



West Palm Beach Housing Authority

3700 Georgia Avenue · West Palm Beach, FL 33405 · Phone (561) 655-8530 · Fax (561) 832-8962

September 2023

EXHIBIT E

FORM OF CONTRACT – SAMPLE (Do not Complete)

RE: Cottage Homes, West Palm Beach, FL
SUBCONTRACT AGREEMENT

Dear (Subcontractor),

Enclosed, please find two (2) original copies of the Subcontract Agreement for the above referenced project. Sign, initial every page and return both originals to the address below. An executed original will be sent back to you. The contract **MUST** be executed promptly. If there are any concerns, contact us at once.

The following requirements must be complied with prior to start of work:

1. Executed "Subcontract"
2. Approved "Schedule of Values".
3. All effectual construction plan pages have been initialed.
4. Current "Certificates of Insurance" complying with contract provisions.
5. Please make sure the West Palm Beach Housing Authority and Palm Beach County are listed as additional insureds.
6. Current copy of your "Business Tax Receipt".
7. Current copy of Florida Department of Business and Professional Regulation License (if applicable), or Certificate of Competency / trade License, as required, allowing you to work in Palm Beach County.
8. Current copy of the IRS form W-9.
9. FULL compliance with ALL submittal requirements.
10. Necessary permits have been received.

11. Receipt of a Notice To Proceed from the WPBHA.
12. E-Verify Affidavit
13. Payment and Performance Bond(s) listing West Palm Beach Housing Authority and Palm Beach County as co-obligees, if subcontract price is \$200,000 or over

Please be aware that Contractor will not process payments until Subcontractor complies with the above requirements. If you should have any questions or need assistance, please do not hesitate to contact us as soon as possible.

Sincerely,

Michael McManaman

Enclosure: subcontract agreement



West Palm Beach Housing Authority

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SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT ("Subcontract") is made this ___ day of _____, 2022 by and between West Palm Beach Housing Authority ("Contractor" and "Owner"), and _____ (the "Subcontractor"), whose Florida contractor's license number is _____, (and whose Florida license permits the contractor to perform _____)

PRELIMINARY STATEMENTS AND RECITALS

A. The Contractor/Owner entered into a Developer and Operator Agreement with Palm Beach County on January 12, 2021 to develop, construct, own and operate the project known as the Prosperity Village Cottage Homes Project, located at 3551 South Military Lane, and 4521 Clemons Street, West Palm Beach, FL 33407, Parcel Control Numbers: 00-42-44-24-07-002-0070 and 00-42-44-24-07-001-0010 ("Project"). For consideration, the project addresses have changed. Should we use those? The Project consists of 17 single-family homes and a community center for homeless transitional housing, located on 1.36 acres of land. Project to be developed to show case the small lot form of housing development.

B. In conjunction therewith, Contractor desires the Subcontractor to furnish labor, materials, supplies, tools, equipment and/or supervision as set forth in Exhibit "A" attached hereto (the "Work") for the Project.

C. The Subcontractor represents that it has personally inspected, or caused to be inspected, the Project including the land, buildings and improvements thereon, if any, and the conditions existing on or adjacent to the Project. The Subcontractor represents it has reviewed this Subcontract, including all exhibits hereto and construction documents referenced herein. It has reviewed all conditions affecting construction in location of the Project, the Project plans, specifications, Project Schedule, including any updates thereto, applicable codes and statutes and drawings, plans and revisions thereof, and the plan log and alternates, amendments and addenda to any of the foregoing (collectively, the "Subcontract Documents"). Subcontractor confirms it has examined the same with particular regard to the Work required under this Subcontract.

D. The Subcontractor represents that Subcontractor is satisfied as to the nature and location of the Work, the general and local conditions, particularly those bearing upon storage of materials, availability of labor, water, electricity, roads, weather conditions,

underground water or similar physical conditions. Subcontractor represents it is satisfied with the compaction and condition of the ground, the character of equipment and facilities needed during prosecution of the work, the possibility and probability of increases in the cost of materials and all other matters upon which information is reasonably obtainable and which in any way can affect the Work or cost under this Subcontract.

AGREEMENT

For and in consideration of the mutual covenants, conditions and promises herein contained by each of the parties hereto to be kept and performed, and intending to be legally bound hereby, it is agreed as follows:

1. Subcontractor's Obligation.

1.1 **Scope of Work.** The Contactor shall perform such services as required by the Owner to complete the work as defined in the Subcontract Documents as defined herein. The Subcontractor agrees to furnish all labor, materials, supplies, tools, transportation, equipment, and/or supervision and all other facilities and things necessary to complete the Work set forth in Exhibit "A" hereto. Subcontractor agrees to perform all of said Work in the best and most workmanlike, prompt and diligent manner and to furnish materials of the most suitable grade of their respective kind for the purpose intended, all in exact accordance with the terms, provisions and conditions of this Subcontract, the Subcontract Documents, all applicable building codes and requirements.

1.2 **Project Title:** The Project is Prosperity Village Cottage Homes

1.3 **Subcontract Documents:** The Subcontract Documents include the Project plans and revisions thereof, specifications, bid solicitation, project schedule, including any updates thereto, applicable codes and statutes and drawings, amendments and addenda to any of the foregoing, the bid documents and attachments, and written change orders authorized by Contractor/Owner, if any.

1.4 **Description of Subcontract Work.** The Subcontractor hereby agrees to furnish all material, necessary equipment, permits, delivery and labor to complete the Work. The Work is hereby further subject to the following:

(a) The Subcontractor shall furnish and be responsible for all shop and field measurements, lines, grades, dimensions, layouts, colors, qualities, quantities, tests, approvals, operating manuals, guarantees, cutting, removals, openings, channels, chases, flues, sleeves, inserts, dowels, hangers, patching, scaffolds, runways, protective paper, tarpaulins, polyethylene protection and clean-up that may be necessary to perform the Subcontract Work, *as applicable*.

(b) The Subcontractor shall be responsible for all dimensions pertaining to the fitting of the Subcontract Work with all surrounding contiguous and adjacent work. If performance and completion of any portion of the Subcontractor's work depends on the proper execution of the work of any other contractor or subcontractor, Subcontractor shall inspect and report in writing to the Contractor any defects in such other work that affect or hinder in any manner the proper execution of the Subcontractor's work. Such written report shall be made to the Contractor no later than forty-eight (48) hours after discovery of the defect. Failure of the Subcontractor to inspect and promptly report any such defect shall constitute an acceptance on the Subcontractor's part of all other contiguous or adjacent work as fit and proper for the performance of every portion of the Subcontractor's work. The Subcontractor shall do nothing that will interfere with the coordination of the Subcontract Work with the work of other subcontractors. In the event of the failure for any reason of the Subcontractor and other contiguous or adjacent trades to agree as to the extent of cooperation or the extent of work to be done by any or either, such disagreement shall be determined by the Contractor whose decision shall be final and conclusive. In the event the Subcontractor sustains damage or loss through any delay, default, act or omission of any other subcontractor and/or other contractors, their servants, agents or employees, the Subcontractor understands and agrees that the Contractor shall not be liable therefore inasmuch as the Contractor does not assume any responsibility for actions or omissions of other subcontractors. Nothing herein contained shall limit the Subcontractor from pursuing the Subcontractor's legal remedies against any such offending party.

