

It is the intent of the Galveston Housing Authority (“Authority”) that the Authority will serve as the general contractor for the purposes of utilizing its certificate of exemption from sales and use tax (“Certificate”) for the purchase of materials for the Project. The selected contractor will serve as the Prime Subcontractor and enter into a Master Subcontractor Agreement in the form as attached. The Authority will provide its Certificate to the Prime Subcontractor for use by any subcontractors when purchasing building materials for the Project.

MASTER SUBCONTRACTOR AGREEMENT
(Former Oleander Homes)

THIS MASTER SUBCONTRACT is made and entered into at and effective as of the _____ day of _____, 2020, by and between Contractor (as defined below) and Prime Subcontractor (as defined below).

WHEREAS, Contractor and Owner have entered into the Prime Contract (as defined below) for the Project (as defined below), as further described in the Prime Contract;

WHEREAS, Prime Subcontractor has experience in the construction of projects similar to the Project, and is capable of constructing the Project for Contractor and Owner; and

WHEREAS, Contractor desires to retain Prime Subcontractor to perform the entirety of the Work required by the Prime Contract, on the same terms and conditions as set forth in the Prime Contract; and

WHEREAS, Contractor has obtained, or will obtain prior to the purchase of any materials by Contractor under the Prime Contract or by Prime Subcontractor under this Master Subcontract, an exemption from Texas sales and use taxes from the Texas Comptroller of Public Accounts.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Prime Subcontractor agree as follows:

1. **Variable Defined Terms.** This Master Subcontract ("**Subcontract**") is made by Contractor and Subcontractor with reference to the following terms ("**Business Points**"):

"Subcontract Date": As of _____, 2020

"Contractor": **GALVESTON HOUSING AUTHORITY,**
a Texas public housing authority
Address: 4700 Broadway
Galveston, TX 77551
Attention: Mona Purgason
Phone (409) 765-1904
Email: ded@ghatx.org

"Contractor's Representative": Deyna Sims

"Prime Subcontractor": _____,
a Texas _____
Address: _____

Attention: _____
Phone: _____
Email: _____

“Prime Subcontractor’s Representative”: _____

“Owner”: _____, a Texas _____

Address: _____

Attention: _____

Phone: _____

Email: _____

“Project”: As defined in the Prime Contract.

“Property”: The land described in Exhibit A.

“Prime Contract”: AIA Document A102-2017, Standard Form of Agreement Between Owner and Contractor, as modified by the Owner and Contractor (the **“Prime Agreement”**), and AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner and Contractor (the **“General Conditions”**), each dated _____, 2020, for the construction of the Project and each of the Contract Documents, as enumerated and defined therein (the Contract Documents, as enumerated and defined in the Agreement and General Conditions, and that include, without limitation, the Agreement and the General Conditions, are collectively referred to herein as the **“Prime Contract”**), a copy of which is attached as Exhibit B hereto.

“Work”: As defined and described in the Prime Contract.

2. Definitions, Cross-references. Terms with initial capital letters are defined terms. Bold italicized print in quotations marks (e.g., **“Indemnify”**) indicates the definition of a term. If a defined term is not expressly defined in this Subcontract, such defined term will have the same meaning as in the Prime Contract. A defined term has the same meaning throughout this Subcontract, may appear in this Subcontract before its definition, and applies to all grammatical variations of the term also shown with initial capital letters (e.g., the definition of the word “Indemnify” also applies to “Indemnity”).

3. Persons Referenced in this Subcontract.

3.1 Persons. **“Person”** means a natural person, a trust or estate, or a corporation, partnership, limited liability company or other form of entity.

3.2 Parties. The “*Parties*” to this Subcontract are the Contractor and the Subcontractor. Subcontractor is an independent contractor of Contractor with respect to all matters pertaining to this Subcontract including, but not limited to, Subcontractor’s performance of the Work.

3.3 Representatives. The Parties’ respective Representatives are named in Section 1. A Representative is authorized to act under the terms of this Subcontract on behalf of the Party appointing such Representative. A Party may change its Representative by ten (10) days’ written notice to the other Party.

3.4 Affiliate. An “*Affiliate*” of a Person is any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. “*Control*” refers to the power to influence management decisions.

3.5 Sub-subcontractor. A “*Sub-subcontractor*” is a Person contracting with the Prime Subcontractor to perform a portion of the Work. The term “Sub-subcontractor” includes any subcontractors or Suppliers to Sub-subcontractors who contract directly with the Prime Subcontractor.

3.6 Supplier. A “*Supplier*” is a Person contracting with the Prime Subcontractor or any Sub-Subcontractor to furnish Materials or equipment for the Work.

3.7 Subcontractor-related Persons. The “*Subcontractor-related Persons*” are (i) Prime Subcontractor, (ii) Prime Subcontractor’s Representative, (iii) all Sub-subcontractors and other Persons involved in performance of the Work that are required by this Master Subcontract or the Prime Contract to be managed or supervised by Prime Subcontractor, (iv) the shareholders, members, managers, partners, and Affiliates of the Persons described in items (i) through (iii), and (v) the officers, managers, directors, employees and agents of the Persons described in items (i) through (iv).

3.8 Contractor-related Persons. The “*Contractor-related Persons*” are (i) Contractor, (ii) Contractor’s Representative, (iii) Owner, (iv) any lender whose loan is secured by the Property, (v) tenants of the Project, (vi) the respective shareholders, members, directors, partners, managers, employees and Affiliates of the Persons described in items (i) through (v), and (vii) any officers, managers, directors, employees and agents of the Persons described in items (i) through (vi).

