor shall keep its work area clean at all times and shall place all trash, scrap, and debris generated from its Work in locations designated by the Project Superintendent. Subcontractor shall be obligated to dispose of any material so piled, which cannot be disposed of by Contractor in Contractor's ordinary and customary manner. Upon completion of the Work, Subcontractor shall remove all of its plans, tools, materials and other articles from the Project and any units therein and shall remove from the site all hazardous materials, temporary structures, debris and waste incident to Subcontractor's operation and clean all surfaces, fixtures, equipment, etc. Any such cleanup shall be accomplished in adherence with applicable Hazardous Substances Laws. Any hazardous waste required to be disposed of by Subcontractor will be the property of Subcontractor and Subcontractor hereby accepts liability for any and all costs associated with the handling, transportation and disposal of such waste, including, without limitation, costs associated with the remediation of any sites to which the waste was sent. If Subcontractor fails to clean up its work area, it shall receive written notification from the Project Superintendent and have 24 hours to cure. If Subcontractor fails to cure, Contractor may undertake the task of cleaning up Subcontractor's work area and may deduct the cost of this clean up from future payments to Subcontractor. The cost of labor for clean up by Contractor shall be at the rate of \$25.00 per hour per man. Other trades are not to have their work delayed or inhibited in any fashion by the Subcontractor's materials or debris. Any actions taken by the Contractor pursuant to this Paragraph II.A. shall not prejudice its right to take such other actions as are allowed under the Contract Documents. See, among other provisions, Articles 12 and 15 of the General Conditions for additional remedies of Contractor against Subcontractor.

B. Any change in Subcontractor's Scope of Work shall be authorized in advance signed by the Vice President of Construction of Contractor, Jim Farmer, or the President of Mark-Dana Corporation, David Mark Kogler. Absolutely no other person, including the Project Superintendent, has the authority to authorize, sign or approve the purchase or use of any additional materials or labor that are not part of this Subcontract. No payment shall be made for any change order unless it is issued pursuant to Article 8 of the General Conditions and signed by the Subcontractor and either the Vice President of Construction of Contractor or the President of Mark-Dana Corporation prior to the performance of the change. Further, in the event a change order has not been signed in advance by either the Vice President of Construction of Contractor or the President of Mark-Dana Corporation, Subcontractor hereby waives any rights under this Subcontract or applicable state law to (i) file any mechanics liens, or other liens, (ii) payment for any work performed, or (iii) take any other legal actions which may otherwise be available.

C. Contractor shall maintain a punch list board in the field office listing various items to be completed by subcontractors with-in forty-eight (48) hours of posting. Failure by Subcontractor to complete any items attributable to Subcontractor's Work shall be sufficient cause to withhold a draw or shall entitle Contractor to pursue its remedies against Subcontractor under, among other provisions, Article 15 of the general Conditions.

D. A representative of Subcontractor who is authorized to make field decisions shall attend weekly construction meetings on the Project. Failure of an authorized representative of Subcontractor to attend construction meetings shall be a breach of this Subcontract and shall entitle Contractor to pursue its remedies against Subcontractor under Article 15 of the General Conditions.

E. Subcontractor shall be responsible for all taxes and related expenses for the performance of this Subcontract.

F. Subcontractor will assign and deliver to Contractor, Owner, or Owner's designee all manufacturers', suppliers', and subcontractors' warranties on materials, equipment, fixtures, and labor incorporated into the Work and all Operating manuals and instruction booklets obtained by Subcontractor in connection with the Work. At Contractor's election (but without any obligation to do so), Subcontractor shall furnish, upon

completion of the Work and prior to final payment therefore, a letter or certificate from the manufacturer of all major equipment and materials utilized in the Work stating that the installation thereof has been completed in accordance with all manufacturer's recommendations and acknowledging all warranties and guaranties given on the equipment and materials.

III. SCOPE OF WORK. Subcontractor's Work shall include, but is not limited to, providing all labor, supervision, materials, equipment, taxes, and insurance necessary to complete the _____, for the apartment community of Lost Oaks located in Houston, Harris County, Texas consisting of three [____] apartment buildings, 78 units, an amenity center, and other ancillary structures or common areas such as dumpster enclosures, etc. in accordance with the plans and specifications listed in Exhibit A. All work to be installed to applicable specifications and standards of the City of Houston, Harris County, Texas Department of Housing and Community Affairs, and the State of Texas, as applicable, and all other applicable laws, rules and regulations, and shall include but not be limited to the following major items.

