

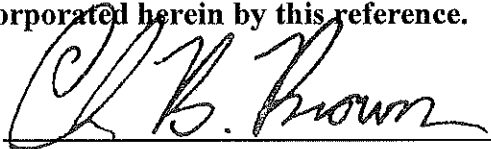
Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.

(✓) Other - Grant Funds Available

  
 \_\_\_\_\_  
 City Controller of the City of Houston, Texas

Date: 6-2, 2020

5030-2000  
 1021-1  
 FUND REF: C 77348 AMOUNT: 69,385.80 ENCUMB. NO.: FR 3-4199 -

City of Houston, Texas Ordinance No. 2020-475

AN ORDINANCE APPROVING AND AUTHORIZING A SECOND AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF HOUSTON AND PROPERTY OWNER(S) AT 4718 NORTH BRAESWOOD BOULEVARD, HOUSTON, TEXAS 77096 FOR THE 2015 FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT TO CHANGE CONTRACTORS FROM TITAN LIFETIME FOUNDATIONS, LLC TO ARKITEKTURA DEVELOPMENT, INC. (AS APPROVED BY ORDINANCE NO. 2017-0560, AS AMENDED); CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes this Second Amendment as described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 3rd day of June, 2020.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 09 2020.

Art J. Alvarez  
\_\_\_\_\_  
City Secretary

**FUNDING SOURCE:**

\$ 69,382.80 - Federal State Local – Pass Through Fund (remains from previous funding)  
\$ 55,259.51 - Grant Matching Fund

(Prepared by Legal Dept. \_\_\_\_\_)  
(ARC/sjl 03/12/2020) \_\_\_\_\_ Assistant City Attorney  
(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)  
(L.D. File No. 0801700199003)

DocuSigned by:  
Arnold Colunga  
4E048CF099CD400...

AYE	NO	
✓		<b>MAYOR TURNER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

**SECOND AMENDMENT TO THE CITY OF HOUSTON / HOMEOWNER AGREEMENT FOR 2015 FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT BETWEEN THE CITY OF HOUSTON AND THE PROPERTY OWNER(S) AT 4718 NORTH BRAESWOOD BOULEVARD, HOUSTON, TEXAS 77096**

**THE STATE OF TEXAS       §  
  §  
COUNTY OF HARRIS       §**

**THIS SECOND AMENDMENT TO THE CITY OF HOUSTON / HOMEOWNER AGREEMENT FOR 2015 FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT (“SECOND AMENDMENT”) is made on the counter-signature date by and between the CITY OF HOUSTON, TEXAS (the “City”), a home-rule city of the state of Texas, and THE PROPERTY OWNER(S) AT 4718 NORTH BRAESWOOD BOULEVARD, HOUSTON, TEXAS 77096 (the “Owner(s)).**

**RECITALS:**

1. Pursuant to Ordinance No. 2017-0560 (August 1, 2017), the City and the Owner(s) entered into the City of Houston / Homeowner Agreement for 2015 Flood Mitigation Assistance Home Elevation Project (the “Original Agreement”).
2. Pursuant to Ordinance 2019-0639 (August 21, 2019), the City and the Owner(s) amended the Original Agreement to amend its term (the “First Amendment”).
3. The City and the Owner(s) desire to amend the Original Agreement, as amended by the First Amendment, to reflect changes in the contractor performing the 2015 Flood Mitigation Assistance Home Elevation Project, as well as incorporate a new Homeowner/Contractor Agreement for 2015 Flood Mitigation Assistance Home Elevation Project.
4. **NOW THEREFORE**, the parties agree as follows:

**ARTICLE I.**

Section 2.1 of Article 2, “Funding”, of the Original Agreement, as amended by the First Amendment, is deleted in its entirety and replaced with the following:

2.1 The City shall provide FMA funds identified in the FMA grant, administered by the Texas Water Development Board. After carefully reviewing the quotes received from the Elevation Contractors, Recipient has chosen to use Arkitektura Development, Inc. to elevate Recipient's property. The total project costs, associated with the Recipient's chosen elevation contractor, as detailed in Attachment B, are \$219,978.15 (including Elevation contract amount of \$191,925.95, Subcontractor/Inspector contract amount of \$5,000.00, Temporary Lodging contract amount of \$7,392.00, Administration/Project Management contract amount of \$15,660.20, and City of Houston In-Kind Donation of \$438.50). The Recipient will be reimbursed for FMA eligible costs up to an amount not to exceed \$248,534.40 incurred in the satisfactory performance of work required to complete the Project. The Recipient is responsible for a cash match from non-federal sources for 10% of the Project's local share, up to an amount not to exceed \$248,534.40. This local match, if applicable, will be paid prior to the commencement of the elevation to ensure 100% of the funds are available to complete the elevation scope of work. As Temporary Lodging is on a reimbursable basis, the amount due at time of execution on this contract is the Homeowner Share (included in ICC Payment) of \$23,614.24, 10% of the Subcontractor/Inspector amount (\$500) and 10% of Temporary Lodging amount (\$739.20) for a total due at signing of \$24,853.44.

Contractor will submit invoices to Recipient and City. City will be responsible for payment of such invoices to Contractor. Temporary living will be paid on a cost reimbursable basis, not to exceed 90% of \$7,392.00. Daily temporary living allowance is limited to the Federal Per Diem Rate for Harris County, TX of \$132.00 per night for lodging.

## ARTICLE II.

Section 2.6 of Article 2, "Funding", of the Original Agreement, as amended by the First Amendment, is deleted in its entirety and replaced with the following:

2.6 It is understood that there are two Agreements associated with this elevation:

- This agreement between the City and the Homeowner; and
- An agreement between the Homeowner and the Elevation Contractor, **Arkitektura Development, Inc.**, attached hereto as Attachment **A-1**.

The Agreement between the Owner and Contractor indicates Owner is responsible for payment under this grant; however, as indicated above, payment for work completed under the terms of this agreement will be made from the City directly to the Elevation Contractor. Therefore, in the agreement between Owner and **Arkitektura Development, Inc.**, the Owner has assigned its right to all monies the Owner is entitled to be paid by the City for the work performed by **Arkitektura Development, Inc.**. Additionally, the City hereby acknowledges **Arkitektura Development, Inc.** as a third party beneficiary to this Agreement, and further acknowledges that Owner has assigned its right to be paid by the City to **Arkitektura Development, Inc.**.

### **ARTICLE III.**

Attachment A, "Elevation Contract between Recipient and Titan Lifetime Foundations LLC," is deleted in its entirety and replaced with the attached Attachment A-1, "Elevation Contract between Recipient and Arkitektura Development, Inc."

### **ARTICLE IV.**

The Original Agreement, as amended by the First Amendment, is amended and supplemented by the attached Attachment K, "Claim Number GC011892, Tender of Completion Contractor to City and Release Agreement."

### **ARTICLE V.**

Except as modified under this Second Amendment, the Original Agreement, as amended by the First Amendment, will remain in full force and effect. In the event of a conflict

between the Original Agreement, as amended by the First Amendment, and the Second Amendment, this Second Amendment shall prevail.

**E. Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

PROPERTY OWNER

DocuSigned by:  
*Dana Marafi*  
By: \_\_\_\_\_  
D90F8BE4F8E0493...