3.9 Developer. The term “*Developer*” refers collectively to both the Contractor and Galveston Public Facility Corporation, a Texas non-profit public facility corporation.

4. Duties.

4.1 Engagement of Prime Subcontractor. Contractor hereby engages Prime Subcontractor to perform the entirety of the Work required to be performed by Contractor under the Prime Contract, including, without limitation, the provision of all labor, supervision, materials, fixtures, special facilities, built-ins, equipment, tools, supplies, taxes (except as otherwise provided herein), permits (including occupancy permits, unless precluded by Drawings and Specifications,

which permits the Owner or Contractor shall pay for), building and occupancy permit related inspections, and other property and services necessary to timely and properly produce all work and completed construction required or reasonably inferable from the Contract Documents comprising the Prime Contract and all work, services and materials necessary to deliver systems and finishes indicated in the Contract Documents that are fully connected, complete, operational and functional. Contractor hereby assumes toward Prime Subcontractor all obligations and responsibilities that the Owner and the Architect, under the Prime Contract and Contract Documents, owe and assume toward the Contractor (as the Contractor thereunder), all such obligations and responsibilities under the Prime Contract and Contract Documents being incorporated herein by reference. Prime Subcontractor hereby assumes toward Contractor all obligations, responsibilities, representations, warranties, covenants, waivers, terms, conditions and any other agreements or provisions that the Contractor, under the Prime Contract and Contract Documents, owes and assumes toward, or has made, undertaken or otherwise agreed to in favor of, Owner and the Architect, all such obligations, responsibilities, representations, warranties, covenants, waivers, terms, conditions and other agreements or provisions under the Prime Contract and Contract Documents being incorporated herein by reference. The Contractor (and the Owner, as a third-party beneficiary) shall have the benefit of all rights, remedies and redress against Prime Subcontractor that the Owner, under the Prime Contract and Contract Documents, has against the Contractor, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference. Prime Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under the Prime Contract and Contract Documents, has against the Owner, all such rights and remedies under the Prime Contract and Contract Documents being incorporated herein by reference. The parties further agree that the Owner is an intended third-party beneficiary of all of Prime Subcontractor's obligations, responsibilities, representations, warranties covenants, terms, conditions and other agreements and provisions hereunder and pursuant to the Prime Contract. For purposes of this Master Subcontract, all references to "Contractor" in the Prime Contract shall be deemed to refer to Prime Subcontractor, unless the context clearly indicates otherwise. In addition, Prime Subcontractor acknowledges and agrees that (i) to the extent the Prime Contract references Owner's lenders, investors, mortgagees, applicable governmental authorities, HUD, the City and/or GHA (for example, and without limitation, Sections 12.1.4 and 12.2.1 of the Agreement), such references, for purposes of this Master Subcontract, shall be deemed to include, without limitation, Contractor and the Owner, and (ii) without limiting any other provision herein and/or in the Prime Contract, whenever the Prime Contract requires any notice to, and/or approval or consent from, the Owner, Prime Subcontractor, in addition to Contractor, shall be required to obtain such consent or approval from, and to provide such notice to, the Owner, as required by the terms of the Prime Contract. Solely as between Contractor and Prime Subcontractor, any such notice given by Prime Subcontractor to, and/or any approval or consent obtained by Prime Subcontractor from, Owner shall be deemed to satisfy any obligations of Prime Subcontractor to give such notices to, and obtain such consent from, Contractor pursuant to this Master Subcontract. Notwithstanding anything to the contrary set forth herein, Contractor's duty to pay Prime Subcontractor for Work performed shall not be limited by Owner's failure to pay Contractor under the Prime Contract if such failure of payment is due to Contractor's fault or breach of the Prime Contract.

4.2 General Obligations and Rights of Prime Subcontractor. Subject to this Master Subcontract, Prime Subcontractor will (i) perform all of the covenants and obligations of

Contractor under, and comply with all of the conditions imposed upon Contractor in, the Prime Contract in the manner, to the standards, and within the time limits set forth in the Prime Contract, (ii) owe all of the same duties to Contractor as Contractor owes to Owner under the Prime Contract, and (iii) have all of the same rights and remedies with respect to Contractor as Contractor has with respect to Owner in the Prime Contract.

4.3 General Obligations and Rights of Contractor. Subject to this Master Subcontract, Contractor will (i) perform all of the covenants and obligations of Owner under, and comply with all of the conditions imposed upon Owner in, the Prime Contract in the manner within the time limits set forth in the Prime Contract, (ii) owe all of the same duties to Prime Subcontractor as Owner owes to Contractor under the Prime Contract, and (iii) have all of the same rights and remedies with respect to Prime Subcontractor as Owner has with respect to Contractor in the Prime Contract, including, without limitation, the right to approve all Suppliers and Sub-subcontractors as set forth in the Prime Contract. In no event will the failure of Contractor to perform any obligation of Contractor under this Master Subcontract constitute a breach of this Master Subcontract if such failure is the result of Owner's failure to perform Owner's obligations under the Prime Contract.