A. General Requirements

1. Subcontractor shall submit to Contractor its written safety policy.
2. Subcontractor shall work in a manner that is in strict compliance with Contractor's onsite policy, Subcontractor's Safety Policy, OSHA Standards and participate.
3. Subcontractor shall perform the work as directed by the Project Superintendent or Construction Manager.
4. Subcontractor is to respect the work and materials of other trades at all times and not to damage them in any way. Costs to repair damage to other trades shall be deducted from this Subcontract amount.
5. Subcontractor or a qualified representative shall attend and be on time for weekly Safety/Coordination meetings onsite. Subcontractor shall have a Foreman on the job site at all times and will report in with the Project Superintendent daily.
6. At the Contractor's sole determination, should Subcontractor have too few workers on the job, or fail to meet the Project schedule, Subcontractor shall add the number of workers requested by the Contractor within forty-eight hours of written notice or the Contractor will do so at the Subcontractor's expense.
7. Subcontractor shall be responsible for locating all existing underground utilities prior to digging. Contractor will not be liable for any cost incurred to repair existing utilities damaged by this Subcontractor.
8. Subcontractor shall submit five sets (originals only) of cut sheets on all fixtures for Owner's approval.
9. Subcontractor shall coordinate work with Project Superintendent and all other Subcontractors to insure proper location and sequencing of work.
10. Subcontractor shall be responsible to schedule all deliveries of materials to conform to Contractor's overall project schedule. Subcontractor will be responsible for unloading and inventory of materials. A proper inventory consists of not only quantity and quality verification, but also of conformance to plans, accurate fit, etc. Any disparities must be immediately acted upon, alerting Contractor and supplier, so as not to delay Contractor's schedule. All materials must have protective measures taken to assure damage is not incurred prior to installation or loss due to theft. Subcontractor will maintain onsite (the duration of the project) adequate equipment and personnel to handle and unload materials.
11. All work performed shall comply with current applicable local, state, county and federal codes.
12. Subcontract shall include all fees, licensing, and inspections. Payment to the Subcontractor shall be withheld if building inspections are failed and "green tags" not attained to meet production schedule. Final payment shall be withheld until all inspections and final approval by the City of Houston, Texas Department of Insurance, County of Harris, Texas Department of Housing and Community Affairs, and the State of Texas, as applicable.
13. This Subcontract includes as many move-ins as needed, as directed by Contractor, to complete scope of work.
14. This Subcontractor has examined the site, as well as the project plans and takes full responsibility to work within area and access constraints. Subcontractor will need to organize and obtain Contractor's permission for material stockpile areas.
15. This Subcontractor will take all measures necessary to protect materials when required. If material is damaged due to actions directly attributable to this Subcontractor, Subcontractor will bare all associated costs to repair and/or replace damaged work.
16. Adjacent roadways must be kept clean from mud and debris at all times.

- 17. Subcontractor shall repair or replace any fault in said work and materials that may appear within one (1) year from final payment for work where specified in Contractor's agreement resulting from imperfect work done or faulty materials furnished by the Subcontractor, when certified by the Contractor as being due to one or both of these causes.
- 18. The Subcontractor agrees to furnish any waivers, warranties, guarantees, affidavits, or other documents required by the Contractor within ten days of notification. If such documents are not furnished within such period, the Contractor may withhold payments currently owed until such time as the documents are received.
- 19. Subcontractor shall protect all necessary construction staking. Re-staking as a result of Subcontractor's failure to protect staking shall be at Subcontractor's expense.
- 20. This Subcontractor is responsible to take field measurements prior to scheduling each units work onsite. Contractor will take no responsibility for materials previously cut or ordered prior to Subcontractor field measurements.
- 21. Contractor/Owner has the option of bringing utilities into service in phases to facilitate prompt building occupancy.
- 22. Samples, certifications, test results, and manufacturer's installation recommendations are to be furnished within two weeks of this subcontract date for Owner's approval. Manufacturer's recommendations and installation guidelines are to be included as an integral part of this subcontract.
- 23. Subcontractor shall coordinate all penetrations through other's work.
- 24. A pre-construction meeting will be held for the project prior to the initiation of work. This Subcontractor will review and approve all applicable plans and details prior to material manufacture and shipment release.
- 25. **TIME IS OF THE ESSENCE.** Contractor will provide a time line schedule as a condition of this Subcontract. The Production Schedule (Attachment "F") details the exact time by which this Subcontract Scope of Work is to be completed. Subcontractor agrees to provide whatever manpower necessary to maintain this schedule regardless of weather delays, as the potential for lost time due to weather has been incorporated into the six (6) days per week work schedule. Subcontractor shall review and conform to the Production Schedule and all of its components, including activity duration, activity start and finish dates, and activity sequencing. The Production Schedule is provided as a minimum goal and an outline for production sequence and schedule. Contractor reserves the right and shall from time to time and at Contractor's sole determination "amend" this Production Schedule and its components as construction progresses. Contractor shall direct the scheduling and sequencing of all work, and the Production Schedule may be changed accordingly, including accelerating or delaying activity start dates or finish dates, activity duration, and/or activity sequencing. Production Schedule changes may be either written or verbal from either the Project Superintendent or the Construction Manager. Changes shall be communicated to the Subcontractor's Foreman, usually during the weekly production/safety meetings. Subcontractor shall comply with these changes.

B. Execution

Subcontractor will provide all materials, labor, licenses, permits, insurance, supervision, and all other items required to complete _____ for Lost Oaks in accordance with this Agreement and the other Contract Documents, including without limitation, the plans and specifications and the following:

Scope of work for _____, includes, without limitation, the following:

Furnish labor, equipment and material to install the following as required to complete the project per plans and specifications to _____.