Printed Name: Dana Marafi

Date: 4/30/2020

PROPERTY OWNER

DocuSigned by:  
*Waleed Alali*  
By: \_\_\_\_\_  
3E8B4F3A295A192...

Printed Name: Waleed Alali

Date: 4/30/2020

ATTEST/SEAL:

\_\_\_\_\_  
City Secretary

**CITY OF HOUSTON, TEXAS**

Signed by:  
\_\_\_\_\_  
Mayor

APPROVED:

DocuSigned by:  
*Carol Haddock*  
A93C410B72B3453...  
Director, Houston Public Works

DS  
*ED*

COUNTERSIGNED BY:

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DocuSigned by:  
*Arnold Colunga*  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

DATE COUNTERSIGNED:

\_\_\_\_\_

Attachment A-1

**HOMEOWNER/CONTRACTOR AGREEMENT FOR  
2015 FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT**

THIS HOME ELEVATION AGREEMENT ("Agreement") is made and entered into by and between Arkitektura Development Inc., a Texas corporation, (the "Contractor") and Dana Marafi and Waleed Alali (the "Owner(s)") on the date countersigned by both the Contractor and the Owner (each, a "Party", and, collectively, the "Parties").

1. **Elevation Services.** The Contractor agrees to perform the turn key elevation work scope of services described in Exhibit A (the "Work"). The Contractor will supervise and direct the Work, and the Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Unless otherwise specifically provided herein, the Contractor will provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water (for its own consumption), heat (for its own consumption), utilities (for its own consumption), transportation, and other facilities and services necessary for the Contractor's sole use and consumption and for the proper execution and completion of the Work.

2. **Structure(s) and Site Conditions.** As part of the Work, the Contractor will elevate the following structure(s) (the "Structures" or "Structure") at the following location:

2.1 Structure: \_\_\_\_\_  
Site Address: 4718 North Braeswood Boulevard  
Houston, Texas  
77096

2.2 The Contractor understands that it is in the interest of the Owner that the construction of the Work shall proceed in a prompt and efficient manner. The Contractor will make a reasonable effort to identify and note on its construction documents interferences that will be encountered on the site of the construction. The Owner shall cooperate with the reasonable requests of the Contractor, the City of Houston, the Texas Water Development Board, and the Federal Emergency Management Agency ("FEMA"), and their representatives related to the Work, including requests to access the property where the Work is being performed.

2.2.1 Execution of the Contract by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Contract.

2.2.2 **Site Conditions.** Contractor understands that it is in the interest of the City that the construction of the Project being designed by an Engineer under this Contract shall proceed in a prompt and efficient manner. Engineer will make a reasonable effort to identify and note on its construction documents interferences encountered on the site of the construction by the construction Contractor.

2.3 The Owner is responsible for maintaining a National Flood Insurance Policy (NFIP) for the lifetime of the Structure, or their ownership, whichever period is longer.

2.4 The Owner shall purchase and maintain adequate property and casualty insurance for the Structure during the term of the Work, as described in Exhibit A.

2.5 The Owner is responsible for the normal maintenance of the Structure during the Work.

- 2.6 With the exception of Section 2.6.1, below, the Owner is prohibited from contracting non-grant grant-related construction work with any Contractor, subcontractor, or any employee or independent contractor of a Contractor or a subcontractor associated with the 2015 FEMA Home Elevation Grant Program during the term of this Agreement. This prohibition extends to other contractors or subcontractors, or employees or independent contractors of a contractor or subcontractor not performing the Work for the Owner. For purposes of this Agreement, non-grant construction work is “work on the Property that is ineligible for reimbursement through the FEMA Flood Mitigation Assistance Grant”.
- 2.6.1 At the Owner’s expense, the Owner is permitted to contract with a contractor or subcontractor associated with the 2015 FEMA Home Elevation Grant Program for additional height elevation of the Structure(s), or the construction of unfinished split-faced block enclosures.
- 2.6.2 Any other proposed non-grant construction work must be submitted by the Owner to the City of Houston (the “City”) for review prior to the execution of a contract or performance of any work and the City will submit that work to The Texas Water Development Board. The Owner’s proposed non-grant construction work may be approved or disapproved on a case-by-case basis. Written notice of the approval or denial of proposed non-grant construction work will be provided to the Owner.
- 2.6.3 Any Work required to meet homeowners’ association requirements is ineligible for funding.
3. **Contract Price.** The total Contract Price for the Work to be paid to the Contractor shall be **\$124,645.31** (the “Contract Price”).
- 3.1 The City agrees to pay the Contract Price to the Contractor as detailed in this Section. The Contractor shall be entitled to request up to four disbursements of the Contract Price after completion of each phase of Work and after submitting the following documentation. Once approved, the Contractor shall be paid within 30 days. Any and all change orders must be submitted to the City and the Board for review and approval.
- 3.2 **Phase 3 Structure elevated to design height, foundation installed, mechanicals reconnected** - 70% of the total Contract Price will be paid to the Contractor, provided that at least 90% of the elevation construction is complete and upon receipt of inspector’s report plus the submittal of the following:
- 3.2.1 The Contractor’s itemized invoice;
- 3.2.2 Progress Report comprising the following:
- 3.2.2.1 Houston Public Works – Building and Development Services concurrence,
- 3.2.2.2 Concurrence as to 90% completion,
- 3.2.2.3 TWIA compliance,
- 3.2.2.4 ADA compliance (if required),
- 3.2.2.5 Grant compliance, and
- 3.2.2.6 Owner acceptance.
- 3.2.3 Phase 3 elevation photographs – minimum of two views each of front and back to show all four exterior walls and an adequate number of pictures for the interior;
- 3.2.4 Signed and notarized the Contractor Lien Waiver Affidavit (Interim) Form; and
- 3.2.5 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form.
- 3.3 **Phase 4 Final Inspection, occupancy certificate, all grant requirements met** - 30% of the total Contract Price will be paid to the Contractor, provided that the elevation construction is complete and upon receipt of inspector’s report plus the submittal of the following:
- 3.3.1 The Contractor’s Final itemized invoice;
- 3.3.2 Post Elevation - Elevation Certificate (FEMA Form 086-0-33);
- 3.3.3 Certificate of occupancy;
- 3.3.4 New survey (if required);
- 3.3.5 Signed and notarized Contractor Lien Waiver Affidavit (**Final**) Form;
- 3.3.6 Signed and notarized Lien Waiver Affidavit Subcontractor (**Final**) Form;