(c) In the event the Contractor furnishes any basic reference lines and benchmarks to the Subcontractor, such basic reference lines and benchmarks must be used by the Subcontractor and the finished Subcontract Work shall agree therewith. The Subcontractor shall provide all field layouts for the Subcontract Work from benchmarks and baselines established by the Contractor.

(d) The Subcontractor shall protect all Subcontract Work and that of other subcontractors during installation of the Subcontract Work.

(e) Each day, the Subcontractor shall remove all rubbish and debris caused in the performance of the Subcontract Work and shall dispose of said rubbish and debris in the Contractor's container or by other acceptable means. The Subcontractor shall keep the Project, Site, and surrounding areas, including storage areas used by it, at all times free from the Subcontractor's rubbish, waste material, excess material, equipment and debris. Each day Subcontractor shall remove from the Site any such rubbish, waste material and debris, and prior to completion of work and shall remove all tools, scaffolding equipment and materials used by the Subcontractor and not incorporated into the completed work and shall leave the Subcontract Work "broom clean" and free and clear of all obstruction and hindrance. If the Subcontractor fails to so remove the Subcontractor's equipment, materials, rubbish, waste material and debris after twenty-

four (24) hours' notice, then the Contractor shall have the right to remove it and charge the cost thereof against monies due or to become due the Subcontractor.

(f) The Subcontract Work shall be performed only within the daily hours mandated by the Contractor at the Project. In the event the Subcontractor desires to perform the Subcontract Work other than during the hours mandated by the Contractor, the Subcontractor shall give notice to and obtain written permission from the Contractor to work at times other than those specified to enable the Subcontract Work to be completed in accordance with the Project Schedule.

(g) The Subcontractor shall provide the Contractor with a set of layout drawings indicating the proposed location of all Subcontract Work so that the Contractor may coordinate the Subcontract Work with other adjacent work and/or trades, and make necessary adjustments for any discrepancies, conflicts, or interferences. No portion of the Subcontract Work is to be performed until all conflicts and/or interferences pertaining to the mechanical, electrical, structural and architectural work have been resolved.

(h) The Subcontractor shall at its own expense furnish within ten (10) days after request by the Contractor samples of materials, certificates, prints of Subcontractor's shop drawings, erection drawings, material schedules, reports, affidavits or any other written or physical data that may be necessary in the opinion of the Contractor for proper prosecution of the Subcontract Work and/or necessary to comply with the provisions of the Subcontract. The Subcontractor agrees that the Subcontractor shall pay for the cost of any Subcontract Documents, required by the Subcontractor.

(i) Intentionally Omitted.

(j) The Subcontractor will provide adequate facilities for inspecting the labor and material either on the Site or elsewhere at all times requested by the Contractor, its employees and representatives, Contractor, Lender and its agents and representatives and all governmental authorities.

(k) Prior to and during the commencement of the Work, Subcontractor shall submit a list of all vendors and subcontractors providing any services to the Subcontractor with regards to the Subcontract Work.

(l) The Subcontractor shall handle, transport and install at the Subcontractor's sole cost and expense all property, supplies, materials and equipment furnished by the Contractor for use on the Project, but only insofar as same applies to the Subcontract Work.

(m) The Subcontractor shall provide and maintain an effective quality control program in accordance with the intent of the Subcontract Documents and perform all requirements of inspection insofar as it pertains to the Subcontract Work. Quality control inspection will be provided by the Subcontractor for materials delivered and work

installed as required to insure proper performance, fit, and finish; however, final decisions as to quality control and compliance shall, at all times, remain with the Contractor and Owner and any agents specifically designated by them.

(n) The Subcontractor, at its own expense, shall be responsible for obtaining all permits, licenses or conditions required or for compliance with by the Contractor or Subcontractor, which relate to or are necessary for the performance and completion of the Subcontract Work.

(o) All incidental work reasonably necessary to complete this Subcontract shall be done by Subcontractor, notwithstanding that such incidental work may have been omitted from the Subcontract Documents and the conditions referenced therein. If the Subcontract Documents are not complete as to any detail of a required construction system, such detail shall be deemed to an implied requirement of the Subcontract Documents. The Subcontractor expressly agrees to perform all such work entailed at no additional cost. If the Subcontract Documents fail to describe the material or kind of goods to be used with regard to any particular aspect of the Subcontract Work, then it is the duty of the Subcontractor to inquire as to proper material or goods to be used.

(p) Subcontractor hereby warrants it holds the Florida Contractor's license number set forth on page 1 of this Subcontract that said license is in good standing. At any time during the duration of this Subcontract should this license become invalid for any reason, or should a Complaint be filed with the Florida Division of Construction Licensing with regard to the license, Subcontractor shall advise Contractor within twenty-four hours of the change in Subcontractor's license status or Complaint. At Contractor's sole discretion, Contractor may elect to terminate this Subcontract. Failure to notify Contractor as set forth above will amount to a material breach of the Subcontract.

2. Progress of the Subcontractor Work.

2.1 **Time.** Contractor agrees that Work will commence 10 calendar days from the recording of the Notice of Commencement, which is effective for a period of not less than 18 months, and the issuance of a Notice to Proceed, whichever is latest. Such date is hereinafter referred to as the Commencement Date and Contractor and Subcontractor will execute the Commencement Date Acknowledgement Form attached as Exhibit ___ indicating the Commencement Date.

2.2 **Completion of Subcontract Work.** Time is of the essence. The Subcontractor will perform and progress the Subcontract Work in a prompt and diligent manner and without delay or interference to the completion of the Project, which shall be done in accordance with the Construction Schedule attached hereto as Exhibit B. The Work shall be substantially completed no later than ___ days from the Commencement Date. Subcontractor shall coordinate and commence the several parts of the Subcontract Work at such times and in such order as the Contractor may direct. Subcontractor agrees to promptly procure and prepare materials and manufacture

products, satisfying the specifications and submit samples thereof, if required, to be ready to begin and to prosecute the completion of the Subcontract Work when and as directed by the Contractor. The Subcontractor recognizes that the Contractor has the right to coordinate all work under the Project, and that directives by the Contractor as to the time when the Subcontract Work shall begin and the manner in which it shall be progressed and completed in connection with other work involved in the Project shall be fully and promptly complied with. Subcontractor agrees that notwithstanding any change to the start date for Subcontractor's performance of the Subcontract Work or any part thereof, the Subcontract Work or part thereof shall be performed for time set forth in the attached Exhibit "B", Construction Schedule. The Contractor shall have the right to inspect the progress of the Subcontract Work in the Subcontractor's shop or places other than the Site. Subcontractor accepts the schedule in Exhibit "B".