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Subcontractor is required to comply with punch list items brought up in final walk downs of scope of work.

Subcontractor is required to pass all inspections required per scope of work.

Subcontractor is required to provide proper equipment to unload and handle material when on site.

Subcontractor will be responsible for correct take-off of material. It will be the subcontractor's responsibility to verify all items included in this contract are installed per plans.

All plans have been made available to subcontractor. All plans referenced in **Exhibit A** of this contract have been provided. It is the Subcontractor's responsibility to review all plans provided and verify that all plans within their possession are the most current set of plans. It is the Subcontractor's responsibility to complete or ensure completion of all of the scope of work referenced in this contract.

I have read and understand the Scope of Work provided and agree to complete all work as defined in this Subcontract.

Signature

Date

IV. SAFETY. Subcontractor agrees to pay all fees issued by the Contractor for the Subcontractor's failure to maintain his work area and work production in a manner as to not be in violation of OSHA rules and regulations. Subcontractor will attend contractor's OSHA Safety Certification meeting when directed or pay a fine of \$150.00 for failure to attend, unless Subcontractor's responsible site person possesses current OSHA Safety Certification. Notice of other violations will be conducted as follows:

- 1st Notice: Warning and No Fine per violation
- 2nd Notice: \$100.00 Fine per violation
- 3rd Notice: Could result in termination of contract or removal of offending workers from job permanently.

V. PAYMENT SCHEDULE. Total payment for all of Subcontractor's Work to be performed under this Subcontract is contained in the attached payment schedule. The parties hereto agree that the payment schedule breakdown is a fair and true method for determining the value of Work performed for purpose of making progress payments to Subcontractor.

VI. SPECIFIC SUBMISSION DATE. Draw requests from Subcontractor shall be submitted no more frequently than monthly and must be actually received by the third Wednesday of each calendar month for payment by the by the third Wednesday of the following month or when Contractor is paid (whichever occurs later), for work completed to the satisfaction of Contractor, General Contractor or Owner during the month ending on such specified submission. The specified submission date for draw requests under this Subcontract may be modified from time to time by the Contractor, in its sole discretion.

VII. GENERAL JOB SAFETY RULES

1. Safety Precautions. Subcontractor and its sub-subcontractors shall take all reasonable safety precautions, shall comply with all safety measures initiated by Contractor, General Contractor or Owner and shall comply with all applicable laws, ordinances, rules, regulations, standards and orders with respect to the safety of persons or property, including without limitation all applicable laws, ordinances, rules, regulations and orders of the Occupational Safety and Health Act, 29 U.S.C. section 651 et seq. ("OSHA"); and any other applicable public authority (collectively, "Safety Rules"). Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for adequacy of and required use of all safety equipment and for full compliance with the Safety Rules. This responsibility of the Subcontractor includes the conduct and compliance by its employees, employees of its subcontractors and all suppliers of materials and equipment. Rules of safety include, without limitation:
 - a. The construction site is a hardhat area. Personal protective wear is also required and must be adequate for safe construction activities.
 - b. Persons exposed to operations subjecting the eyes and face to dust of flying particles shall use eye and/or face protection.
 - c. Electrical equipment and tools shall be grounded by multi-conductor cord with grounding conductor, and multi-conductor polarized plug-in receptacles.
 - d. Compressed gas cylinders shall be in a secured upright position at all times.
 - e. Housekeeping must be conducted by each trade on a daily basis.
 - f. Employees are responsible for becoming familiar with the location of the first aid station and emergency telephone number and for reporting all injures as soon as possible to their supervisor.
 - g. Fire extinguisher should be adequately marked, located and accessible.
 - h. Adequate shoring or sloping-back shall be maintained for all trenching or excavating activities.
 - i. All heavy (motor) equipment shall be inspected prior to use, and seat belts must be worn.