4.4 Insurance. Without limiting any other obligations of Prime Subcontractor pursuant to this Master Subcontract and/or the Prime Contract, Prime Subcontractor shall maintain all insurance policies and coverages, and shall furnish all payment and performance bonds, as are required to be maintained or furnished by Contractor under the Prime Contract, in the same amounts as, and subject to the same terms conditions as applicable to those, required by the Prime Contract ("**Required Insurance**"). Without limiting the foregoing, those Additional Insureds and co-obligees named in the Prime Contract shall be added to the insurance policies and bonds as additional insureds or co-obligees, as applicable. In addition, Prime Subcontractor shall add Contractor as an additional insured and a co-obligee on such insurance and bonds, respectively. Prime Subcontractor agrees that the cost of such bonds and insurance is included in the compensation payable by Contractor to Prime Subcontractor hereunder.

4.5 Sub-subcontractor's Insurance. Each Sub-subcontractor must maintain the Required Insurance or as otherwise agreed in writing by the Contractor and the Prime Subcontractor. Prime Subcontractor will be liable for any Claim Arising from reductions permitted by Prime Subcontractor to the Required Insurance with respect to Sub-subcontractors. Subcontractor will maintain certificates and evidence of insurance from all Sub-subcontractors and make such certificates and evidence of insurance available to Contractor and Owner upon request.

4.6 Sales and Use Tax Exemption. Contractor represents to Prime Subcontractor that Contractor is a tax-exempt entity for purposes of Texas sales and use tax in accordance with Section 151.310 of the Texas Tax Code ("**Sales Taxes**"), which exemption shall be applicable to all materials and other items of personal property purchased for use or incorporation in the Project. It is contemplated that pursuant to this Master Subcontract, Prime Subcontractor shall purchase Materials from Suppliers or any other Sub-subcontractors for sale by Prime Subcontractor to Contractor hereunder, for and in consideration of the Contract Sum, for use or incorporation in the Project. Contractor shall issue to Prime Subcontractor a fully and properly completed exemption certificate or certificates (collectively, "**Certificates**") as to Contractor's Texas exemption from

Sales Tax such as will permit Prime Subcontractor not to collect sales and use taxes on materials sold to Contractor for use or incorporation in the Project and, upon issuance by Prime Subcontractor of resale certificates, not to pay Sales Taxes on Materials purchased by Prime Subcontractor from the Suppliers and any other Sub-subcontractors (and such Sub-subcontractors, upon issuance of resale certificates, from their lower tier suppliers and Sub-subcontractors), for use or incorporation in the Project. The Certificates to be issued by Contractor to Prime Subcontractor hereunder shall remain in effect until the Project is complete as reflected by the issuance of final Forms 8609 for the buildings in the Project. Contractor shall also provide to Prime Subcontractor the Sales Tax exemption number of Contractor. Contractor shall distribute to Prime Subcontractor Contractor's Sales-Tax exemption certificate and Prime Subcontractor shall distribute such certificate to all applicable employees and Sub-subcontractors (including, without limitation, Sub-subcontractors of all tiers), who shall be instructed to use such certificate to prevent Sales Taxes from being inadvertently charged to the Project, Owner and/or Contractor. Prime Subcontractor shall take all actions reasonably requested by, and shall cooperate with, Owner and/or Contractor in connection with securing and continuing the Project's exemption from Sales Taxes.

4.7 Promotional Materials. Prime Subcontractor will not name any Contractor-related Person or the Property in any promotional materials without the prior written consent of Contractor. This Agreement does not constitute such written consent.

4.8 Agent Designation. Contractor designates Prime Subcontractor as its agent for purposes of procuring and purchasing, on behalf of Contractor, the Materials and equipment to be incorporated into the Project, and in making payment of all fees and charges to Suppliers and Sub-Subcontractors for such Material and equipment purchases. Prime Subcontractor is authorized to purchase the Materials and equipment either as a disclosed purchasing agent for Contractor or as a nondisclosed purchasing agent for Contractor.

5. Compensation for Work. As full consideration for performance of the Work by Prime Subcontractor, Contractor will pay to Prime Subcontractor in current funds the Contract Sum set forth in the Prime Contract (*i.e.*, the Cost of the Work plus the Contractor's Fee), not to exceed the GMP established therein, which GMP is equal to _____ and 00/100 Dollars (\$_____.00). The GMP shall not be adjusted except and solely to the extent expressly permitted by the terms of the Prime Contract and pursuant to the execution of a Change Order by the Owner and Contractor or a CCD by Owner. To the extent the Prime Contract requires the consent of the Contractor in connection with a change in the Work and/or the execution of a Change Order or other Modification to the Prime Contract, the written consent of Prime Subcontractor shall be required in order for such change, Change Order or Modification to be binding upon Prime Subcontractor. In addition, Contractor and Prime Subcontractor acknowledge that the Contract Sum shall consist of the following components: (i) the "***Services Payment,***" which shall consist of the portion of the Contract Sum payable to Prime Subcontractor on account of the skill, labor and other soft items comprising the Work, including fabrication, installation and any other labor performed by Prime Subcontractor and/or its Sub-subcontractors; and (ii) the "***Materials Payment,***" which shall consist of the portion of the Contract Sum payable to Prime Subcontractor on account of the Materials comprising the Work that are to be incorporated into the Project; provided that in no event shall the sum of the Services Payment and Materials Payment