- 3.3.7 Copy of the Contractor’s Warranties that have been signed by Owner;
  - 3.3.8 If ADA elevator or lift was installed, elevator installation specifications and engineering concurrence that elevator was installed in accordance with said specifications. These documents provided to both the City and the homeowner;
  - 3.3.9 Owner acceptance;
  - 3.3.10 Grant compliance reconciliation (if non-grant work was also performed); and
  - 3.3.11 Final elevation photographs – minimum of three (3) views each of front and each side to show all four exterior walls and an adequate number of pictures for the interior.
- 3.4 The Contractor is required to obtain and provide to the City and the Owner a payment bond and performance bond, each in an amount equal to the Contract Price issued by a solvent company authorized to do business in the State of Texas, which is compliant with all legal requirements, as security for the faithful payment of all the Contractor’s obligations under this Agreement. The penal sum of the payment and performance bonds shall be equal to the construction budget as specified this Contract, or as otherwise specified by the Director of Houston Public Works, or their designee (the “Director”).
- 3.4.1 In the event that the Contractor has not provided payment and performance bonds, the Contractor will not be given notice to proceed and the Work will not begin until said performance bond is provided. If the Contractor is unable to provide a payment or performance bond, the Owner will be instructed by the City to choose another contractor.
- 3.5 Allowable costs shall be determined in accordance with 2 Code of Federal Regulations (CFR) 200, 44 CFR Part 13, and other applicable Severe Repetitive Loss (SRL) program guidance. The payments to the Contractor shall be provided upon request directed to the Owner as each phase of the Work is completed and approved by the building inspection department and submittal of required receipts from the Owner.
- 3.6 Method of Payment – Disputed Payments. If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director of Houston Public Works, or their designee (the “Director”), shall temporarily withhold payment on the draw requested unit all draw requirements are met. The Director shall promptly notify Contractor of the dispute and request remedial action. The City shall consult with the Board regarding the dispute. Once the consultation is concluded, the City shall issue a decision, and all such decisions resolving the dispute shall be final. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- 3.7 The final payment of the Contract Price to the Contractor will be made only after Work completion, submission of all required documentation and a formal request for final payment. Payment and retention of all funding under this Agreement is subject to final review.
- 3.8 **Construction Budget.** If a construction budget for this Work is indicated in an exhibit to this Contract, the Contractor shall use its best efforts to design the Work so that it is likely that the Work may be constructed within that budget. At any point the Contractor becomes reasonably aware that the construction budget will likely be exceeded, Engineer will notify the Owner of its awareness of that likelihood.

4. **Insurance/Warranties.** At all times during the term of this Contact and any extensions thereto, the Contractor shall provide and maintain in full force and effect at all times the following insurance and endorsements. Such insurance is described as follows.

4.1 **Risks and Limits of Liability.** The Contractor shall maintain the following insurance coverages in the following amounts.

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	• Texas Statutory Limits for Workers'

	Compensation
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: Including Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Work)	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit (each occurrence), subject to general aggregate Limit of \$2,000,000;</li> <li>• Products and Completed Operations \$2,000,000 aggregate Limit.</li> </ul>
Automobile Liability Insurance: (For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-owned Autos.</li> </ul>
Professional Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 per occurrence; \$2,000,000 aggregate</li> </ul>
Installation Floater (Unless alternative coverage approved by City Attorney)	<ul style="list-style-type: none"> <li>• Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work</li> </ul>
Excess Coverage	<ul style="list-style-type: none"> <li>• \$1,000,000 each occurrence aggregate in excess of limits specified for Commercial General Liability and Automobile Liability</li> </ul>
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

- 4.2 **Insurance Coverage.** At all times during the term of this Contract and any extensions or renewals, the Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the request of the Director, or the Owner, or each time coverage is renewed or updated, the Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. The Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. The Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. The Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.
- 4.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City's City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

- 4.4 **Required Coverage.** The City shall be an Additional Insured under this Contract, and all policies except Professional Liability, Worker's Compensation, and Builder's Risk must name the City as an Additional Insured. The Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, the Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.
- 4.5 **Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, the Contractor shall provide other suitable policies in order to maintain the required coverage. If the Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend the Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 4.6 The Contractor will provide for Work performed under this Agreement a set of limited warranties and building and performance standards in accordance to the Texas Residential Construction Commission standards in place prior to the time that the Texas Residential Construction Commission ceased to exist, which include:
- 4.6.1. A one-year workmanship and materials warranty;
  - 4.6.2. A two-year mechanical and delivery system warranty; and
  - 4.6.3. A ten-year structural warranty.
- 4.7 The Contractor agrees to include this Section's warranty provisions in all of the Contractor's subcontracts for Work under this Contract. The Contractor further acknowledges that it is not eligible for final payment until such warranties have been delivered to Owner with such copy signed by Owner evidencing Owner's receipt of such warranty policies.
- 4.8 Owner acknowledges that there are inherent and unavoidable risks during the course of elevating and/or moving any structure formerly affixed to real property. The Contractor will make every effort to complete the Work in a safe and workmanlike manner; provided, however, the Contractor cannot guarantee that the Work will not result in damage to the Structure and appurtenant property. The Contractor agrees to provide prompt and efficient construction services in relation to the Work under this Contract for the fees specified. The Contractor's performance under this Contract shall be performed with care and diligence, and shall be in accordance with the standards prevailing in the State of Texas for construction services for similar projects at the time such services are performed. In addition, the Contractor does not and cannot warrant the Structure has been constructed or maintained in a manner consistent with any engineering, architectural or building code principles and therefore it is possible that the Structure may be susceptible to damage during the Work due to unknown, inherent or latent defects or issues associated with the construction of the Structure.
- 4.9 Prior to elevation a walk-through at the Structure site will be conducted with the Contractor, Owner and the City, to note all pre-existing and Site conditions in the Structure, and both the Contractor and the Owner shall sign off on the inspection.

5. **Default; remedies, termination.**

- 5.1 **Contractor Default.** If any of the following events occur ("Events of Default"), all obligations on the part of the City to make any further payment of funds hereunder shall terminate, if the Owner and the City mutually agree after consultation, and the City may, at its option, then exercise any of the remedies set forth herein. After consultation with the Owner, the City may make any payments or parts of payments

- after the happening of any Events of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further payment:
- 5.1.1 If any warranty or representation made by the Contractor in this Agreement or any previous Agreement with the Owner shall at any time be false or misleading in any respect;
  - 5.1.2 If the Contractor shall fail to keep, observe, or perform any of the terms or covenants contained in this Agreement or any previous agreement with the Owner, and the Contractor has not cured such Event of Default within an amount of time jointly determined by the Owner and the City, and given in the written notice of default from the Owner or the City to the Contractor;
  - 5.1.3 If Project funds from mortgage lenders or other sources are not received because of defaults in the mortgages, construction loan agreements, or other loan documents used for the Owner's funding of the Project, and the Owner has not cured such Event of Default within an amount of time jointly determined by the Owner and the City, and given in the written notice of default from the City to the Owner;
  - 5.1.4 If any reports required of the Contractor by this Agreement have not been submitted to the Owner or the City, or have been submitted with incorrect, incomplete, or insufficient information, and the Contractor has not cured such Event of Default within an amount of time jointly determined by the Owner and the City, and given in the written notice of default from the Owner or the City to the Contractor;
  - 5.1.5 If the Contractor failed to perform and complete in a timely fashion any of the Project work required under the Elevation Contract as detailed in Attachment A, and the Contractor has not cured such Event of Default within an amount of time jointly determined by the Owner and the City, and given in the written notice of default from the Owner or the City to the Contractor; or
  - 5.1.6 If the necessary funds are not available to fund this Agreement as a result of action by the City, Legislature, the State of Texas Office of the Comptroller, or the Office of Management & Budget.
- 5.2 Upon the happening of an Event of Default, and upon the Contractor's failure to timely cure, where applicable, and after consultation and mutual agreement with the City, the Owner or the City may exercise any one or more of the following remedies, either concurrently or consecutively, and the pursuit of any one of the following remedies shall not preclude the Owner or the City from pursuing any other remedies contained herein or otherwise provided at law or in equity:
- 5.2.1 Terminate this Agreement;
  - 5.2.2 Commence an appropriate legal or equitable action to enforce performance of this Agreement;
  - 5.2.3 Withhold or suspend payment of all or any part of a request for payment;
  - 5.2.4 Exercise any corrective or remedial actions, to include but not be limited to, requesting additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Recipient to suspend work, or requiring the Contractor to reimburse the Owner and the City for the amount of costs incurred for any items determined to be ineligible; and,
  - 5.2.5 Exercise any other action or remedies which may be otherwise available under law.
- 5.3 The Contractor shall return funds to the Owner and the City if found in non-compliance with laws, rules, ordinances, or regulations governing the use of the funds made available pursuant to this Agreement. Funds shall be delivered by certified check or money order made payable to the City within thirty (30) days from the date of the written demand from the City.
- 5.4 This Agreement may be terminated by the written mutual consent of both Parties. The Owner may terminate the agreement after consulting with the City, and both the Owner and the City have mutually agreed on a course of action. Should the Owner and the City not agree on a course of action, the City shall make the final decision in the termination of the agreement between the Contractor and the Owner.
- 5.5 **Homeowner Default.** Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner by virtue of any breach of Agreement by the Owner. The Owner and the City may withhold any