2.3 Ordering Materials. The Subcontractor shall immediately upon the execution of this Subcontract, place all required purchase orders and prepare all samples, shop drawings and other items requiring the Contractor's approvals so that the Subcontractor's vendors will immediately proceed with preparation and timely delivery of the materials needed for this Subcontract. The Subcontractor shall provide proof of ordering trusses, windows, NC equipment, roof shingles and other items that may be required by the work with lead-time exceeding 10 days, as applicable to the Work.

2.4 Delays. If the Subcontract Work has not sufficiently progressed in the shop or elsewhere, as a result of which any work at the Site is likely to be delayed, the Contractor shall have all the rights set forth in Section 15, regardless of the condition of the work at the Site. If the Subcontractor fails to install, perform and/or supply the Subcontract Work at the Site in a timely manner so that the ensuing operations by others are delayed or interfered with, and continues such failure for a period of twenty-four (24) hours after being given notice to commence performance, the Contractor may permit such operations by others to proceed even though the performance thereof will result in the Subcontractor being required to expend additional funds or labor not contemplated in the bid for the Subcontract Work. The cost of delay contemplated herein, along with the cost of any damage to other work caused by such the Subcontractor, shall be borne solely by the Subcontractor.

2.5 Modification of Schedules. The Contractor at all times reserves the right to alter and modify schedules in determining and coordinating the progress of the Subcontract Work with that of others and the Subcontractor agrees to make no claims against the Contractor based on this cause.

2.6 Compliance by Subcontractor. In the event that the critical path method or any other Project progress planning and control technique is used, the Subcontractor shall comply with all requirements resulting from the use of such technique as to start, completion and phasing of the Subcontract Work.

2.7 **Discrepancies.** In case of a discrepancy or difference between any figures, drawings or specifications, the matter shall be immediately submitted in writing to the Contractor, whose decision shall be final and conclusive and without whose decision said discrepancy or difference shall not be adjusted by the Subcontractor, save only at the Subcontractor's own risk and expense.

3. **Errors in Subcontractor's Work, Deviations and Documents.** The Subcontractor shall be responsible for the full and correct performance of the Subcontract Work, including work of Subcontractor's subcontractors and suppliers. Any errors in Work shall be corrected at the Subcontractor's sole cost and expense. The Subcontractor shall indemnify the Contractor for any costs or expenses attributable to errors in performance by the Subcontractor or the Subcontractor's subcontractors and suppliers. The Subcontractor's obligation hereunder shall include taking field measurements for all of the Subcontract Work. It shall not be incumbent upon the Contractor to discover any mistakes, errors, omissions or deviations from the requirements of this Subcontract in the quality or kind of material used by the Subcontractor or in the shop drawings, schedules and reports submitted by the Subcontractor. The Contractor's approval of the same shall not relieve the Subcontractor from responsibility for unauthorized changes, deviations, omissions or for errors of any sort therein. Performance by the Subcontractor of the Subcontract Work before the required approvals shall be at the Subcontractor's sole risk and expense.

4. **Damage to Work and Equipment.** The Subcontractor agrees that the Subcontractor will protect and prevent damage to all Subcontract Work provided for under this Subcontract. In no event shall the Contractor be liable to the Subcontractor for loss or pilferage or damage to any Work, materials or equipment. Subcontractor agrees and acknowledges that Subcontractor shall be responsible for all risk of loss to Subcontractor's Work, whether caused by any casualty, until the Project is complete, accepted by Owner, and Final Payment issued to Subcontractor. In the event of fire damage and subsequent recovery from on a claim for loss, the Contractor, after first reimbursing itself for the full amount of its claimed loss, will allocate to the Subcontractor such proportion of the remaining fire damage recovery to subcontractors making claim in connection with the same fire incident, as approved by insurer and/or Owner. The Subcontractor's responsibility to the Contractor in the event of fire shall be to the Contractor and not for the benefit in any manner of any insurance company.

5. **Subcontractor's Work Force.** The Subcontractor shall staff the job and shall keep the job adequately supplied with labor and materials at all times to the complete satisfaction of the Contractor. The Subcontractor agrees to have a qualified representative at the job site at all times during the Work, who shall have authority to act as the Subcontractor's agent in all matters concerning the Subcontract Work. Subcontractor shall provide written notice of the name and contact information, including office and mobile telephone numbers and email address, for the qualified representative. The Subcontractor shall work such hours as directed by the Contractor

without additional cost to the Contractor as may be necessary to ensure prosecution and completion of the Subcontract Work in a skillful and expeditious manner within the time limitations of this Subcontract (as may be modified). In the event the Contractor, its sole but reasonable determination, deems an employee of the Subcontractor incompetent, careless, insubordinate or otherwise objectionable, the Contractor shall provide written notice to the Subcontractor of such employee and the Subcontractor shall permanently remove such employee from the Project. Under no circumstances shall Subcontractor remove its project manager or superintendent without authorization from the Contractor.

6. **Strikes, Labor Stoppages.** The Subcontractor shall not employ any persons or means that may cause labor disturbances or stoppages in the Subcontract Work, or the work of the Contractor, other subcontractors employed by the Contractor, the Contractor or other subcontractors employed by the Contractor. The Subcontractor shall conform to prevailing local labor conditions, and any provision of any union contract to which the Subcontractor is a party. If for any reason labor employed by the Subcontractor strikes, the Contractor shall have the right to exercise its remedies set forth in Section 15.

7. **Equal Opportunity, OSHA, Safety.** The Subcontractor shall not commence work hereunder, or once started continue same, until the Subcontractor has complied with all applicable laws with regard to safety and accident prevention, licensure, non-discrimination, overtime compensation, all applicable federal and state anti-kickback and anti-bribery statutes and laws and any and all other matters required by this Subcontract and all pertinent laws and regulations. The Subcontractor agrees that it will conform to all federal, state and local statutes, laws and ordinances, and any regulations thereunder, to provide equal employment opportunity for all individuals without regard to race, color, national origin, religion, sex, gender identity, sexual orientation, age, disability or genetic information. The Subcontractor agrees to observe and comply with all provisions and requirements of the Federal Occupational Safety and Health Act of 1970, and amendments thereto (OSHA), and all other safety requirements of this Subcontract in the performance of the Subcontract Work. Subcontractor agrees to indemnify and hold the Contractor and Palm Beach County harmless from all liability, claims, penalties and damages including attorneys' fees and expenses, resulting from the failure of the Subcontractor in the performance of this Subcontract to comply with any statutes, laws or regulations. The Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention and who shall have the responsibility and full authority to enforce the programs.

8. **Changes to the Subcontract Work.**

8.1 **Generally.** Minor variations that do not affect the contract time or subcontract sum, in the underlying Subcontract Work, where such variations are in accordance with good construction practice, shall be approved and performed by the

Subcontractor at no additional cost to the Contractor. Adjustment of the Subcontract amount, as set forth in Section 11.1 hereof, will be in writing as provided for herein.