- j. Fall protection (rails, lanyards, etc.) shall be used as required.
 - k. This project has been designated a "Drug Free" work place. This project will be regulated according to the guidelines of the approved drug and alcohol policy.
 - l. Everyone is responsible for safety awareness, jobsite cleanliness, and to practice accident prevention.
2. Compliance with Environmental, Health and Safety Standards. Subcontractor shall not, in connection with the Contract Documents or the Work, use, possess, handle, transport, emit, release or discharge any chemical, material or substance except as permitted by, and in strict compliance with, all applicable environmental laws, regulations, and rules ("Hazardous Substance Laws").
 3. Operation of Vehicles. Subcontractor agrees that the operation of vehicles near, in, or about the Project by Subcontractor or the employees or agents of Subcontractor (including delivery vehicles operated by suppliers of Subcontractor) shall be as follows: (a) using only the designated entries to enter the Project, (b) using only established roadways and temporary roadways as authorized by Contractor, (c) no crossing of curbs or sidewalks, (d) observing a speed limit of no more than 5 miles per hour within the entire Project, and (e) no standing, waiting, or parking on or next to the public roads adjacent to the Project. Subcontractor agrees to schedule deliveries, pick-ups, and the arrival and departure of vehicles so as not to interfere or conflict with the neighboring school's student drop-off and pick-up. In the event the vehicles of Subcontractor, Subcontractor's employees or agents, or Subcontractor's suppliers cause damage to curbs, sidewalks, landscaping or concrete surfaces within the Project or adjacent to the Project or cause any other damage to the Project, Contractor may effect the repair of such damage and Subcontractor shall be obligated to immediately reimburse Contractor for all actual expenses incurred by Contractor thereby.
 4. Parking of Vehicles. It shall be the responsibility of Subcontractor (a) to control the traffic generated by its employees on the Project under the direction of Contractor's Project Superintendent or Construction Manager; (b) to enforce restrictions against parking on roads within and adjacent to the Project; and (c) to provide necessary parking areas for all workers in suitable locations as approved by Contractor. In the event Contractor has to tow vehicles owned by Subcontractor, its agents or employees to maintain ingress and egress to the Project, all such towing charges will be charged to Subcontractor. Neither Subcontractor nor Subcontractor's agents, employees or material suppliers shall be permitted to park vehicles in driveways, garages or carports of the housing units (whether completed or being constructed) within the Project nor shall such vehicles be parked upon sidewalks located within the Project nor shall such vehicles be parked upon public streets or roads. In the event Subcontractor, its agents or employees or its material suppliers do park vehicles in such restricted areas, Contractor shall have the right to fine or charge Subcontractor \$100.00 per vehicle per day and Contractor shall have the right to be reimbursed for any damages resulting to such driveways, garages, carports or sidewalks in cash or in the form of back-charges.
 5. Unacceptable Behavior. Unruly behavior, the drinking of alcoholic beverages, the use of illegal drugs, smoking, guns, and/or the playing of music by Subcontractor or its employees or agents shall not be permitted within the Project. In the event that Subcontractor or Subcontractor's agents or employees engage in such activities, Contractor shall have the right to fine or charge Subcontractor \$100.00 per occurrence. Contractor shall also have the right to request that the offending party leave the Project immediately and Subcontractor agrees to abide by such request. Contractor may require Subcontractor to remove from the Project such employees as Contractor deems incompetent, careless, insubordinate or otherwise objectionable, or whose continued employment in connection with the Work is deemed by Contractor to be contrary to Contractor's best interests or the public interest. Subcontractor shall not permit any unauthorized personnel including, without limitation, any children or other family members to be on the Project site.
 6. Signs and Advertising. Signs or advertisements shall not be erected or displayed without prior approval of Contractor.

I have read and agree to the above stated safety rules as an employee, subcontractor, or sub-tiercontractor.

Signature

Date

VIII. DRUG ABUSE POLICY

1. Statement of Purpose and Scope. It is recognized that alcohol and drug abuse in the work place have become a major concern. We believe that by reducing drug and alcohol abuse, we will improve the safety, health, and productivity of workers, prevent accidents and comply with the Workers Compensation Act.

The use, possession, sale, transfer, purchase, or being under the influence of drugs by workers at any time on company premises or while on company business is prohibited. The illegal use of any drug is prohibited. Workers must not report for duty or be on company property with any drug.

2. Definition of Drug. For the purpose of this policy, the term "drug" whenever it appears in this policy statement shall include alcoholic

SUBCONTRACT NO. _____-LO;

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beverages, abusable glue, aerosol paint, or a controlled substance.

3. Consequences of Violating the Drug Abuse Policy. Violation of this drug abuse policy will result in one of the following forms of corrective action: immediate *discharge, suspension, probation, oral warning, or written warning.* In arriving at a decision for proper action, the seriousness of the infraction, the past record of the workers, and the circumstances surrounding the matter, will all be taken into consideration.

4. Treatment Programs. While we do not sponsor or endorse any specific drug treatment program, such programs are available through public and private health care facilities in our area. Affected workers are encouraged to seek assistance for themselves and their dependents.

5. Education and Training Programs. We do not offer, nor require participation in drug and alcohol abuse education and training programs, however, various public and private facilities in our area offer such programs and affected workers are encouraged to seek assistance.

6. Drug Testing. Subject to applicable law, we reserve the right to require drug testing as a condition for employment, or in the case of a worker's involvement in an accident.

I have read and understand this Drug Abuse Policy and agree to abide by its terms and conditions.