payments to the Contractor, from this or any other agreement between the Contractor and the Owner, for the purpose of set-off, until such time as the exact amount of damages due the Owner and the City from the Contractor is determined. Owner will be in default under this agreement upon the occurrence of any of the following events:

- 5.5.1 Homeowner fails to perform the term of this Agreement and such failure continues for three business days after delivery of written notice of the failure;
- 5.5.2 Homeowner becomes insolvent or unable to pay its debts as they become due or declares bankruptcy or makes an assignment for the benefit of creditors;
- 5.5.3 Homeowner commits a default under any other contract it has entered with the City;
- 5.5.4 Owner has misused the proceeds of the mitigation offer; or
- 5.5.5 Homeowner has made any misrepresentations in connection with this Agreement.
- 5.5.6 In the event of Homeowner’s default, the City in its sole discretion shall have the right, without prejudice to any other right or remedy, to take any of the following actions:
  - 5.5.6.1 Terminate this Agreement on written notice to the Homeowner;
  - 5.5.6.2 Direct the Contractor to stop work on the improvements, either temporarily or permanently notwithstanding the foregoing, sums earned by Contractor for elevation and delivery of the improvements prior to any notice to Contractor of any misuse of funds or misrepresentation by Homeowner shall be payable from the City to the Contractor;
  - 5.5.6.3 Cancel disbursement of any unearned portion of the Mitigation Offer Amount and eligible ICC claim under this Agreement; or
  - 5.5.6.4 Sue Homeowner for damages, injunctive, or equitable relief.

5.6 If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other’s breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Owner, Director of Houston Public Works, or by any other employee or agent of the City, of any part of Contractor’s performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. Neither the Owner nor the Director are authorized to vary the terms of this Agreement.

5.7 *Dispute Resolution*

- 5.7.1 For purposes of this Section, “Project Administrator” means the person the Director of Houston Public Works designates to monitor the progress of all Parties’ performance under this Agreement.
- 5.7.2 Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law (2) arises during the performance of this Agreement and (3) is not resolved between the Contractor and the Owner must be handled as described below:
  - 5.7.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor and the Owner with a copy. The Contractor or Owner may abide by the decision or may appeal the decision to the Director.
  - 5.7.2.2 If the Contractor or Owner desires to appeal a decision of the Project Administrator, the Contractor or the Owner must submit a written appeal to the Director. The Contractor or the Owner must file its written appeal within seven working days following receipt of the Project Administrator’s original decision. The Director shall provide the Contractor or the Owner with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

6. **Utilities.** The Contractor shall have an obligation as part of the Work to locate and mark all underground utilities at the Site. The Owner is responsible for authorizing the disconnection of electricity, telephone, cable and gas as directed by the Contractor. The Owner is responsible for all utility bills during elevation. The Owner is

responsible for authorizing reconnection of all utilities as directed by the Contractor. Any upgrades required by utility company for reconnection are not eligible costs hereunder.

7. **Completion of Owner's Work.** Owner agrees to perform all work related to the 2015 FEMA Flood Mitigation Assistance (FMA) Home Elevation Grant, or designated as the responsibility of the Owner under the terms of this Agreement.
  - 7.1 Except as noted in Section 2.6, any Contractor, subcontractor, and any employee or independent contractor (whether from a Contractor, or a subcontractor) associated with the Work are expressly prohibited from contracting with the Owner for other work not related to the 2015 FMA Home Elevation Grant during the term of this Contract.
  - 7.2 Except as noted in Section 2.6, the Owner is prohibited from contracting ineligible grant-related construction work with any Contractor, subcontractor, or any employee or independent contractor (whether from a Contractor, or a subcontractor) associated with the 2015 FMA Home Elevation Grant Program during the term of this Contract.
  
8. **Indemnification.** The Owner shall indemnify and hold harmless the Contractor and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Owner, other contractors under the control of Owner, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Party or person described in this paragraph. In any and all claims against the Contractor or any of its agents or employees by any employee of the Owner, any other contractors under control of Owner, anyone directly or indirectly employed by any of them, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Owner or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
  
9. **Texas State Auditor.**
  - 9.1 By executing this Agreement, the Contractor accepts the authority of the Texas State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this Agreement. The Contractor shall comply with and cooperate in any such investigation or audit. The Contractor agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Contractor also agrees to include a provision in any subcontract related to this Agreement that requires the Contractor to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the Agreement.
  - 9.2 The Contractor and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the Executive Administrator of the Board. Accounting by the Contractor and its contracted parties shall be in a manner consistent with generally accepted accounting principles.
  - 9.3 The Board shall have unlimited rights to technical or other data resulting directly from the performance of Work under this Agreement. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Agreement and developed by the Contractor or its contracted parties pursuant to this Agreement shall become the joint property of the Contractor, the City, and the Board. These materials shall not be copyrighted or patented by the Contractor or by any consultants involved in this Agreement unless the Executive Administrator of the Board approves in writing the right to establish copyright or patent; provided, however, that

copyrighting or patenting by the Contractor or its contractor(s) will in no way limit the Board's access to or right to request and receive or distribute data and information obtained or developed pursuant to this Agreement. Any material subject to a Board copyright and produced by the Contractor or Board pursuant to this Agreement may be printed by the Contractor or the Board at their own cost and distributed by either at their discretion. The Contractor may otherwise utilize such material provided under this Agreement as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any Board copyright is appropriately noted on the printed materials.