8.2 Changes to Work; Additions, Deletions, Claims. The Contractor may, without invalidating this Subcontract, issue written orders to the Subcontractor making changes in, adding to, or subtracting from the Subcontract Work. The Subcontractor shall not deviate from, add to, delete from, or make changes in the Subcontract Work unless so directed by prior written order of the Contractor signed by an authorized representative of Contractor, who shall be the Contracting Officer of the Contractor. Subcontractor will not be compensated for any additional work, unless the written order is expressly approved in writing by the Contracting Officer. This provision requiring signed written authorization for changes may not be modified or amended through any course of conduct between the parties. Upon receipt of a written signed change order from the Contractor, the Subcontractor shall within seventy-two (72) hours notify the Contractor in writing if the Subcontractor claims that such order entitled Subcontractor to additional compensation or extension of time for performance stating the reasons for the same and furnishing a detailed breakdown of the estimated increased costs and/or time. Upon receipt of a written change signed order from the Contractor, subtracting from or deleting work undertaken hereunder, the Subcontractor shall promptly and in any event within seventy-two (72) hours thereafter notify the Contractor in writing the amount of credit, which the Subcontractor estimates the Contractor should receive. Subcontracting shall provide a detailed breakdown of the costs estimated for such deleted work. In order to verify such claims or credit, the Subcontractor shall produce any and all back up documentation and data upon Contractor's request, without limitation, including time sheets, payrolls, foremen's reports, daily reports, bills and vouchers of material suppliers and subcontractors, receiving documents, freight and trucking receipts. The Contractor and Subcontractor shall negotiate and endeavor to agree in writing to any changes in time of performance or in the amounts to be paid or the credit allowed under this Subcontract. In the event the Subcontractor and Contractor are unable to agree, the Subcontractor nevertheless shall, and hereby agrees to proceed with performance as ordered and the question of change in the amount to be paid will either be agreed upon at a subsequent date or resolved by a court of competent jurisdiction. If Subcontractor fails to request additional time or compensation in writing within seventy-two (72) hours after receipt of a particular order from the Contractor making changes in, or adding to the Subcontract Work, or after a dispute as to the Subcontract Work, it shall be construed that there is no additional time or compensation requested or required. However, failure of the Subcontractor to notify the Contractor in writing of the estimated credit as provided for herein, shall, and hereby is authorized from the Subcontractor to the Contractor to estimate the credit to be taken and to deduct the amount so determined from monies due or to become due to the Subcontractor hereunder.

8.3 Work Directives. Although Field Directives by the Contractor may be given, no work which affects the cost of the work, or that may affect other

Subcontractors, shall proceed until a written change order has been signed by both the Contractor and the Subcontractor.

9. **Delivery of Work.**

9.1 **Partial Possession; Delivery of Work; Guaranties.** Upon completion of this Subcontract, the Subcontractor shall deliver the Subcontract Work complete and undamaged. Nevertheless, the Contractor shall have the right to take possession of or use any completed or partially completed part of the Subcontract Work, but such possession or use shall not be an acceptance of any Subcontract Work not completed in accord with this Subcontract. In that regard, the Subcontractor agrees to furnish all guaranties for the Subcontract Work required by the Contractor and will execute such guaranties to the Contractor for the benefit of the Contractor. Prior to the acceptance of the Subcontract Work, the Subcontractor and the Contractor shall prepare a punch list of workmanship and materials that are required to be corrected to conform the Subcontract Work to the Subcontract Documents. The Subcontractor shall complete the punch list work within 15 days of receipt of the punch list from Contractor. In addition, the Contractor may retain from the amounts payable to the Subcontractor an amount equal to the cost to repair any punch list items.

9.2 **Transfer of Title.** All materials, supplies, appliances, and Work which have been made the basis of partial payments or have been incorporated in the Subcontract Work shall be and become the property of the Contractor upon delivery at the Site, or upon being specially adapted for use in or as part of the Subcontract Work, whichever may occur first, free and clear of any liens or encumbrances. If any such materials, supplies, appliances, shall be defective or unsatisfactory, and the Subcontractor has failed or refused to replace any such defective or unsatisfactory materials within forty-eight (48) hours after notice thereof and subject to the provisions of Section 4 hereof, the Contactor may replace said defective or unsatisfactory items at Subcontractor's expense. The Subcontractor shall furnish to the Contractor bills of sale or other instruments of title and Release of Liens as may be required, properly executed, acknowledged and delivered, assuring title to any such materials, supplies, appliances, or Work are free of liens and/or other encumbrances. Subcontractor shall mark or otherwise identify all such materials, supplies, appliances, or Work as the property of the Contractor. In the event of a breach by the Subcontractor of this covenant against a lien, and a lien is nevertheless filed by any materialmen, suppliers or by labor, then the Subcontractor hereby agrees to bond said lien within twenty-four (24) hours after same is filed and to cause its discharge or recordation of the bond.

10. **Payment of the Subcontract.**

10.1 **Contract Price.** The Contractor shall pay to Subcontractor the sum of _____ (_____.00) subject to such adjustments as provided for in the Subcontract Documents.

10.2 **General Terms.** Payment terms are Net 30 days from the acceptance of a properly completed invoice with all supporting documentation. Acceptance means that all the billed work has been performed and is complete, and all invoicing requirements have been met. Submit Pay Application(s) to:

West Palm Beach Housing Authority
Attn: Joel Hatcher, Cottage Homes Project 3700 Georgia Avenue
West Palm Beach, FL 33405

10.3 **Invoicing.** Subcontractor shall submit invoicing as Applications for Pay, on AIA Forms G702 and G703. All Applications for Pay shall also include an invoice detailing the actual work that is billed on the Application for Pay, and an applicable Partial Release of Lien, referencing the proper amount being billed, along with the proper period of work. Prior to, or along with the subsequent Application for Pay, Unconditional Releases for the previous application for pay will need to be submitted to the Contractor to show receipt of payment from the Contractor, and payment by the Subcontractor to all of its subcontractors, if applicable. All Applications for Pay shall be reduced by 10% to be held as “retainage”, with exception of the final Application for Pay, which should be for the payment of all accumulated retainage on the project. Under no circumstances shall the amounts reflected on the applications for pay cumulatively exceed the contracted price as set forth in the Subcontract Documents. Applications for Pay and Invoices shall also be numbered, include dates of service, location serviced, Project Name and the contract number, if applicable.

11. **Palm Beach County Contracting Requirements & Intended Third Party Beneficiary**

11.1 **Generally.** The Subcontractor understands and acknowledges that the Contractor/Owner has a Developer & Operator Agreement, dated January 12, 2021 with Palm Beach County, Florida (“County”) for the development, construction, ownership and operation of the Cottage Homes Project (“County Agreement”). The Contractor/Owner, has entered into this Subcontract with Subcontractor in furtherance of the County Agreement and the County shall be an intended third party beneficiary to this Subcontract, is entitled to the rights and benefits hereunder and may enforce the provisions of this Subcontract as if it were a party, including the right to sue and enforce this Subcontract as if it were a signatory hereto.

11.2 **Express Agreement for Assignment.** In the event the County Agreement with the Contractor/Owner is terminated and the Facility and Site revert to the County, this Subcontract may be assigned to the County and Subcontractor expressly agrees to said assignment.