Signature

Date

EXHIBIT C

TO SUBCONTRACT

DATED _____, 2024

BY AND BETWEEN

KOOGLER CONSTRUCTION OF TEXAS, LLC

AND

For: _____

AT LOST OAKS

LIABILITY INSURANCE SPECIFICATIONS

1. Subcontractor's Liability Insurance

In addition to any other insurance selected and obtained by Subcontractor, Subcontractor shall obtain the insurance set out in this Exhibit C from a company or companies selected by Subcontractor and reasonably acceptable to KOOGLER CONSTRUCTION OF TEXAS, LLC with policy limits equal to or greater than those set forth below:

a. Worker's Compensation to cover full liability under the Worker's Compensation Laws of the State of Texas at or above the statutory limits required by the laws of the State of Texas.

b. Employer's Liability with limits as follows:

- \$1,000,000 Bodily Injury by Accident
- \$1,000,000 Bodily Injury by Disease - Each Accident
- \$1,000,000 Bodily Injury by Disease - Policy Limit

c. Comprehensive General liability or Commercial General Liability Insurance policy must be underwritten through a company with an A. M. Best rating of A - V or better. Comprehensive General liability or Commercial General Liability Insurance, on an "occurrence basis", including insurance for operations, independent contractors, products, completed operations, and contractual liability specifically designating Section 2.1 of this Subcontract as an insured contract. Such Comprehensive or Commercial General Liability Insurance must be endorsed with a Broad Form Property Damage Endorsement (Including Completed Operations), or its equivalent, and afford coverage for explosion, collapse and underground hazards. The insurance required by this Subparagraph (c) shall be in limits not less than the following:

- \$2,000,000 Each Occurrence
- \$2,000,000 Products and Completed Operations Aggregate
- \$3,000,000 General Aggregate/per project

d. Comprehensive Automobile Liability Insurance covering all owned, nonowned and hired automobiles used in connection with the Work with the following minimum limits of liability:

- \$1,000,000 Combined Single Limit Per Occurrence

2. The insurance required by this Exhibit C shall be maintained without interruption from the date of commencement of the Work until the date of final payment, with the exception of completed operations coverage, which shall be maintained for two years after final completion.

3. All insurance policies provided pursuant to this Exhibit C shall be primary and non-contributing with, and not in excess of, any other insurance available to Contractor.

4. To the fullest extent of the law, each of the insurance policies provided shall be endorsed to name Contractor, KOOGLER CONSTRUCTION OF TEXAS, LLC; all of its affiliated companies; General Contractor, Harris County Housing Finance Corporation, Developer, Mark-Dana Corporation; Owner, Lost Oaks, LP, and General Partner, Lost Oaks Advisors, LLC; each as additional insureds, along with a waiver of subrogation.

5. Subcontractor shall provide to Contractor an ACORD 25 Form of Certificate of Insurance evidencing the insurance requirements of this Agreement.

EXHIBIT D

JOINT CHECK AGREEMENT

This Joint Check Agreement is entered into _____, 2024 by and between **KOOGLER CONSTRUCTION OF TEXAS, LLC** (hereinafter "Contractor") and _____ (hereinafter "Subcontractor").

WHEREAS, Subcontractor has entered into a subcontract with Contractor on _____, 2024 to provide labor and/or materials on a project known as Lost Oaks (the "Subcontract"); and

WHEREAS, Subcontractor intends to enter (or has entered) into subcontracts with subcontractors to perform certain of the services for which Subcontractor has obligated itself to provide to Contractor under the Subcontract; and

WHEREAS, Subcontractor and Contractor desire to enter into this Joint Check Agreement for the purpose of providing payment to Subcontractor's subcontractors and suppliers.

NOW, THEREFORE, the undersigned parties have agreed, and do hereby agree, as follows:

1. Upon the request of Contractor, Subcontractor agrees that together with each draw request under the Subcontract, Subcontractor will submit to Contractor an Affidavit of Bills Paid and Outstanding setting out the names and amounts owed to its subcontractors and suppliers, and based upon each such Affidavit submitted together with such other information as Contractor may acquire (but without implying that Contractor has any duty to make affirmative inquiry), Contractor shall make reasonable efforts to issue a check, made payable to the order of Subcontractor and each such subcontractor and supplier jointly either in (a) the amount set forth in such Affidavit, or (B) the amount which Contractor, in its sole discretion, determines to be the reasonable value of the materials or labor supplied to the Project by said subcontractor or supplier.

2. Subcontractor agrees that payment by Contractor under the Subcontract, in the form of the joint checks as described in the preceding paragraph, is an acceptable form of payment under the terms of the Subcontract.

3. Subcontractor agrees to inform each of its subcontractors and suppliers of the existence of this Joint Check Agreement and shall obtain each such subcontractor's and supplier's approval hereof. Subcontractor hereby authorizes and directs each of its subcontractors and suppliers to communicate and provide all information requested by Contractor relating to Subcontractors accounts with its subcontractors and suppliers. Upon issuance of the joint check by Contractor, Subcontractor hereby agrees to duly endorse said joint check for the benefit of each subcontractor or supplier.

4. Nothing in this Joint Check Agreement shall obligate Contractor to issue a joint check to a subcontractor or supplier of Subcontractor and the issuance of said joint check should be at the sole option of Contractor. Contractor reserves the right to require any subcontractor or supplier of Subcontractor to provide a Release of Lien and Claims to Contractor prior to the issuance of a joint check, if any, under this Joint Check Agreement together with any other instruments, which Contractor may require under the terms of the Subcontract.