exceed the GMP. The GMP reflects the estimated Services Payment and Materials Payment (estimated as of the date of execution of this Master Subcontract), as follows: (a) Services Payment: \$ _____; and (b) Materials Payment: \$ _____, each as further provided in the Schedule of Values attached hereto as Exhibit C and incorporated fully herein as a part of this Master Subcontract. Upon Substantial Completion of the entire Work and completion of the final accounting pursuant to the requirements of the Prime Contract, this Master Subcontract shall be amended to reflect the actual Services Payment and Materials Payment payable to Prime Subcontractor on account of the Work. For the avoidance of doubt, the estimated Services Payment and Materials Payment set forth herein shall in no way dictate or limit the actual Contract Sum payable to Prime Subcontractor pursuant to this Master Subcontract and the terms of the Prime Contract (*i.e.*, the actual Services Payment and/or Materials Payment payable to Prime Subcontractor may be less than the estimated amounts set forth in this Section 5; and, provided that if the sum of the actual Services Payment and Materials Payment is less than or equal to the GMP, the actual Services Payment payable to Prime Subcontractor may exceed the estimated amount set forth in this Section 5, or the actual Materials Payment payable to Prime Subcontractor may exceed the estimated amount set forth in this Section 5, as the case may be).

5.1.1 Partial Payments. Prime Subcontractor shall submit its monthly Applications for Payment in the form required for Applications for Payment under the Prime Contract, together with all supporting documentation as is required under the Prime Contract, to Contractor and Owner simultaneously in accordance with the terms and conditions of, and by such date or dates as are required by, the Prime Contract. Each Application for Payment shall specify the portion of each payment that is allocated to a Materials Payment and that portion that is allocated to a Services Payment. Prime Subcontractor will assist the Contractor with the preparation and submittal of Contractor's Applications for Payment to the Owner in accordance with the terms of the Prime Contract. The Contractor will make payments due to Prime Subcontractor (including, without limitation, final payment and any release of retainage withheld from Contractor) within seven (7) days and on the same terms as it receives such payment or retainage release from Owner or by no later than the time required by applicable Laws. Notwithstanding the foregoing, nothing herein will prohibit the Owner from making such monthly progress payments directly to Prime Subcontractor as set forth herein. In addition, notwithstanding anything herein to the contrary, in no event will payments by Contractor to Prime Subcontractor under this Master Subcontract be due until such time as Contractor has received payment of such funds due under the Prime Contract from Owner for the same Work. Payment to Prime Subcontractor may be in the form of checks from Contractor to Subcontractor, from Owner jointly to Contractor and Prime Subcontractor, or directly to the Contractor from the Owner to the extent permitted by applicable law. To the extent payment less retainage is made by Owner to Contractor under the Prime Contract, no further retainage shall be withheld by Contractor from the payments due to Prime Subcontractor hereunder notwithstanding any other provision of the Prime Contract or this Master Subcontract. Payments due and unpaid by Contractor to Prime Subcontractor under this Master Subcontract shall bear interest at the same rate as payable by Owner to Contractor under the Prime Contract.

5.1.2 Final Payment. Contractor will pay or cause Owner to pay directly to Prime Subcontractor (in satisfaction of Owner's obligation to pay the applicable amount to Contractor) the entire unpaid balance of the Contract Sum ("***Final Payment***") on the date specified

in the Prime Contract for final payment, subject to Prime Subcontractor's satisfaction of all required conditions for final payment as set forth in the Prime Contract. Acceptance of Final Payment by Prime Subcontractor will constitute a Release and waiver by Subcontractor of all Claims against Contractor and Owner.

5.1.3 Releases. Prime Subcontractor shall submit with each Application for Payment, all applicable release of lien rights by Prime Subcontractor and each Sub-subcontractor in the applicable form(s) required by the Prime Contract and in compliance with Chapter 53 of the Texas Property Code. Delivery of such release of lien rights by Prime Subcontractor shall be a condition precedent to payment by Contractor.

5.1.5 Schedule of Values. The schedule of values referenced in the Prime Contract shall be the schedule of values attached to the Prime Contract; provided that, for purposes of this Master Subcontract, the Schedule of Values shall be the Schedule of Values attached hereto as Exhibit C, and such Schedule of Values shall further itemize and separately list that portion of the Work that is allocated to the Materials Payment and that portion that is allocated to the Services Payment. Such Schedule of Values may be amended by the Parties on the same basis as the schedule of values may be amended under the terms of the Prime Contract.

5.1.6 Mechanics' and Materialmen's Liens. Prime Subcontractor may and/or shall bond around a mechanics' or materialmen's lien filed by a Sub-subcontractor or Supplier to the extent Contractor may and/or shall bond around a such liens as required by the Prime Contract including, but not limited, Section 9.3.1.4 of the General Conditions and/or in accordance with applicable Laws.

5.2 Withholding Payment. Contractor may withhold payment to Prime Subcontractor to the same extent Owner may withhold certification or payment from Contractor under the Prime Contract.

5.3 Prime Subcontractor's Records. Prime Subcontractor will maintain books and records pertaining to the Work in accordance with requirements of the Prime Contract. Prime Subcontractor will, upon request, provide Contractor with copies of any expenses shown on any Payment Request and access to Prime Subcontractor's books and records.

5.4 Disposition of Payments. Contractor has no obligation with respect to the proper disposition or application of any monies paid by Contractor to Prime Subcontractor.

5.5 Prime Subcontractor's Lien Rights. Notwithstanding any other term in the Prime Contract or this Master Subcontract, the Contractor acknowledges and agrees that, for purposes of Prime Subcontractor's statutory and constitutional mechanic's lien rights, Prime Subcontractor is an original contractor as defined in Section 53.206 of the Texas Property Code.