11.3 **Project Documents.** Subcontractor agrees that any and all Project documents generated pursuant to the County Agreement and this Subcontract shall be delivered to the County upon its request.

11.4 Sub-Subcontractors. If applicable, to the extent that Subcontractor sub-subcontracts any of the Subcontractor Work provided for herein, the County shall be an intended third party beneficiary of said sub-subcontract and Subcontractor shall provide for the same therein and provide that the said sub-subcontract may be assigned to the County. Any such sub-subcontract shall also provide for 1) insurance in amounts equal or greater than those listed in _____ hereof; 2) name the County as an additional insured on such insurance policies of the sub-subcontractor; 3) indemnify and hold harmless the County; and 4) require that the sub-subcontractor deliver to the County any documents and materials prepared by the sub-subcontractor, when requested by the County

11.5 County Representative. The County Representative shall be the following person, unless otherwise notified in writing by the CONTRACTOR:

Fernando Del Dago, AIA, LEED AP BD+C
Director-Capital Improvements Division
Palm Beach County FD&O
2633 Vista Parkway
West Palm Beach, FL 33411-5605

11.6 Indemnification. The Subcontractor agrees to the fullest extent permissible by law to indemnify and hold harmless the County, and its officers, directors, Commissioners, agents and/or employees, from liabilities, damages, losses, and costs including, but not limited to reasonable attorneys' fees and defense costs, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Subcontractor, and other persons employed or utilized by the Subcontractor, in the performance of this Subcontract. None of the parties shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others. **This section shall survive termination of this Contract.**

12. Insurance Requirements

12.1 General Coverage. Prior to undertaking any work under this Subcontract, the Subcontractor shall procure and maintain continuously for the duration of this Subcontract, at no expense to the Contractor, insurance coverage as specified below, in connection with the performance of the work of this Subcontract by the Subcontractor, its agents, representatives, employees and/or subcontractors. The Subcontractor shall procure and maintain policies with insurers with an A. M. Best Company Rating of at least A-, for any or all claims which may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Subcontract, whether such services, work and operations be by the firm, its employees, or by subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable. The Subcontractor shall require, and shall be responsible for assuring throughout the time the agreement is in effect, that any and all of its subcontractors obtain and maintain until the completion of that

subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others. The required insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater. These insurance requirements shall not limit the liability of the Subcontractor.

12.2 Additional Insureds. The Subcontractor's liability insurance policies shall be endorsed to name the West Palm Beach Housing Authority (CONTRACTOR) and to name the County as additionally insureds.

(a) The Additional Insured endorsement for the CONTRACTOR shall read "West Palm Beach Housing Authority, 3700 Georgia Avenue, West Palm Beach, FL 33405."

(b) The Additional Insured endorsement for the County shall read "Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its Officers, Employees and Agents", c/o Facilities Development and Operations Department, 2633 Vista Parkway, West Palm Beach, FL 33411."

12.3 Minimum Coverage Amounts. Subcontractor shall maintain the following policies and minimum amounts:

Workers Compensation Coverage

The Subcontractor shall maintain workers compensation insurance for all workers compensation obligations imposed by State and Federal Laws, or a valid certificate of exemption issued by the State of Florida, or an affidavit in accordance with Chapter 440 of the Florida Statutes. Subcontractor shall also purchase any other coverages required by law for the benefit of employees. The minimum amount of coverage shall be \$1,000,000 each accident.

General Liability Coverage - Occurrence Form Required

Coverage A, shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent firms, contractual liability covering this agreement, contract or lease, broad form property damage coverage's, and property damage resulting from explosion, collapse or underground (XCU) exposures.

Coverage B, shall include personal injury.

Coverage C, medical payments, is not required.

The Subcontractor agrees to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the CONTRACTOR's acceptance of renovation or construction projects.

Minimum limits shall be no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate.

Business Auto Liability Coverage

Subcontractor will maintain business auto liability coverage to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use. Minimum insurance shall be \$1,000,000 combined single limits for property damage and body injury per occurrence.

12.4 Waiver of Subrogation. Subcontractor hereby waives any and all rights of subrogation against the Contractor, Owner and the County, its officers and employees for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Subcontractor shall agree to notify the insurer and request the policy be endorsed with a "Waiver of Transfer of Rights of Recovery Against Others", or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should Subcontractor enter into such an agreement on a pre-loss basis.

12.5 Evidence/Certificates of Insurance. Required insurance shall be documented in certificates of insurance. If and when required by the Contractor, certificates of insurance shall be accompanied by documentation that is acceptable to the Contractor establishing that the insurance agent and/or agency issuing the certificate of insurance has been duly authorized, in writing, to do so by and on behalf of each insurance company underwriting the insurance coverages(s) indicated on each certificate of insurance.

New certificates of insurance are to be provided to the Contractor/Owner and the County at least 30 days prior to coverage renewals. Failure of the firm to provide the Contractor and the County with such renewal certificates may be considered justification for the Contractor to terminate this agreement. Certificate should provide that the Contractor shall be notified at least 30 days in advance of cancellation.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the Contractor, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Subcontractor's obligation to fulfill the insurance requirements herein. If requested by the Contractor, the Subcontractor shall furnish complete copies of the insurance policies, forms and endorsements, and/or such additional information with respect to its insurance as may be requested.

Subcontractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and the legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Subcontract. Neither party to this Subcontract shall assign the Subcontract or sublet it as a whole without the written consent of the other (which consent shall not be unreasonably withheld), except that Subcontractor

acknowledges and agrees that Contractor has the right to assign this Subcontract to the County without Subcontractor's consent. In the event of an assignment, the Subcontractor will continue to be liable for all its obligations and performance hereunder.

13. **Indemnity.**

13.1 **Indemnification.** To the fullest extent permitted by law, the Subcontractor expressly agrees to indemnify and hold harmless the Contractor, Owner, County, the architect, and the engineer and their respective officers, directors, agents, and employees herein called the "indemnitees" from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to person or property caused in whole or in part by any act, omission, or default by the Sub-contractor or its sub-subcontractors, materialmen, or agents of any tier or their employees, arising out of this Subcontract or its performance, including any such damages caused in whole or in part by any act, omission, or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnities' gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Sub-contractor or its sub-subcontractors, materialmen, or agents of any tier or their respective employees.

The indemnification obligations under this Subcontract shall not be restricted in any way by any limitation on the amount of type of damages, compensation, or benefits payable by or for the Sub-contractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Sub-contractor or of any third party to whom Sub-contractor may subcontract a part or all of the work.

13.2 **Limitations.** The indemnification obligations of Subcontractor under this Paragraph and elsewhere in this Subcontract shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Subcontractor is required to carry under this Subcontract. The Indemnified Parties' right to indemnification by Subcontractor under this Paragraph shall be independent of the Indemnified Parties' rights under the insurance to be provided by Subcontractor under this Subcontract.