5. The parties to this Joint Check Agreement acknowledge and recognize that this Joint Check Agreement is entered into only for the convenience of the parties, and is not a guarantee, contract or promise by Contractor of payment to Subcontractor or to the subcontractors or suppliers. Further, this Joint Check Agreement shall not alter, expand or add to any rights or remedies available to Subcontractor under the Subcontract or otherwise, or to any of its subcontractors or suppliers. This Agreement shall affect only the form in which payments may be issued by Contractor under the Subcontract and the parties specifically agree and recognize that this Joint Check Agreement shall not be construed as a waiver of any of Contractor's rights against Subcontractor, its subcontractors, suppliers, or any other entity or persons.

6. In the event of any dispute between Subcontractor and its subcontractors or suppliers Contractor shall, without waiving any other rights have the option to terminate this Joint Check Agreement. This Joint Check Agreement constitutes the full agreement of the parties as to joint check arrangements, into which all previous agreements concerning joint check arrangements are merged and incorporated.

7. Nothing in this Joint Check Agreement shall create any relationship, whether contractual or legal, between any subcontractor and supplier of Subcontractor and Contractor. Further, it is the intention of Subcontractor and Contractor that such subcontractors and suppliers shall obtain no beneficial rights under this Joint Check Agreement by virtue of the issuance by Contractor of any Joint Check hereunder, nor shall such subcontractors and suppliers be entitled to assert any claims whatsoever against Contractor under the Joint Check Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Check Agreement on the date above-stated.

KOOGLER CONSTRUCTION OF TEXAS, LLC

By: _____
Its: _____

By: _____
Its: _____

SUBCONTRACT NO. _____-LO;

SUBCONTRACTOR:

EXHIBIT E

TO SUBCONTRACT

DATED _____, 2024 BY AND BETWEEN

KOGLER CONSTRUCTION OF TEXAS, LLC

and

For: _____

AT LOST OAKS

SUBCONTRACTOR AND SUPPLIER INFORMATION

FULL NAME: _____

ADDRESS: _____

TELEPHONE: _____ MOBILE: _____ FAX: _____

EMAIL: _____

CONTACT: _____

ESTIMATED PURCHASES/WORK: _____

FULL NAME: _____

ADDRESS: _____

TELEPHONE: _____ MOBILE: _____ FAX: _____

EMAIL: _____

CONTACT: _____

ESTIMATED PURCHASES/WORK: _____

FULL NAME: _____

ADDRESS: _____

TELEPHONE: _____ MOBILE: _____ FAX: _____

EMAIL: _____

CONTACT: _____

ESTIMATED PURCHASES/WORK: _____

SUBCONTRACTOR: IF YOU HAVE MORE SUBS/SUPPLIERS, PLEASE PHOTOCOPY THIS PAGE IN ORDER TO LIST ALL ADDITIONAL PARTIES.

EXHIBIT F**FEDERAL REQUIREMENTS FOR CONTRACTOR**

Subcontractor (“Obligated Party”) acknowledges the contract to which this Exhibit F is attached (the “Contract”), is funded in whole or in part through a subaward under that certain Subrecipient Agreement by and between the Harris County Housing Finance Corporation and Harris County, Texas (the “County”), which is funded with Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) established and governed by sections 602(c) and 603(c) of the Social Security Act (the “Act”), regulations adopted by U.S. Department of the Treasury (the “Treasury”) pursuant to sections 602(f) and 603(f) of the Act (31 CFR Part 35), and guidance issued by Treasury regarding the foregoing (collectively, the “SLFRF Requirements”), which includes the requirements summarized in this Exhibit.

Governmentwide Requirements for Drug-Free Workplace (31 CFR Part 20). Obligated Party will encourage its subcontractors to comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, title v, subtitle D; 41 U.S.C. 701 *et seq.*) and implementing regulations at 2 CFR part 182, and maintain a drug-free work environment.

New Restrictions On Lobbying (31 CFR Part 21). Obligated Party will encourage its subcontractors to comply, as applicable, with the New Restrictions on Lobbying (31 CFR Part 21), including completion of the Anti-Lobbying Certificate if the Contract amount is over \$100,000.

Increasing Seat Belt Use in the United States (Executive Order 13043 (Apr. 18, 1997)). Obligated Party is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.

Reducing Text Messaging While Driving (Executive Order 13513 (Oct. 6, 2009)). Obligated Party is encouraged to adopt and will encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.

Participation by Minority & Women-Owned Business Enterprises (2 CFR 200.321). Obligated Party must comply with the Minority and Women-owned Business Enterprise participation requirements under 2 CFR 200.321. Obligated Party must take all affirmative steps necessary to contract or subcontract with Minority and Women- owned Business Enterprises (MWBES) to assure that MWBEs are used when possible. These affirmative steps shall include:

- 1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration.