- 9.4 The Contractor and its contracted parties agree to acknowledge the Board in any news releases or other publications relating to the Work performed under this Agreement.
- 9.5 The foregoing shall not be construed as creating any debt by or on behalf of the State of Texas, and the Board, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this Agreement transcends the biennium in which this Agreement is entered into, this Agreement is specifically contingent upon the continued authority of the Board and appropriations therefor.
- 9.6 For the purpose of this Agreement, the Contractor shall be considered an independent contractor and therefore solely responsible for liability resulting from its own negligent acts or omissions. The Contractor shall obtain all necessary insurance, in the judgment of the Contractor, to protect themselves, the Contractor, the Board, and employees and officials of the Board from liability arising out of this Agreement.
- 9.7 **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY, THE BOARD, AND THE STATE OF TEXAS HARMLESS, TO THE EXTENT THE CONTRACTOR MAY DO SO IN ACCORDANCE WITH STATE LAW, FROM ANY AND ALL LOSSES, DAMAGES, LIABILITY, OR CLAIMS THEREFOR, ON ACCOUNT OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER CAUSED BY THE CONTRACTOR, ARISING OUT OF THE ACTIVITIES UNDER THIS AGREEMENT.**
- 9.8 **Inspections and Audits.** Representatives of the City shall have the right to examine and review all books, records, and billing documents which are directly related to performance or payment under this Contract. The Contractor shall maintain such books, records, and billings for three years after the cessation of its other duties under this Contract. This right of audit extends to the records of the Contractor's consultants and subcontractors, and the Contractor's agreements with its consultants and subcontractors shall provide this right to the Owner.
10. **Notice.** Any notice given in connection with this Agreement must be given in writing and shall be served by personal delivery or deposited with the postal service. Notices served by personal delivery or postal service shall be directed to the Party to be notified at the address set forth for such Party on the first page of this Agreement. Notices directed to a Party by personal delivery shall be deemed received when actually delivered. Notices directed to a Party by mail shall be deemed received on the third day following the deposit of the notice with the postal service, certified or registered mail, postage prepaid, return receipt requested. Any Party may change its address for receiving notice by giving the other Party at least five days' prior written notice of each change in the manner provided for giving notices in this paragraph.
11. **Force Majeure.** The Contractor shall not be responsible for delays in performance beyond the control of the Contractor, including without limitation, the actions or inactions of Owner or any other contractor employed by Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, delays in receiving materials or machinery, or acts of God.
12. **Ownership of Plans.** All plans and specifications for the Work under this Agreement are the property of the Contractor, and shall not be submitted to outside parties for examination or any other purpose without the written consent of the Contractor.

13. **Attorneys' Fees and Costs.** In the event the Contractor undertakes efforts to collect any amount due under this Agreement or to perform the Owner's obligations or to enforce any other terms of this Agreement hereunder, the Contractor shall be entitled to recover its attorneys' fees and costs from Owner. In the event of litigation arising out of this Agreement, the Contractor shall be entitled to recover its attorneys' costs and fees in addition to any other relief to which the Contractor may be entitled.
14. **Permits/Termination.** In the event that either the Contractor or Owner is unable to obtain the permits, licenses or inspections necessary for the completion of the Work under this Agreement, or if such licenses or permits are suspended or revoked, then the Contractor shall have no further obligation to perform any Work hereunder.
15. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the heirs, executors, administrators and assigns of the parties hereto, and if there be more than one Owner, their obligations hereunder shall be joint and several. Owner may not assign this Agreement without the written consent of the Contractor. A subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the Site. The Contractor may assign or subcontract any part or all of the Work to any one or more subcontractors as it deems best, with prior written notice given to the Owner. In the case of such an assignment, the Contractor shall immediately furnish the Owner with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. The Contractor shall not be required to contract with anyone with whom it has an objection.
16. **Non-Waiver.** Failure of either Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
17. **Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.
18. **Ambiguities.** In the event of any ambiguity in any of the terms of this Contract, it shall not be construed for or against any Party because of such Party's involvement in the preparation or drafting of this Contract.
19. **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Owner and the Contractor in relation to the Work and supersedes any and all prior written or oral understandings. There are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the subject matter hereof, whether written or verbal. This Agreement may be amended or supplemented only by written agreement between the Parties signed by an authorized person of each.
20. **Survival.** Engineer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of the term of this Contract, including but not limited to the Ownership of Documents provisions of Article 2 of this Contract.
21. **Captions.** The captions at the beginning of the articles and sections of this Contract are guides and labels to assist in locating and reading such articles and sections and, therefore, will be given no effect in construing this Contract and shall not be restrictive of or be used to interpret the subject matter of any article, section, or part of this Contract.
22. **Acceptances and Approvals.** Any acceptance or approval by the Owner, the City, the Board, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the

Contractor, its employees, agents, consultants, or suppliers for the accuracy, competency, and completeness for any documents prepared or services performed pursuant to the terms and conditions of this Contract, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the Owner, the City, the Board, or its agents and employees, for any defect, error or omission in any documents prepared or services performed by the Contractor, its employees, agents, consultants or suppliers pursuant to this Contract.

- 23. CONTRACTOR'S DEBT. IF THE CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS CONTRACT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT THE CONTRACTOR HAS INCURRED A DEBT, THE CONTROLLER SHALL IMMEDIATELY NOTIFY ENGINEER IN WRITING. IF THE CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO THE CONTRACTOR UNDER THIS CONTRACT, AND THE CONTRACTOR WAIVES ANY RECOURSE THEREFOR. THE CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS CONTRACT.**

**Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

IN WITNESS WHEREOF, THE OWNER AND THE CONTRACTOR HAVE HEREUNTO SET THEIR HANDS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

**THE CONTRACTOR**

DocuSigned by:  
*Phillip Contreras*  
\_\_\_\_\_  
By: Phillip Contreras  
Title: Owner  
ARKITEKTURA DEVELOPMENT INC.

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

**THE OWNER(S)**

DocuSigned by:  
*Dana Marafi*  
\_\_\_\_\_  
Name: Dana Marafi.

DocuSigned by:  
*Waleed Al-ali*  
\_\_\_\_\_  
Name: Waleed Alali

**WITNESS**

DocuSigned by:  
*Brian Ramm*  
\_\_\_\_\_  
Name: Brian Ramm  
Title: Admin Coordinator

**WITNESS**

DocuSigned by:  
*Brian Ramm*  
\_\_\_\_\_  
Name: Brian Ramm

**DATE COUNTERSIGNED**

4/29/2020

**Exhibit A**  
**Scope of Work**

**TURN KEY ELEVATION WORK**

1.1 **Eligible Work to be performed.** The Work to be performed by the Contractor at the Site shall include the following:

- 1.1.1 Engineering services for design, structural feasibility analysis, and cost estimate preparation;
- 1.1.2 Surveying, soil sampling, completion of elevation certificate, title search, deed recordation fees, legal and/or permitting fees, project administration, and construction management;
- 1.1.3 Disconnection of all utilities;
- 1.1.4 Building of a foundation so that the lowest floor is at the BFE or higher if required by local ordinance or FEMA;
- 1.1.5 Physical elevation of the Structure and subsequent lowering and attachment of the Structure onto a new foundation;
- 1.1.6 Construction of a floor system that meets minimum building code requirements when the existing floor system cannot be elevated or is not appropriate for the new foundation;
- 1.1.7 Reconnecting utilities and extending lines and pipes as necessary and elevating all utilities and service equipment;
- 1.1.8 Debris disposal and erosion control;
- 1.1.9 Costs for repair of lawns, landscaping, sidewalks, and driveways if damaged by the Work;
- 1.1.10 Construction of a utility room above the BFE only if there is no existing space within the Structure for this purpose or there is no alternative cost-effective way to elevate the utilities;
- 1.1.11 Elevation of existing decks, porches, or stairs;
- 1.1.12 Construction of new stairs, landings, and railings to access the elevated living space per minimum code or local ordinance;
- 1.1.13 Construction of a single ADA-compliant access facility when the Owner or a member of the Owner's family has a permanent physical handicap and a physician's written certification;
- 1.1.14 Documented reasonable living expenses (except food and personal transportation) that are incurred while the Owner is displaced by the Work;
- 1.1.15 Abatement of asbestos and lead-based paint; and
- 1.1.16 Filling of the crawlspace beneath the structure's basements with compacted clean fill.