6. Suspension, Termination, and Default.

6.1 Suspension of Work. Contractor may delay the commencement or completion of, or suspend Prime Subcontractor's performance of the Work, at such times as Owner is permitted to delay the commencement or completion of, or suspend Contractor's performance of the Work under the Prime Contract. In any of such events, the time for performance under this Master Subcontract will be adjusted in the same manner as the Contract Time may be adjusted under the Prime Contract.

6.2 Termination. Contractor may terminate this Master Subcontract in the same manner as and on the same basis that Owner may terminate the Prime Contract. In such case, in the event that Contractor actually receives payment from Owner for amounts due under the Prime Contract, Contractor shall pay Prime Subcontractor such amounts due to Prime Subcontractor under this Master Subcontract for Work actually performed prior to that date of such termination.

6.3 Prime Subcontractor's Default. Prime Subcontractor will be in default under this Master Subcontract if (i) any material representation made or information submitted by Prime Subcontractor is not true and correct in all material respects, (ii) Prime Subcontractor or any Sub-subcontractor fails to comply fully and timely with any condition of this Master Subcontract or the Prime Contract, or (iii) Prime Subcontractor fails to perform fully and timely any covenant of Prime Subcontractor contained in this Master Subcontract or covenant of Contractor to be performed in the Prime Contract. Prime Subcontractor shall be allowed an opportunity to cure any alleged default of the Master Subcontract to the same extent Contractor is permitted to cure any alleged default of the Contractor under the Prime Contract.

6.4 Prime Subcontractor's Suspension of the Work or Termination. Prime Subcontractor may delay the commencement, suspend performance of the Work and/or terminate this Master Subcontract, at such time and for such grounds and pursuant to such procedures as Contractor is permitted to delay the commencement, suspend performance of the Work and/or terminate the Prime Contract under the Prime Contract.

6.5 Remedies Cumulative. Prime Subcontractor's sole remedies shall be as set forth in this Master Subcontract.

6.6 Termination for Bankruptcy. If Prime Subcontractor becomes subject to a proceeding under the United States Bankruptcy Code ("*Bankruptcy*") and, in the reasonable opinion of Contractor, is unable to fulfill its obligations under this Master Subcontract because of the Bankruptcy, Contractor will notify Prime Subcontractor in writing. If Prime Subcontractor is unable to provide adequate assurance of future performance reasonably satisfactory to Contractor within twenty (20) days after receiving Contractor's notice, Prime Subcontractor agrees that Contractor may immediately terminate this Master Subcontract for cause and Prime Subcontractor will take no action which would impede the efforts of Contractor to have this Master Subcontract rejected and/or terminated by a Bankruptcy court.

7. Indemnification.

7.1 Additional Definitions.

7.1.1 “**Beneficiary**” is the intended recipient of the benefits of another party’s Indemnity, Release or obligation to defend.

7.1.2 “**Claims**” means all demands, legal action (whether filed or threatened), liabilities, losses, damages (including actual, direct, indirect, statutory, consequential, and punitive and all penalties, fines, assessments and forfeitures), expenses, Legal Costs (as defined herein), or penalties of any nature or description.

7.1.3 “**Injury**” means (i) harm to, impairment, destruction, or loss of property or its use, (ii) harm to, sickness, bodily injury, disease, or death of a person, or (iii) “personal and advertising injury,” as such term is defined in the form of “Commercial General Liability Insurance” Subcontractor is required to maintain.

7.1.4 “**Legal Costs**” means court costs, attorneys’ fees, experts’ fees or other expenses reasonably incurred in investigating, preparing, prosecuting, defending, or settling any legal, administrative, or alternative dispute resolution action, Claim, or proceeding.

7.1.5 “**Indemnify**” means, to the fullest extent permitted by law, to (a) protect an Indemnified Person (as defined herein) against the occurrence of a Claim, including defending or contesting on behalf of the Indemnified Person, a Claim in litigation, arbitration, mediation, or other proceeding with counsel reasonably acceptable to the Indemnified Person and paying all Legal Costs associated with such defense or contest and/or (b) compensate another Person for a Claim actually incurred, all such obligations being subject to Section 7.6 herein.

7.1.6 “**Release**” means to waive or relinquish a right or release another Person from liability in connection with a Claim.

7.1.7 “**Arising From**” means directly or indirectly, in whole or in part, (1) occurring in connection with or as a result of, (2) causing or resulting in, or (3) based upon.

7.1.8 “**Indemnified Person**” means a person or entity that is the beneficiary of the Indemnity under this Article 7. Subcontractor’s obligation to Indemnify Contractor against Claims, including Legal Costs, under this Paragraph 7 shall be construed as a separate item of indemnification which shall be an absolute obligation of Subcontractor even if such Claims are invalid or groundless (except to the extent that such invalid or groundless Claims are brought by Contractor).