13.3 **Duty to Defend.** Subcontractor's duty to defend the Indemnified Parties is entirely separate from, independent of, and free-standing from Subcontractor's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of Subcontractor's liability, breach of this Subcontract or other obligation, or Subcontractor's responsibility has been

determined and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Subcontract Work. Such defense obligation shall arise immediately upon presentation of a Claim by any party, which arises out of or is connected to the work performed by Subcontractor and written notice of such Claim being provided to Subcontractor. Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force, and shall continue until it is determined by final judgment that any and all actions against the Indemnified Parties for such matters, which are indemnified hereunder, are fully and finally barred by applicable Law.

13.4 Right to Reimbursement. Subcontractor shall reimburse Contractor and/or Owner and/or County for any Claims or losses incurred by them within five (5) business days of notification from Contractor/Owner or County. Contractor and/or Owner may deduct payments made from any monies due or to become due to Subcontractor pursuant to this Subcontract or from any other agreement then existing between Subcontractor and the party seeking reimbursement. Contractor and/or Owner may withhold from any monies due or to become due Subcontractor such sums as shall be reasonably necessary to protect Contractor/Owner from any Claims under Section 13.

13.5 Limits. The provisions of this Section 13 shall not apply to any Claims, which arise out of the sole negligence or willful misconduct of the Indemnified Parties.

14. Work Under Protest.

If the Contractor directs the Subcontractor to perform work as part of this Subcontract, which work the Subcontractor believes is not Subcontract Work, the Subcontractor shall advise the Contractor in writing setting forth in detail the reasons for the Subcontractor's contention. Pending further advice from the Contractor, the Subcontractor shall not proceed with the work in dispute. After the Contractor has investigated the reasons for the Subcontractor's contention and the Contractor still believes the work in contention to be Subcontracted Work, the Contractor will so advise the Subcontractor. Upon receipt of such advice from the Contractor, the Subcontractor shall proceed with the disputed work forthwith, but the Subcontractor may at the same time advise the Contractor that it is doing so under protest. In the event the Subcontractor proceeds under protest, the matter shall be determined by the negotiation between the parties involved.

15. Contractor's Options in Event of Breach, Default or Bankruptcy. In the event the Subcontractor fails to perform the Subcontract Work or comply with the notices provided for in this Subcontract or in the event of any other breach by the Subcontractor of the terms of this Subcontract or in the event that a petition under any of the provisions of the bankruptcy laws of the United States of America or any state or other jurisdiction is filed by or against the Subcontractor or in the event any of the

provisions of any of the said bankruptcy laws are invoked by or against the Subcontractor or in the event the Subcontractor admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors or in the event the Subcontractor is adjudicated a bankrupt or insolvent or a receiver, trustee or liquidator is appointed for any of its properties or its properties pass into the hands of any legal representative, the Contractor, without further notice to the Subcontractor, shall have the right to any one or any combination of the following remedies:

(a) Supply such number of workers and quantity of material, equipment, etc., as the Contractor deems advisable in and about the completion of such work and charge the cost thereof together with all other reasonable expenses to the Subcontractor.

(b) Terminate the Subcontractor's right to proceed with any part of the Subcontract Work or any part of the labor and materials hereby sublet and after such termination to re-let such work and supply the same through its own forces or through other subcontractors or any other means and to charge the cost thereof and all expenses incident thereto against the within Subcontract price, and if the said Subcontract price shall be insufficient the Subcontractor shall pay the excess cost to the Contractor. If the Contractor exercises this right, it may take possession of and utilize in completing any part of such work, such materials, appliances and plant as may be on the Site, whether supplied by the Subcontractor or not.

(c) Terminate this Subcontract entirely and the Subcontractor shall be entitled to no monies of any kind, but shall remain liable for any damage that the Contractor has suffered or may suffer.

(d) If the Contractor is of the opinion that the Subcontractor is not performing any part of the Subcontract Work properly or on a timely basis or is performing the Subcontract Work in such a way that in the opinion of the Contractor, the Subcontractor is (i) causing delay to the other trades performing work on the Project, or (ii) causing the Contractor to alter its scheduling sequence of other trades performing work on the Project, the Contractor may terminate the right of the Subcontractor to proceed with any separate parts of the work without terminating the entire Subcontract ("Partial Termination"). The Contractor may exercise such right upon giving two (2) days written notice to the Subcontractor, whereupon the Contractor may after the said two (2) days take whatever steps it may deem necessary to perform those parts of the Subcontract Work so terminated, and the Contractor shall charge the cost thereof, together with all reasonable expenses to the Subcontractor.

(e) If this Subcontract is terminated by the Contractor pursuant to the provisions hereof, all materials at the Site shall belong to the Contractor and all tools and equipment of the Subcontractor shall remain upon the Site premises and the Contractor shall have the right to use the same without expense to the Contractor, but after the principal Subcontract Work has been fully completed and accepted by the Contractor, the Subcontractor may remove such of the tools and equipment as still

remain, but the Contractor shall not be liable for anything that has been lost, worn out or destroyed.

(d) If any of the events listed in this Section 16 occurs and a legal representative of the Subcontractor is appointed by any court, whether such representative be a trustee, receiver assigned for the benefit of creditors, debtor in possession or whatever the designation may be, the said legal representative shall have no right whatsoever to assume the performance of this Subcontract unless the Contractor agrees to the same in writing, and in the absence of such writing, the legal representative shall have no rights with respect to this Subcontract whatsoever.

16. Extensions of Time; Suspension; Delay; Termination for Convenience.

16.1 Delay. In the event the Subcontract Work is delayed without fault of the Subcontractor, the Subcontractor agrees that the Subcontractor will notify the Contractor in writing of the nature and cause of such delay within forty-eight (48) hours of the arising of the cause for claims of delay. Should the Subcontractor fail to strictly comply with the provisions of this Section 16, the Subcontractor shall waive all rights the Subcontractor may have for extension of time in performance of this work. The Subcontractor's rights with respect to delay are hereby specifically limited to an extension of time, and Subcontractor shall have no claim for damages against the Contractor arising out of delay from any cause whatsoever. Acceptable grounds for consideration of an extension of time due to delay beyond the Subcontractor's control are limited to labor disputes not within the Subcontractor's control and which cannot be overcome by the retention of alternative labor; unusually adverse weather conditions, or actions by governmental or civil authorities which are beyond the Subcontractor's control.

16.2 Suspension. The Contractor may order the Subcontractor to suspend all or any part of the Subcontract Work for such period as may be determined by it to be necessary or desirable for the convenience of the Contractor.

16.3 No Liability. Any provision in this Subcontract to the contrary notwithstanding, the Contractor shall not be liable to the Subcontractor for any delay caused by the Contractor or by other contractors employed by the Contractor.

16.4 Damage. The Subcontractor agrees that if it shall delay the progress of the Subcontract Work so as to cause any damage for which the Contractor shall suffer or become liable, it shall make good to the Contractor all such damage and should it finish the Subcontract Work after the time herein provided for completion, the assent or permission of the Contractor to such delayed finishing shall not be construed as a waiver of the Subcontractor's obligation to make good any damage caused by such delay or default.