The State of Texas maintains a Historically Underutilized Business Program, which identifies any business at least fifty-one percent (51%) owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity’s affairs as a Historically Underutilized Business (also considered MWBEs). Parties who wish to check the status of a firm may visit <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Procurement of Recovered Materials (2 CFR 200.323). Obligated Party must comply, to the extent applicable, with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Minimum Bonding Requirements (2 CFR 200.326). If the Contract involves construction or facility improvements in excess of the simplified acquisition threshold, as that term is defined in 2 CFR Part 200, subpart A, Obligated Party shall maintain or cause to be maintained a performance bond for 100 percent (100%) of the contract price to secure fulfillment of all the Contract requirements.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216). Obligated Party shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under the Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(2) Telecommunications or video surveillance services provided by such entities or using such equipment.

(3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Non-Collusion (The Sherman Act). Obligated Party must comply with the requirements of The Sherman Act, which prohibit collusion. Collusion occurs when two persons or representatives of an entity or organization make an agreement to deceive or mislead another. Such agreements are usually secretive and involve fraud or gaining an unfair advantage over a third party, competitors, consumers, or others with whom they are negotiating. The collusion, therefore, makes the bargaining process inherently unfair. Collusion can involve promises of future benefits, price or wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

The Sherman Act prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Collusion, bid rigging, or other anticompetitive activity is considered a felony.

Obligated Party shall not in any way, directly or indirectly:

- a. Collude, conspire, or agree with any other person, firm, corporation, bidder, or potential bidder to the amount of a bid or the terms or conditions of a bid.
- b. Pay or agree to pay any other person, firm, corporation, bidder, or potential bidder any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in its bid or the bid of any other bidder.
- c. Assemble in coordination with any other organization in an attempt to fix the price of the work.

Obligated Party is expected to report any suspected fraud, collusion, or impropriety from the inception of solicitation through the end of the contract term.

2 CFR PART 200 Appendix II Requirements

Remedies (2 CFR Part 200, Appendix II(A)). The administrative, contractual, or legal remedies in the Contract apply when the Obligated Party defaults, violates, or breaches the Contract.

Termination For Cause/Convenience (2 CFR Part 200, Appendix II(B)). Federal law requires the Contract address termination for cause and convenience, and the parties shall comply with such provisions.

Equal Employment Opportunity (41 CFR Part 60; 2 CFR 200, Appendix II (C)). To the extent the Contract meets the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3, the Contract must contain and Obligated Party must comply with the following provisions:

“During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such contractor; and refer the case to the Department of Justice for appropriate legal proceedings."

Davis-Bacon Act (2 CFR Part 200, Appendix II (D)). Under the SLFRF program, the requirements of the Davis-Bacon Act (40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708) and applicable regulations at 29 CFR Part 5 do not apply to projects solely funded with SLFRF funds, and such requirements are not expected to apply to the Contract.

Copeland "Anti-Kickback" Act (2 CFR Part 200, Appendix II (D)). Obligated Party shall comply with the applicable requirements of the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) and the requirements of 29 CFR part 3, which prohibits Obligated Party from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Obligated Party shall notify County of any suspected or reported violations of this provision.

Contract Work Hours and Safety Standards Act (2 CFR Part 200, Appendix II (E)). If at any time during the Contract term, the contract amount exceeds \$100,000 and the Contract involves the employment of mechanics or laborers, Obligated Party must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including particularly 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Obligated Party must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to the Contract and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

Rights to Inventions Made Under a Contract or Agreement (2 CFR Part 200, Appendix II(F)). Obligated Party agrees that if the Federal award funding all or part of the Contract meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the Contract concerns the substitution of parties, assignment, or performance of experimental, developmental, or research work under that "funding agreement," the parties must comply with the applicable requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act and the Federal Water Pollution Control Act (2 CFR Part 200, Appendix II (G)). Obligated Party must comply with all applicable provisions of the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Obligated Party agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act, as amended.

Obligated Party agrees to report each violation of the Clean Air Act or Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.

REQUIRED CONTRACT PROVISIONS

Obligated Party shall comply with all of the following contract provisions. Obligated Party shall insert in any subcontracts the provisions set forth in this exhibit as indicated, and such other provisions as the County may require, and a clause requiring its subcontractors to include these provisions in any lower tier contracts or subcontracts. Failure to comply by Obligated Party or by any subcontractor may be grounds for termination of the Contract and for debarment as a contractor or subcontractor, as applicable.

For purposes of these required contract provisions, "Contract" shall include any contract or subcontract between Obligated Party and a contractor or subcontractor for the acquisition of property or services paid for, directly or indirectly, in whole or in part, with SLFRF funds.

NO OBLIGATION OF THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from this Contract.

DISCRIMINATION

Contractor must comply with the statutes and regulations prohibiting excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, religion, national origin, sex, disability, or age, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) (31 CFR Part 22); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (24 CFR Parts 8-9); The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.) (31 CFR Part 23).