7.2 **Indemnities as to Performance.** Subcontractor will Indemnify the Contractor-related Persons from and against all Claims Arising From or alleged to Arise From (i) performance by Subcontractor of the Work, (ii) any default by Subcontractor or any Sub-subcontractor under this Subcontract, (iii) any defect in the Work or materials used in the construction of the Property, (iv) any failure by Subcontractor or any Sub-subcontractor to maintain the insurance coverages required under the Prime Contract or under this Subcontract, (v) violation of or failure to comply

with applicable law by any Subcontractor-related Person, (vi) any release, generation, or improper use, disposal or disturbance of Hazardous Substances that Arises From a Subcontractor-related Person's activities or operations or the remediation of such release or disturbance, or (vii) any Claim resulting from the failure of Subcontractor to perform any covenant or obligation of Contractor under the Prime Contract or comply with any condition of Contractor under the Prime Contract. Without limiting any of Prime Subcontractor's obligations hereunder and/or pursuant to the Prime Contract, Prime Subcontractor acknowledges and agrees that all indemnification (including, without limitation, all defense) provisions set forth in the Prime Contract (including, without limitation, those set forth in Section 3.18 of the General Conditions) shall be construed as requiring Prime Subcontractor to provide such defense and indemnification in favor of each of the indemnitees specified therein, as and to the extent required therein and to the fullest extent permitted by applicable law. In addition, such defense and indemnification obligations of Prime Subcontractor shall extend to include Contractor as a party to be indemnified and defended pursuant to the applicable provisions of the Prime Contract. Prime Subcontractor's obligation to defend and indemnify Contractor and the Owner Indemnitees under this section shall be construed as a separate item of indemnification which shall be an absolute obligation of Prime Subcontractor even if such Claims are invalid or groundless.

7.3 **Indemnity and Release as to Injuries.** Subcontractor agrees to Indemnify the Contractor-related Persons from and against all Claims Arising From or alleged to Arise From the presence of Sub-Subcontractor-related Persons on the Property or their ongoing or completed operations.

7.4 **Indemnity for Use of Sales Tax Exemption.** Subcontractor will Indemnify the Contractor-related Persons from and against any claims by the Comptroller of Public Accounts of the State of Texas, any other taxing authority in the State of Texas, or any other third party arising from an Improper Use by Prime Subcontractor or its subcontractors of Contractor's sales tax exemption. An "***Improper Use***" is defined as "a use other than as contemplated or authorized by Section 4.6 of this Master Subcontract."

7.5 **Scope of Indemnities and Releases.** The indemnities provided by this Article 7 are independent of, and will not be limited by, each other or any insurance obligations in this Subcontract (whether or not complied with) or workers' compensation or other employee benefit programs or laws. The Indemnity and Release contained in Section 7.3 will not apply to the extent of the percentage of a Claim that, under the comparative negligence principles of the state in which the Property is located, was proximately caused by the negligence or willful misconduct of the Beneficiary of such Indemnity and Release.

7.6 **Public policy Limitations.** Nothing in this Master Subcontract any other Contract Documents is intended to provide for indemnification (or defense 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 indemnitee or its agent or employee, or any third-party under the control or supervision of the indemnitee (other than the indemnitor or its agent, employee, or subcontractor of any tier), to the extent that indemnification under the circumstances is declared to be against public policy by Section 151.102 of the Texas Insurance Code. If any indemnification provision of this subcontract or another Contract Document, by its terms, purports

to allow for indemnification (including defense against claims) that are made unenforceable by Section 151.102 of the Texas Insurance Code, then such provision shall be inapplicable to the extent that it is so made unenforceable, but the inclusion of the unenforceable rights shall not affect the indemnification provision as applied to other circumstances, and the indemnitee shall continue to be entitled to indemnification (including defense against claims) to the maximum extent allowed by the provision and consistent with applicable laws.

8. Hazardous Substances.

8.1 Definition. A “*Hazardous Substance*” means all hazardous or toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, petroleum-based products, asbestos and raw materials which include hazardous constituents, radon or urea formaldehyde) and any other similar substances, or materials which are included or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulations, contamination, clean-up or disclosure, including, without limitations, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide Fungicide and Rodenticide Act, each as amended.

8.2 General Covenants. For so long as Subcontractor-related Persons are on the Property (whether or not this Master Subcontract has expired or been terminated), Prime Subcontractor will not cause or permit the storage, use, disturbance, release, generation or disposal of Hazardous Substances on the Property in violation of applicable law. Prime Subcontractor will immediately notify Contractor of any Hazardous Substances contamination or spillage Arising From the activities of a Subcontractor-related Person and, within thirty (30) days after receipt of an invoice therefor, reimburse Contractor for all expenses incurred by Contractor in connection with the clean up or other remediation of such Hazardous Substances.

9. Claims and Dispute Resolution.

9.1 Waiver of Consequential and Punitive Damages. Each Party hereby waives consequential and punitive damages against the other Party to the same extent (if any) that the Owner and the Contractor waive consequential and punitive damages against each other in the Prime Contract.

9.2 Dispute Resolution Procedures. Any dispute or claim arising under this Master Subcontract shall be subject to and decided by the procedures required under the Prime Contract for the resolution of disputes or claims under the Prime Contract. Without limiting the foregoing, all disputes or claims arising under this Master Subcontract shall be decided as provided in the Prime Contract. If requested by Contractor in writing, Prime Subcontractor’s obligations under this Subcontract will include representing Contractor and appearing on behalf of Contractor in, and preparing any presentation or submittal required for, any dispute resolution proceeding conducted pursuant to the Prime Contract, all at the cost of Subcontractor.