1.2 **Ineligible Work.** The Work to be performed by the Contractor at the Site shall **not** include the following:

- 1.2.1 Elevating the Structures if not in compliance with current NFIP standards at the time of construction;
- 1.2.2 Costs related to building additions or auxiliary structures not a part of the Structure;
- 1.2.3 Construction of new decks or porches;
- 1.2.4 Any improvements for purely aesthetic reasons unless required by the EHP compliance review;
- 1.2.5 Costs to replace or repair utility service components, which are undersized, inadequately designed, or unsafe unless required by code (except utility rooms noted as eligible costs);
- 1.2.6 Exterior finish on the exposed foundation of the Structure, unless required by EHP compliance review and/or local code;
- 1.2.7 Additional landscaping for ornamentation beyond what existed on the Site prior to construction of the Work (e.g., trees, shrubs);
- 1.2.8 Upgraded driveways, ramps, and entryways;
- 1.2.9 Siding, except for siding damaged in the elevation process;
- 1.2.10 Repairs, rehabilitation, additions, expansions, or elevation of appurtenances, except where noted in the eligible work listed in Section 1.1; and

1.2.11. Construction or repair of decks or porches, except where noted in the eligible costs listed in Section 1.1.

**1.3 Additional Information about Eligible and Ineligible Work.**

- 1.3.1 A residence with an attached garage may be eligible for certain costs associated with relocating the garage under the elevated house.
- 1.3.2 Where the Owner or members of the Owner's family are physically handicapped, certain access facilities are eligible for the Work upon written confirmation from the appropriate physician. Such facilities may include an access ramp or mechanical lift where ramps are not technically feasible.
- 1.3.3 In cases where existing floor systems have been adequately designed or constructed with undersized materials, the Owner shall bear all costs of rehabilitation related to such inadequacies.
- 1.3.4 Where HVAC systems are expanded or increased in size and capacity, the Owner shall bear any such costs beyond the HVAC's capacity to service the home's original square footage prior to the elevation work.
- 1.3.5 Where existing underground utility lines have deteriorated, or if such lines do not meet code requirements, additional costs to repair such facilities shall not be eligible for grant funding.
- 1.3.6 Any payment due from the Owner to the Contractor for ineligible work shall be held by the City, and paid according to Article 3, "Contract Price".

**2015 FMA Home Elevation Grant Program - City of Houston**

<b>Name of Elevation Contractor:</b> ARKITEKTURA DEVELOPMENT, INC.	<b>Raise Height</b>
<b>Address:</b> 705 HARBORSIDE WAY	5.89
<b>Phone Number:</b> 281-957-9192	<b>First Floor Square Foot</b>
<b>Elevation Project Address:</b> 4718 N BRAESWOOD BLVD / WALEED RESIDENCE	1972

Item	Description	QTY	Unit Price	Price
<b>1</b>	<b>Pre-Construction/Design Development</b>			
	Survey and Elevation Certificates	1	\$ 2,500.00	\$ 2,500.00
	Engineering/Structural Plans Permitting	1	\$ 3,500.00	\$ 3,500.00
	Soils Testing	0	\$ 1,000.00	\$ 1,000.00
	Engineer Inspections	2	\$ 900.00	\$ -
	Subtotal - Pre-Construction/Design/Development		\$ 250.00	\$ 500.00
				\$ 7,500.00
<b>2</b>	<b>Site Preparation/Development</b>			
	Temporary Screen Fencing-Silt Fence	0	\$ 1,200.00	\$ -
	Port-a-Can	1	\$ 500.00	\$ 500.00
	Landscape Removal	0	\$ 750.00	\$ -
	Tree Trimming/Removal	0	\$ 850.00	\$ -
	Flatwork Demolition	2	\$ 1,200.00	\$ 2,400.00
	Dumpster/Disposal	2	\$ 750.00	\$ 1,500.00
	Subtotal - Site Preparation/Development			\$ 4,400.00

Item	Description	QTY	Unit Price	Price
<b>3</b>	<b>Piles/Elevation</b>			
	Labor to Excavate and Push Piles Around the Perimeter of the Home	20	\$ 392.00	\$ 7,840.00
	Block Piling Materials	1050	\$ 2.20	\$ 2,310.00
	Shims	0	\$ 1.30	\$ -
	Rebar/Iron	0	\$ 0.65	\$ -
	Steel 6x15 I Beams	0	\$ 10.00	\$ -
	Cribbing and Wedges	0	\$ 1.00	\$ -
	Saw Cutting and Bell Bottom Detach	0	\$ 2,000.00	\$ -
	Foundation Lift	0	\$ 5.50	\$ -
	Lifting Labor	0	\$ 1,900.00	\$ -
	Head Blocks	0	\$ 4.50	\$ -

	Pile Column Blocks	0	\$	2.50	\$	-
	Rough Clean	1	\$	2,000.00	\$	2,000.00
	<b>Subtotal - Piles/Elevation</b>		\$		\$	<b>12,150.00</b>
<b>4</b>	<b>Utilities/Mechanicals</b>					
	Water	1	\$	1,500.00	\$	1,500.00
	Sewer/Septic	0	\$	2,500.00	\$	-
	Gas	0	\$	750.00	\$	-
	Electrical	4	\$	1,500.00	\$	6,000.00
	HVAC	1	\$	1,750.00	\$	1,750.00
	Site Generator	0	\$	500.00	\$	-
	Fuel	0	\$	3.30	\$	-
	AC Platforms	0	\$	900.00	\$	-
	Water Heater Enclosure/Platform	0	\$	1,250.00	\$	-
	Electrical Meter Platform	1	\$	4,500.00	\$	4,500.00
	<b>Subtotal - Utilities/Mechanicals</b>		\$		\$	<b>13,750.00</b>
<b>5</b>	<b>Foundation</b>					
	Footing/Beams	0	\$	35.00	\$	-
	Corner Columns	0	\$	400.00	\$	-
	Skirt Wall	0	\$	9.00	\$	-
	Flood/Air Vents (Freedom Flood Vents FFV-1608 / Raise Concrete @ 4 Vent Areas for Flood Compliance)	8	\$	250.00	\$	2,972.00
	Access Door	0	\$	1,000.00	\$	-
	Lateral Bracing	1	\$	1,500.00	\$	1,500.00
	Structural Steel or Clips	1972	\$	2.25	\$	4,437.00
	<b>Subtotal - Foundation</b>		\$		\$	<b>8,909.00</b>
<b>6</b>	<b>Steps/Landings/Decks/Carpentry</b>					
	Front Deck Landing and (2) Stairs (Pressure Treated Wood)	478	\$	35.00	\$	16,730.00
	Standard Rear Deck Landing and Stairs (Pressure Treated Wood Railing)	414.4	\$	35.00	\$	14,504.00
	Additional Handrails for Elevated Decks	200	\$	15.00	\$	3,000.00
	Concrete Stoops	3	\$	500.00	\$	1,500.00
	Slab Separation	0	\$	16.00	\$	-
	<b>Subtotal - Steps/Landings/Decks/Carpentry</b>		\$		\$	<b>35,734.00</b>
<b>7</b>	<b>ADA Approved Item</b>					
	Verticle Platform Lift/Ramp	0	\$	-	\$	-
		0	\$	-	\$	-