DISABILITIES

Contractor must comply with all applicable federal, state, and local laws and regulations that prohibit recipients of federal funding from discriminating against individuals with disabilities. Applicable laws and regulations may include, but are not limited to, the following: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (24 CFR Parts 8-9); The Americans

with Disabilities Act of 1990 (42 U.S.C. Sections 12101 et seq.); the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); the Uniform Federal Accessibility Standards in Title 24, U.S.C. and associated regulations (24 CFR Part 40); the Architectural Barriers Rules; and the Texas Accessibility Standards.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS (49 CFR Part 24)

To the extent applicable, Contractor must comply with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ENVIRONMENTAL LAWS

Contractor must comply with all applicable environmental standards that may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.), and U.S. Environmental Protection Agency regulations pursuant to 40 CFR Part 50, as amended; (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

FAIR LABOR STANDARDS ACT

Contractor must comply the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) (29 CFR Parts 1, 3, 5, 6 and 7) as now or hereafter amended, which regulates wage, hour, and other employment practices that govern the use of funds provided and the employment of personnel under this Contract. Contractor will pay all its workers all monies earned by its workers including, but not limited to regular wages, any overtime compensation, or any additional payments pursuant to the Fair Labor Standards Act; the Texas Payday Law; the Equal Pay Act; Title VII of the Civil Rights Act of 1964; or any provisions of the Texas Labor Code, as amended.

WHISTLEBLOWER PROTECTION ACT

In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for contract or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency; A court or grand jury; or
- vi. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

2 CFR PART 200 REQUIRED CONTRACT PROVISIONS

MANDATORY DISCLOSURES (2 CFR 200.113)

Contractor must disclose, and require its subcontractors to disclose, in a timely manner, in writing to the Federal awarding agency or the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award funding all or part of this Contract. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339.

POTENTIAL CONFLICTS OF INTEREST (2 CFR 200.318(c))

Contractor must comply, and cause its subcontractors to comply, with conflicts-of-interest requirements imposed under this Contract in accordance with the standards set forth in 2 CFR 200.318(c). No employee, officer, or agent of Contractor may participate in the selection, award, or administration of this Contract or any other contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Conflicts of interest would also arise because of Contractor's relationship with a parent company, affiliate, or subsidiary organization and the Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

DOMESTIC PREFERENCE REQUIREMENTS (2 CFR 200.322)

As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Contract. For purposes of this paragraph:

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

COST PLUS CONTRACTING PROHIBITED (2 CFR 200.324(D))

The cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited by 2 CFR 200.324(d), including in subcontracts and third-party contracts.

RECORDS AND ACCESS (2 CFR 200.334-.338)

Contractor shall maintain records and financial documents sufficient to evidence compliance with the Act, Treasury's regulations and guidance, and this Exhibit, in accordance with 2 CFR 200.332(a)(5) and 200.334-.338.

Contractor shall prepare and submit financial, progress, monitoring, evaluation, personnel, property, and financial records and other reports as required by this Contract and the County (in the format acceptable to County) to assure proper accounting of all Federal project funds. Contractor shall furnish such information that, in the judgment of the County, may be relevant to questions of compliance with contractual conditions hereunder or granting agency directives, or with the effectiveness, legality, and goals of this Contract.

Contractor shall provide the Treasury, Inspector General, the Government Accountability Office, County, or any of their authorized representatives access to any documents, papers, or other records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions and to allow such parties to reproduce by any means whatsoever, to copy excerpts and transcriptions as reasonably needed, and to access construction, or work sites pertaining to the services/work being completed under this Contract.

Records shall be maintained by Contractor for a period of three (3) years after all federal funds have been expended or returned to Treasury, whichever is later; provided, however, if any litigation, claim, negotiation, audit, or other action or event has been started before the expiration of the required record retention period, records must be retained until completion of the action or event and resolution of all issues that arise from it.

Contractor acknowledges that all federal funds may not be expended until September 30, 2026 to meet the federal deadline of December 31, 2026.

DEBARMENT / SUSPENSION AND VOLUNTARY EXCLUSION (2 CFR Part 200, Appendix II (H); 2 CFR Part 180; 31 CFR Part 19)

Contractor, for itself and its principals, warrants it is eligible or otherwise not disqualified or prohibited from participation in federal or state assistance programs. Contractor must verify that all of its subcontractors performing work under this Contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further must notify the County in writing immediately if Contractor or its subcontractors are not in compliance with this paragraph during the term of this Contract. If it is later determined that Contractor did not comply with this paragraph, the County or the Federal Government may pursue any and all available remedies (which shall be cumulative and not exclusive), including, but not limited to, suspension and/or debarment of Contractor or its subcontractors.

BYRD ANTI-LOBBYING AGREEMENT (31 U.S.C. § 1352; 2 CFR 200, APPENDIX II(I))

Pursuant to the Byrd Anti-Lobbying Agreement (31 U.S.C. § 1352), if at any time during the Contract term the funding to such contract exceeds \$100,000.00, Contractor shall file with the County the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying" as laid out in a form available from County upon request.

Each tier of subcontractor certifies to the tier above that it will not and has not used federal appropriated funds to pay any person

SUBCONTRACT NO. _____-LO;

SUBCONTRACTOR:

or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any covered federal award. Contractor shall ensure each subcontractor requires such disclosures be forwarded from tier to tier up to the County.

8. ADDENDUMS

**[Addendums to this RFP may be incorporated at
discretion of the General Contractor]**