9.3 Contingent Assignment of Subcontracts. Prime Subcontractor agrees to the terms of, and shall expressly state in each of its subcontract agreements, purchase order or supply

agreement with any third party (“*Lower-Tier Provider*”) whose performance of such lower-tier agreement is related in any way to this Master Subcontract, the following provision for the collateral assignment of any such subcontract, purchase order or supply agreement:

“[INSERT CONTRACTOR’S NAME] (as “Contractor”) has irrevocably and collaterally assigned to _____, a Texas _____ [NTD: Insert Owner entity] (as “Owner”), this [DESCRIBE AGREEMENT] with [INSERT NAME OF LOWER-TIER PROVIDER] (as “Lower-Tier Provider”) to secure Contractor’s obligations to perform under a Contract, dated [DATE], with Owner in connection with the Project. Lower-Tier Provider hereby consents to this assignment, and shall execute all documents reasonably required to evidence or facilitate the effectiveness of such assignment. Such assignment shall not, however, become effective until Owner delivers notice of intent to Lower-Tier Provider that Owner has elected to accept and assume such assignment, whereupon Owner may elect in writing to require Lower-Tier Provider to (a) cease work on and/or vacate the Project, (b) continue performance hereunder, or (c) enter into a new agreement directly with Owner on the same terms and conditions contained herein as to all of Lower-Tier Provider’s obligations remaining to be performed after the date of such notice. The Lower-Tier Provider agrees to notify Owner simultaneously with its issuance of any notice to the Contractor of the circumstances relating to the occurrence of any material default by the Contractor in its obligations to Lower-Tier Provider hereunder, as a result of which Lower-Tier Provider elects to exercise its rights to terminate hereunder, and Owner shall have an opportunity to cure such default by Contractor, provided that such cure is effected within a reasonable period of time, but in no event later than thirty (30) days after the date of Owner’s receipt of such default notice. The Lower-Tier Provider further agrees to extend to Owner directly any warranties and remedies required of Lower-Tier Provider hereunder; provided however, the foregoing shall not change Contractor’s or Lower-Tier Provider’s rights and obligations hereunder, other than to provide to Owner, the right to directly enforce against Lower-Tier Provider such warranties and remedies.”

9.4 Commencement and Completion of the Work; Liquidated Damages. Prime Subcontractor shall commence the Work, in accordance with, and upon receipt by the Contractor of the Notice to Proceed issued by Owner, which notice may be sent by Owner simultaneously to Contractor and Prime Subcontractor. Without limitation of any of Prime Subcontractor’s obligations hereunder and/or pursuant to the Prime Contract, (i) Prime Subcontractor shall Substantially Complete the entire Work or any designated portion of phase thereof and Finally Complete the Work by the applicable required dates for Substantial Completion and Final Completion as set forth in the Prime Contract, subject only to Excused Delays, as defined therein; and (ii) Prime Subcontractor shall be liable to Contractor for all liquidated damages for which Contractor is liable to the Owner, for Prime Subcontractor’s failure to Substantially Complete the entire Work or any designated portion of phase thereof and Finally Complete the Work by the applicable required dates for Substantial Completion and Final Completion as set forth in the Prime Contract, as and to the extent set forth in Section 5.1.6 of the Agreement.

10. General Provisions.

10.1 Entire Contract. This Master Subcontract and any other agreements or contracts referenced in this Master Subcontract constitute the entire agreement between the Parties. No oral statements or prior written proposals or agreements which are not specifically incorporated into this Master Subcontract will be effective. Contractor will not be bound by any purported consent, approval or modification of this Master Subcontract or deemed to have waived or released any provision of this Master Subcontract, unless such consent, approval, modification, waiver, or Release is in writing and signed by Contractor.

10.2 Governing Law; Venue. This Master Subcontract will be governed by, construed in accordance with, and enforced under the applicable law of the state in which the Property is located. Proper venue for any legal action brought under this Master Subcontract will be in the county in which the Property is located.

10.3 Interpretation. All headings in this Master Subcontract are for convenience of reference only and not part of this Master Subcontract. No construction or inference will be derived from the headings. This Master Subcontract may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and the same document. Each Party has reviewed, and had an opportunity to have legal counsel review, this Master Subcontract; therefore, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed to interpret this Master Subcontract. The word “including” does not exclude items not listed. Unless the context otherwise requires, singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable. Unless expressly provided otherwise, the word “day” refers to a calendar day.

10.4 Conformity with Applicable Law. Any applicable law affecting the legality, validity or enforceability of any provision of this Master Subcontract, including Indemnity or Release, is made a part of such provision and will operate to amend such provision to the minimum extent necessary to bring the provision into conformity with applicable law and cause the provision, as modified, to continue in full force and effect. If any provision of this Master Subcontract is held to be illegal, invalid or unenforceable under applicable law, such provision will be deemed removed from this Master Subcontract and this Master Subcontract will be reformed to carry out the Parties’ intent to the maximum extent practicable under applicable law.

10.5 Successors and Assigns. This Master Subcontract benefits and binds the respective legal representatives, successors, and permitted assigns of Contractor and Prime Subcontractor. Owner is a third party beneficiary to this Master Subcontract.

10.6 Communications. Prime Subcontractor is hereby authorized to communicate directly with the Owner and/or the Architect with respect to the Project and the Work required hereunder. Copies of all written communications between Prime Subcontractor and either Owner or Architect shall be delivered promptly by Prime Subcontractor to the Contractor. Copies of all written communications between Contractor and either Owner or Architect shall be delivered promptly by Contractor to Prime Subcontractor. If Owner or Contractor asserts any Claim against the other, Contractor shall promptly deliver written notice of such Claim to Prime Subcontractor.