16.5 Reimbursement of Damages. In the event any acts or omissions of the Subcontractor cause or contribute to any failure on the part of the Contractor to complete all Subcontract Work within the time scheduled for the completion of the Project, the Subcontractor shall upon demand of the Contractor promptly pay to, and reimburse the Contractor for the amount of any damages caused or contributed by the Subcontractor or apportioned to it in the event such delay is caused by more than one (1) subcontractor.

16.6 Termination for Convenience. Contractor reserves the right to terminate this Subcontract and all rights and obligations hereunder, without cause, and at Contractor's sole discretion and convenience by giving ten (10) days written notice thereof to Subcontractor. In the event of a termination pursuant to this section, Subcontractor shall be entitled to recover its partial and final payment for all Subcontract Work performed through the date of termination, as well as costs incurred due to the termination (demobilization) but in no event shall be entitled to payment for any Subcontract Work not performed, including profit that would have been realized on the Work not yet performed. In no event shall Contractor be liable for any lost profits, lost opportunity damage, or consequential damages.

17. No Waiver of Contract. Failure by the Contractor in any instance to insist upon observance or performance by the Subcontractor of all the terms, conditions or provisions of this Subcontract shall not be deemed a waiver by the Contractor of any such observance or performance. No waiver shall be binding upon the Contractor unless in writing signed by an individual on the Authorized Representative List of Contractor and shall then be for the particular instance only. Waiver of any one breach shall not be a waiver of any other breach; payment of any sum by the Contractor to the Subcontractor with the knowledge of any breach shall not be deemed a waiver of any such breach or any other breach.

18. Salvage. All salvage shall belong to the Contractor and shall be delivered by the Subcontractor to a point or points on the Site designated by the Contractor and the Subcontractor shall have no right or claim thereto whatsoever.

19. Performance and Payment Bonds.

If the Subcontractor's contract price is \$200,000 or over, the Subcontractor shall be required as part of the contract award, to furnish 100% Performance and Payment Bonds as a condition of performing and an assurance of completing the work. The bonds must be obtained from a guarantee or surety company acceptable to the U.S. Government and authorized to do business in the State of Florida. Further, the payment and performance bond/bonds must be in compliance with Section 255.05, Florida Statutes. WPBHA and Palm Beach County shall be listed as co-obligees on the payment and performance bond(s).

U.S. Treasury Circular Number 570 (<https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>), lists companies approved to act as sureties on bonds securing Government contract, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Individual Sureties shall not be considered.

20. Increases in Labor and Materials.

It is understood that at the time of the execution of this Subcontract the parties hereto are aware of the possibility of increases in the prices of labor and materials necessary to perform this Subcontract and/or the difficulty in obtaining same. It is accordingly understood that no claim shall be made by the Subcontractor for an increase in the Subcontract price herein referred to even though it may be necessary to obtain materials from local warehouse stocks or otherwise in order to perform within the Subcontract time. The Subcontractor shall at no time claim that the Subcontract price was predicated on obtaining materials from any particular or unusual source or supply. If it be thereafter claimed that the Subcontractor finds that the price of labor and materials herein provided for is increased to any extent, for any reason whatsoever, including (but without limiting the generality of the source of causes of such possible increase) strikes, forced or voluntary agreements between employer and employee, present or future federal, state or municipal regulations, enactments, statutes, decrees, present or future codes, trade association agreements, whether the same be brought by statute, agreement or otherwise, freight rates or any change of economic conditions whatsoever, it is understood that any and all risks of increase in price of labor or materials have been contemplated by the Subcontractor and have been taken into full consideration in arriving at the Subcontract price. The Subcontractor shall at no time claim such increase even though the Subcontractor has been brought into a period of increased labor and material costs by reason of any delays of the Contractor, and of its other subcontractors, the Contractor or its representatives, of other independent subcontractors employed by the Contractor, or for any other cause whatsoever.

21. Claims by Other Subcontractors.

If other independent subcontractors on the Project hold the Contractor and/or Owner responsible for any damages sustained through any act or omission of any of its subcontractors, then the Subcontractor accordingly agrees to indemnify and hold harmless the Contractor and Owner and County by reason of any claims, demands, judgments, liabilities, or other adverse action, which may be made against the Contractor and/or Owner by any other independent contractor on the Project and which arise out of any act or omission of the Subcontractor.

22 Patent or Copyright Infringement.

In the performance of the Subcontract Work, the Subcontractor shall not infringe on any patents or copyrights and agrees to indemnify and hold the Contractor and/or Owner and County harmless against any and all losses and liabilities, including expenses arising out of any such infringements and actions for damages because of such infringements.

23. Notice.

Unless otherwise specified herein, all notices given within the terms of the agreement shall be in writing and will be delivered personally or through electronic mail (email) or sent by confirmed facsimile transmission, overnight letter or United States certified mail, proper postage prepaid at the addresses provided in this section. Either party may change the person or the address to which notices are directed by giving written notice to the other party. Personally delivered, confirmed facsimile and email notices will be deemed given when delivered. Notices sent by United States certified mail, return receipt requested, will be deemed given three (3) business days after dispatch. Notices sent by overnight letter will be deemed given on the next business day after dispatch. Notwithstanding the foregoing, notices of change of address will be deemed given only upon receipt by the party to whom it is delivered.

If to Contractor: Linda Odum, Executive Director

With copy to: Joel Hatcher, Director of Construction Services
West Palm Beach Housing Authority
3700 Georgia Avenue
West Palm Beach, FL 33407

If to Subcontractor: _____

24. Other Provisions.

24.1 Dispute Resolution. Any disputes or misunderstandings that may arise under this Subcontract concerning the Subcontractor's performance shall first be resolved through amicable negotiations, if possible, between the Contractor's Project Manager and WPBHA's Representative, or if necessary, shall be referred to the Contracting Officer of the WPBHA. If such parties do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to, alternate dispute resolution processes.

24.2 Attorney's Fees. In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under the Subcontract Documents (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, each party shall be responsible for its own attorney fees, and costs and expenses incurred.

24.3 Public Records. Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Subcontractor: (i) provides a service; and (ii) acts on behalf of the Contractor/Owner as provided under Section 119.011(2) F.S., the Subcontractor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Subcontractor is specifically required to:

(a) Keep and maintain public records required by the Subcontractor to perform services as provided under this Subcontract.

(b) Upon request from the Contractor/Owner's Custodian of Public Records, provide the Contractor/Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.

(c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Subcontract, if the Subcontractor does not transfer the records to the public agency.

(d) Upon completion of the Subcontract the Subcontractor shall transfer, at no cost to the Contractor/Owner, all public records in possession of the Subcontractor unless notified by Contractor/Owner's representative/liaison, on behalf of the Custodian of Public Records, to keep and maintain public records required by the Contractor/Owner to perform the service. Failure of the Subcontractor to comply with the requirements of this article shall be a material breach of this Subcontract. Contractor/Owner shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Subcontractor acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

24.4 Independent Contractor. The parties agree that the Subcontractor is an independent contractor and its personnel are employees of the Subcontractor and shall not be deemed to be and shall not hold itself out as an agent, joint venture, legal representative or employee of the Contractor and/or the County.