		Subtotal - ADA Approved Item		\$
8	Finish Out Items			
	Sidewalk/Driveway Repair	2	\$ 1,000.00	\$ 2,000.00
	Gutter Extension	2	\$ 550.00	\$ 1,100.00
	Existing Fence Repair	1	\$ 750.00	\$ 750.00
	Insulation	1972	\$ 2.20	\$ 4,338.40
	<b>Subtotal - Finish Out Items</b>			<b>\$ 8,188.40</b>
9	Punch Out Items			
	Sheetrock Repair	0	\$ 950.00	\$ -
	Site Clean	3	\$ 850.00	\$ 2,550.00
	<b>Subtotal - Punch Out Items</b>			<b>\$ 2,550.00</b>
10	Finishes/Landscape			
	Grading	64	\$ 35.00	\$ 3,040.00
	Sod	8	\$ 450.00	\$ 3,600.00
	Topsoil	60	\$ 30.00	\$ 1,800.00
	Irrigation Repair	1	\$ 2,045.00	\$ 2,045.00
	Reinstall Existing Landscaping	0	\$ 800.00	\$ -
	<b>Subtotal - Finishes/Landscape</b>			<b>\$ 10,485.00</b>
11	Freight			
	Freight	0	\$ -	\$ -
	<b>Subtotal - Freight</b>			<b>\$ -</b>
	<b>Subtotal - Grant Eligible Costs</b>			<b>\$ 103,666.40</b>
12	Bonding and Insurance			\$ 6,219.96
13	Profit and Overhead			\$ 10,366.59
14	Sales Tax on Materials			\$ 1,282.87
15	Project Management			\$ 3,109.49
	<b>Total - Grant Eligible Costs</b>			<b>\$ 124,645.31</b>
	<b>Owner Paid Extras (TWDB/State Approved Additions) - Non Grant Eligible Cost</b>			
16				
17				
18				\$ -
19				\$ -
	<b>SUBTOTAL</b>			<b>\$ -</b>
	<b>TOTAL ELEVATION PROJECT COST</b>			<b>\$ 124,645.31</b>

Attachment K

**Claim Number GC011892**

**TENDER OF COMPLETION CONTRACTOR TO CITY AND RELEASE AGREEMENT**

This TENDER OF COMPLETION CONTRACTOR TO CITY AND RELEASE AGREEMENT ("Agreement"), dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between Great Midwest Insurance Company ("Surety"), the City of Houston (the "City"), and Waleed Alali and Dana Marafi (collectively, the "Homeowner"). The Surety, City and Homeowner may be referred to herein individually as a "Party" and collectively as the "Parties."

**Recitals**

WHEREAS, effective on or about 09/28/2017, the City and Homeowner entered into a contract entitled "City of Houston/Homeowner Agreement for 2015 Flood Mitigation Assistance Home Elevation Project" (hereinafter the "FMA Contract"), pursuant to which the City would provide FEMA grant funds for the elevation of Homeowner's residence under certain terms and conditions stated therein; Homeowner thereby agreed to and did contract with its chosen vendor, Titan Lifetime Foundations LLC and Linda Heaner d/b/a Absolute Concrete (collectively, the "Principal", the "Developer", or "Titan") to perform such elevation project, such agreement being memorialized in the Homeowner/Contractor Agreement for 2015 Flood Mitigation Assistance Home Elevation Project (hereinafter the "Homeowner/Contractor Agreement"), dated 09/22/2017. Further, the Homeowner/Contractor Agreement was attached to and incorporated into the FMA Contract as Attachment "A", as if set forth fully therein; the elevation project is described therein as "Home Elevation – 4718 N. Braeswood Blvd, Houston, TX 77096" and is hereinafter referred to for convenience as the "Project"; and

WHEREAS, the FMA Contract and the Homeowner/Contractor Agreement are referred to herein collectively as the "Original Contract"; and

WHEREAS, as a condition under the Original Contract, Surety executed and delivered to City a Performance Bond, No. GMIC-SB-2381059 ("Performance Bond") in favor of the City to secure the performance obligation of Principal pursuant to the Original Contract referred to above and Payment Bond, No. GMIC-SB-2381059 ("Payment Bond") issued pursuant to the provisions of Texas Government Code Chapter 2253, each in the penal sum of \$219,985.33. In accordance with the Original Contract, the Performance Bond and Payment Bonds is for the total project costs, including both grant eligible and homeowner (grant ineligible) costs; and

WHEREAS, City and Homeowner agreed to pay to Principal the sum of \$173,464.50 (the "Contract Sum") pursuant to the Original Contract, subject to increases or decreases in the Contract Sum based on changes in the work; and

WHEREAS, on August 14, 2018, City and Homeowner formally declared the Principal to be in default on the Original Contract. City and Homeowner subsequently made a demand upon Surety under the Performance Bond to complete the Project in accordance with the Original Contract; and

WHEREAS, Surety invited bids for completion of the work remaining on the Project and in due course received bids from several contractors, the lowest responsible bid being that of Arkitektura Development, Inc. ("Arkitektura"), 705 Harborside Drive, Houston, TX, for the sum of \$124,645.31 as more particularly set forth in the bid from Arkitektura attached hereto as Exhibit "A" (hereinafter the "Completion Bid") and incorporated herein; and

WHEREAS, to fulfill its Performance Bond obligations, Surety will tender, and the City and Homeowner will agree to accept Arkitektura as the Completion Contractor, a construction contractor ready, willing and able to perform and complete all of the remaining work required to be performed under the Original Contract, and to do so, Surety has arranged for City and Homeowner to enter into a Completion Contract with Arkitektura in substantially the same form and terms as provided in the Original Contract and

consistent with the Completion Bid. However, the Completion Contract shall also provide that Arkitektura will:

- a. Complete all of the remaining work to be performed under the Original Contract, save and except those matters described below as the Homeowner Additional Work Settlement;
- b. Warrant and ensure compliance with the Completion Contract requirements of all remaining work to be performed to complete said Original Contract,
- c. Warrant all of the work previously performed by Principal, and
- d. Furnish to City its payment and performance bonds issued pursuant to the provisions of Texas Government Code Chapter 2253, and in accordance with the terms of the Completion Contract which shall be substantially the same terms as the Original Contract and as described in this paragraph, guaranteeing all of said performance and warranties; and

WHEREAS, Surety and Homeowner desire to memorialize their **Homeowner Additional Work Settlement**, and accordingly do stipulate and agree that: (a) Principal failed to complete certain Homeowner requested additions to the Original Contract after receiving advance payment for same from Homeowner; (b) the sum of \$ \$24,663.50 paid by Surety to Homeowner is a fair and reasonable sum to compensate Homeowner; and (c) Surety agrees to pay, and Homeowner agrees to accept such sum as full and final settlement of the matters described in this paragraph's (a); and