10.7 Survival of Provisions. The termination or expiration of this Master Subcontract will not affect (i) any right or obligation of either Party which accrued or vested prior to such termination or expiration, (ii) any continuing obligation, liability or responsibility of Prime Subcontractor, including Prime Subcontractor's obligations under Articles 4, 5, 6, 7, and 8, or (iii) any related provisions necessary to interpret and continue such rights, obligations, liabilities or responsibilities.

10.8 Time of Essence. Time is of the essence in Prime Subcontractor's performance of this Master Subcontract and every provision and term of this Master Subcontract.

10.9 Conflicts. To the extent that a provision contained in this Master Subcontract conflicts with a provision contained in the Prime Contract, the provision contained in the Prime Contract will control; provided that, a provision of this Subcontract that is intended to modify the corresponding provision in the Prime Contract shall not be construed as a conflict with the Prime Contract.

10.10 Notice. All notices shall be given in the same manner as provided in the Prime Contract. Electronic transmittal ("***Email***") communications are solely for the convenience of the Parties and will not constitute valid or effective notice for purposes of this Master Subcontract. All notices, including all inquiries, requests, instructions, authorizations and communications will be made to the appropriate Representative. **In order to be effective, notices from either Party changing such Party's Representative, terminating this Master Subcontract, or alleging nonperformance or default by the other Party, must be addressed and sent to such Party at that Party's address given in Article 1.**

10.11 Warranties. Contractor hereby transfers to Owner any guarantees or warranties given by the Prime Subcontractor, Sub-subcontractors or Suppliers in connection with the Work, Materials or equipment.

10.12 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).

10.13. Various legal requirements. Without limiting any other provision of this Prime Subcontract, Prime Subcontractor acknowledges and agrees that it will comply with the following, and shall include the following in its subcontract agreements:

10.13.1 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.354, Labor standards – Federal Labor Standards which includes:

A. Davis–Bacon and Related Act (40 USC 276 (A)-5) – Ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.

B. Copeland Act (Anti-kickback) – Governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.

C. Contract Work Hours and Safety Standards – Provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.

10.13.2 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 58, Environmental standards.

10.13.3 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.508 (7)(i)(a)(b). Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements Section 3 of the Housing Development Act of 1968, as amended.

10.13.4 Prime Subcontractor acknowledges, understands, and agrees to comply with 24 CFR 92 Section 92.350, Use of debarred, suspended or ineligible contractors or subrecipients.

10.13.5 If Prime Subcontractor is a nonprofit corporation or governmental entity, Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Part 92.505, Uniform administrative requirements and cost principles.

10.13.6 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.356, Conflict of interest.

10.13.7 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.351 (a)(b), Affirmative Marketing.

10.13.8 Prime Subcontractor acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.251, Property Standards.

10.13.9 Prime Subcontractor acknowledges, understands, and agrees to comply to fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111.

10.13.10 Prime Subcontractor verifies that it does not currently Boycott Israel; and will not Boycott Israel, as the term is defined in the Texas Government Code Section 808.001, as amended, during the term of this Master Subcontract in accordance with Texas Government Code Chapter 2270.

10.14. HUD Section 3 (if applicable). The following shall apply to the extent applicable to this transaction (and the parties agree that references to “contractor” in the provisions below shall be deemed to refer to Prime Subcontractor):

10.14.1 The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

10.14.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

10.14.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

10.14.4 The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

10.14.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

10.14.6 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

10.14.7 With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that

are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

10.15. Eligibility. Prime Subcontractor represents that neither Prime Subcontractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction.

10.16. Other Provisions. Without limiting any other provision of this Master Subcontract, Prime Subcontractor acknowledges and agrees that it will comply with the following, which are required by one of the Project lenders, and shall include the following in its subcontract agreements:

17.1 Prime Subcontractor understands and acknowledges that the Provisions of Chapter 2258, Texas Government Code are expressly made a part of this Master Subcontract.

17.2 Upon request, Prime Subcontractor shall provide the City with sufficient documentation to verify that the provisions of Chapter 2258, Texas Government Code are met.

17.3 Owner, Contractor and/or Prime Subcontractor shall have requested the applicable wage decision of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Master Subcontract prior to the bidding of the Project. Such wage decision shall have been obtained from the City for inclusion by Owner, Contractor and/or Prime Subcontractor in the construction solicitation.

17.4 Prime Subcontractor understands and acknowledges that the City may request periodic reports or support to ensure adherence to prevailing wage rates provisions.

17.6 Prime Subcontractor understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve Prime Subcontractor or any Sub-subcontractor from their obligations under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the Work to be performed hereunder.

17.7 Prime Subcontractor and any Sub-subcontractor, in the execution of this Project, agrees that they shall not discriminate in their employment practices against any person because of race, color, creed, sex or origin. Prime Subcontractor and any Sub-subcontractor agree that they will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

[Signatures to appear on following page]

Signature Page to Master Subcontract

CONTRACTOR:

GALVESTON HOUSING AUTHORITY, a Texas
public body corporate and politic

By: _____

Name: Mona Purgason

Title: Secretary/Executive Director

PRIME SUBCONTRACTOR:

By: _____

Name: _____

Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

PRIME CONTRACT

EXHIBIT C

MASTER SUBCONTRACT SCHEDULE OF VALUES