24.5 Compliance with Laws. Any provisions hereof to the contrary notwithstanding, Subcontractor shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the Project.

24.5 Warranty. The Subcontractor guarantees that all materials (including but not limited to mechanical, plumbing and electrical) and equipment furnished by it will be new, that all Work performed and all materials and equipment furnished by Subcontractor will be of good quality, free from faults and defects and will conform to the Subcontract Documents as to kind, quality, function, design, and characteristics of materials and workmanship specified; provided, however, Subcontractor makes no warranty with respect to appliances (except for their installation) if a warranty for such appliances is provided by the manufacturer, and which Subcontractor shall assign to Owner. Except as provided above, the Subcontractor shall remove, replace, and repair at its sole cost and expense, all defects in or to the Work occurring within one (1) year from the date of the permanent Certificate of Completion or Certificate of Occupancy whichever is applicable. Subcontractor shall repair, replace or otherwise cure any defect not later than two weeks after receipt of a notice from Owner (or its agent) describing

the defect, or if said defect cannot be cured within said two weeks, Subcontractor shall commence curing said defect within the two week period, and shall proceed thereafter with all due diligence. Notwithstanding the foregoing, in the event of a defect which threatens damage to person or property, Owner may undertake to cure the defect without waiting for Subcontractor to do so, and may charge the Subcontractor with the cost thereof. However, in cases of non-emergency, Owner shall give the Subcontractor three (3) days notice to cure such defect. The benefits of this Section 24.5 shall inure to the benefit of the Owner, the County, and its successors and assigns. In addition, any bond or guarantee which may be required of the Subcontractor under the Subcontract shall inure to the benefit of the Owner, the County, and its successors and assigns. Notwithstanding the foregoing or anything contained in the Subcontract, all Subcontractor's warranties and guarantees shall terminate one (1) year from the date of the permanent or temporary Certificate of Occupancy, whichever is earlier, except as it relates to the roof which will have a Manufacturer Extended Warranty for not less than 20 years.

25. **Miscellaneous Provisions**

25.1 **Security.** Subcontractor shall be responsible for securing the premises at all times.

25.2 **Duration of Work:** Subcontractor shall assure that neither Subcontractor nor its sub-subcontractors shall perform 100% of its work on nights, weekends, or holidays. Work shall be conducted during normal business working hours or such other reasonable times as may be approved by Contractor. Duration of work shall occur at minimum for one working day, unless otherwise waived by the Contractor.

25.3 **Successors and Assigns.** The Subcontractor and Contractor each bind their respective successors and assigns in all respects, to all the terms, conditions and covenants and provisions of this Agreement.

25.4 **Entire Agreement.** This is the entire agreement between the parties and may not be modified or amended except by a written documents signed by the Contracting Officer and or Authorized Representative.

25.5 **Severability.** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

25.6 **Venue.** Palm Beach County, Florida shall be proper venue for any litigation involving this Agreement.

25.7 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Agreement are for convenience or reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

25.8 **Counterparts.** This Agreement may be executed in counterparts, in which case each counterpart will be deemed an original all executed counterparts will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Subcontract to be duly signed and executed, and their respective seals affixed hereto by their respective duly authorized officers as of the day and year first above written.

SUBCONTRACTOR

WEST PALM BEACH HOUSING
AUTHORITY

Title: _____

Linda Odum, Executive Director

GENERAL CONDITIONS

SUBCONTRACTOR will provide all the required labor, materials, equipment, staging, and permits to complete the Subcontract Work.

1. Provide all supervision, labor, materials & equipment to complete the Work per the Subcontract Documents.
2. It shall be the responsibility of the Subcontractor to review the Subcontract Documents and provide the Work in accordance with the guidelines set forth in the Subcontract Documents and according to the governing building code requirements.
3. Subcontractor shall be bound by the terms of this Subcontract as well as the contract agreement between Contractor and the County.
4. Provide one (1) electronic and four (4) hard copies of all shop drawings and submittals per the Subcontract Document requirements and per requirements of governing building department.
5. Provide one (1) digital and four (4) hard copies of all close-out documents including but not limited to the following:
 - a. Warranty letter guaranteeing all work for a period of one year from date of completion
 - b. One (1) set of red-lined drawings reflecting any changes
 - c. All O&M manuals as applicable
 - d. Cut sheets and/or approved submittals/shop drawings reflecting all products used
 - e. Contact information for principals of company
6. Provide all scaffolding, stages, lifts, ladders, cranes, and temporary conveying systems required to complete this scope of work.
7. This Subcontractor is responsible to coordinate, control, manage, and supervise all material orders, detailing, fabrication, and delivery of materials to the jobsite in accordance with the project schedule and space limitations of the jobsite.
8. Provide and install all materials meeting the standards and requirements set forth in the Subcontract Documents for intended use, if discrepancies exist, the highest standard will govern this work.
9. All materials provided shall be in accordance with applicable Building Codes and all applicable statutes.
10. The Subcontractor shall implement and put into effect all safety requirements, standards and governing regulations as may be applicable to the entire scope of the

work defined by this Subcontract including those set by the Occupational Safety & Health Administration (OSHA). Provide all requested and required safety plans for the project including, but not limited to, Trenching and Excavation Plan, Scaffolding Plan, Fall Protection Plan and Confined Space Plan.

11. Attend all weekly Subcontractor and Safety Meetings while performing work on site, as applicable. Failure of an authorized company representative to attend and sign in will result in an immediate \$500 penalty and deductive change order. This is clause non-negotiable.

12. Provide a written project specific safety plan for work on the project. Contractor will follow the three strike policy; subsequent the third safety violation issued by a Contractor representative to the authorized company representative, an immediate \$500 penalty and deductive change order will be issued for each occurrence thereafter. This is clause non-negotiable.

13. Daily cleanup of debris and organization of the Subcontractor's materials is required while performing work onsite, shall the Subcontractor fail to perform these requirements, a Contractor representative will notify the authorized company representative in writing, and if said condition is not corrected within 24hrs, Contractor will provide a deductive change order to correct the condition.

14. Subcontractor will be responsible for parking non-company vehicles offsite, Contractor will try and designate an area for personnel vehicles onsite but site conditions may restrict these efforts.

15. Price includes all insurance, taxes, license fees, and all permits related to this scope of work.

16. Permits for this scope of work shall be provided by Subcontractor as required by governing municipality.

a. Subcontractor is required to request inspections with the governing municipality/inspecting agency.

b. Subcontractor to provide a qualified and competent representative to meet with inspector for each inspection associated with this scope of work.

17. A site inspection by the Subcontractor must be documented prior to execution of this Subcontract and is required as part of this scope of work.

Exhibit "A" - Scope of Work

(Attached hereto)

Exhibit "B" – Construction Schedule

Exhibit "C" - Drawing I Specification Log