WHEREAS, the City holds Remaining Contract Funds of \$69,385.80 from the Original Contract for completion of the Project, which amount is comprised of the Contract Sum of \$173,464.50 less two payments by the City totaling \$104,078.70, and will dedicate said Remaining Contract Funds for payment of the Completion Contract. Because the completion bid from Arkitektura (\$124,645.31) exceeds the Remaining Contract Funds (\$69,385.80), Surety owes City the excess amount of \$55,259.51 for completion of the Original Contract; and

WHEREAS, the above described tender proposal and cash settlement offer of Surety is acceptable to City and Homeowner, and the Parties desire to document the terms of their agreement as set forth below:

**NOW, THEREFORE, in consideration of the terms and conditions and mutual promises set forth herein, the City, Homeowner and Surety do hereby covenant and agree to the following:**

1. All Recitals set forth above are true and correct and are incorporated herein by reference.
2. Arkitektura is hereby tendered by Surety as the Completion Contractor and the City and Homeowner agree to enter into the Completion Contract with Arkitektura, in substantially the same form and terms as provided in the Original Contract, consistent with the Completion Bid attached hereto as Exhibit "A", to fully perform all work remaining under the Original Contract. However, the Completion Contract shall also provide that Arkitektura will:
  - a. Complete all of the remaining work to be performed under the Original Contract, save and except those matters described below as the Homeowner Additional Work Settlement;
  - b. Warrant and ensure compliance with the Completion Contract requirements of all remaining work to be performed to complete said Original Contract,
  - c. Warrant all of the work previously performed by Principal, and
  - d. Furnish to City its payment and performance bonds issued pursuant to the provisions of Texas Government Code Chapter 2253, and in accordance with the terms of the Completion Contract which shall be substantially the same terms as the Original Contract, guaranteeing all of said performance and warranties, save and except those matters described herein as the Homeowner Additional Work Settlement.

3. For and in consideration of the sum of \$55,259.51 to be paid by Surety to City, the sum of \$24,663.50 paid by Surety to Homeowner and for the other good and valuable consideration described hereinabove, the receipt and sufficiency of which is hereby acknowledged and confessed, the City and Homeowner, and effective upon satisfaction of those conditions and outstanding obligations set forth herein, hereby release and forever discharge Surety from any and all claims, demands, causes of action, damages, and/or expenses arising out of or in any way related to the Original Contract entered into between the City, Homeowner and Principal and the Surety's statutory Performance Bond, and its Performance Bond is hereby returned to the Surety.
  
4. For and in consideration of the release in Paragraph 3, Surety does hereby agree to make and hereby delivers payment to City in the amount of \$55,259.51, and to Homeowner in the amount of \$24,663.50, simultaneously with the execution of this Agreement, as a cash settlement of any and all claim(s) previously asserted and which could have been asserted by said City and Homeowner as of this date against said Performance Bond in full and complete settlement of said claim(s), and effective upon satisfaction of those conditions and outstanding obligations set forth herein.
  
5. City and Homeowner do hereby assign unto Surety, its successors and assigns any and all rights, demands, claims and/or causes of action which City and Homeowner have as against Principal arising out of, as a result of and/or on the basis of the default and breach by Principal of the Original Contract for the Project, and City and Homeowner give Surety, its successors and assigns full power and authority for its own use and benefit, but at its own cost, to ask, demand, collect, receive, compound and/or release, and in its name or otherwise, to prosecute and withdraw any claims, suits or proceedings at law or in equity as against Principal in its efforts to obtain recovery upon its rights under said assignment.

6. The Surety, on behalf of itself and its agents, assigns, attorneys, heirs, executors, representatives, predecessors and successors, hereby releases and forever discharges the Homeowner and the City, its past, present, and future officers, directors, public and elected officials, attorneys, insurers, agents, servants, representatives, employees, affiliates, partners, predecessors, successors and assigns from any and all liabilities, causes of action, claims, demands, losses, damages, costs, expenses and attorneys' fees of whatever kind or nature, whether known or unknown or suspected or unsuspected, arising out of or in any way related to the Original Contract entered into between the City, Homeowner and Principal and/or the Surety's statutory Performance Bond, whether its own claim, or the subrogated claim(s), or any other claim, if any, of the Principal.
  
7. **This Agreement shall not be effective unless and until Arkitektura shall execute in writing the Completion Contract and other sufficient documentation to bind itself to City and Homeowner for completion of the work under the Completion Contract for completion of the Project, issue new performance and payment bonds in the amount equal to 100% of the value of the Completion Contract and guaranteeing all performance and warranties as described herein and in the Completion Contract, provide certificates of Insurance as required in the Completion Contract, and agrees to a completion date for the work not later than fifteen (15) days after issuance of a Notice to Proceed.**
  
8. Surety acknowledges and agrees that its Payment Bond No. GMIC-SB-2381059, previously furnished for said Project shall continue to remain in full force and effect in accordance with its original terms, except that it is expressly agreed by and between Surety, City and Homeowner that the scope and coverage of said payment bond shall be limited to and shall only apply to statutory claims for payment of subcontractors and suppliers of Principal for work performed and materials delivered on behalf of the Principal, and that said payment bond shall not apply to

or cover Arkitektura or any of its subcontractors and suppliers for any work performed and materials delivered after the date hereof.

9. Rights Against Original Contractor and Assignment. Except as expressly provided in this Agreement, nothing herein shall be construed as a waiver of any rights of the City, Homeowner or Surety against the Principal, and City and Homeowner hereby assign, sell and transfer and subrogate to Surety all of its right, title and interest in and to all of its rights and causes of action against the Principal.
10. Surety's Actions. Surety's actions under this Agreement and its Payment and Performance Bonds shall forever be construed and considered as those of a surety and not a contractor.
11. Headings. All paragraph headings in this Agreement are for convenience and reference only and shall not affect any construction or interpretation of this Agreement.
12. Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against any other party.
13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, agents, predecessors, successors, and assigns.
14. Entire Agreement. This Agreement contains and embodies the entire agreement of the Parties hereto with regard to the matters covered herein and no other representations, inducements, or other agreements, oral or otherwise, not contained and embodied herein shall be of any force or effect.
15. No Waiver. Mere delay in the enforcement of any provision of this Agreement shall not be deemed a waiver of such provision. The waiver by any Party hereto of any right

or remedy granted herein shall not be deemed to be a waiver of any other or subsequent right or remedy granted herein.

16. Free and Voluntary Agreement. The Parties hereto acknowledge that each has been fully advised by legal counsel concerning the language and legal effect of this Agreement and each knowingly enters into this Agreement freely and without coercion of any kind.
17. Counterparts. The Parties may execute this Agreement in counterparts, each of which shall be considered to be an original. If counterparts are separately signed, all separately signed documents together shall constitute, as a group, the final agreement. Faxed or scanned and emailed copies containing party signatures shall be considered the same as originals for the purpose of evidencing the Agreement.
18. Authority. Each Party signing this Agreement acknowledges and represents that the person signing on its behalf has the authority to do so and each person signing this Agreement acknowledges and represents that he or she has the authority to sign this Agreement on behalf of the Party for whom he or she is signing.
19. Independent Counsel. The Parties herein expressly warrant to each other that each has had the opportunity to have this Agreement reviewed by counsel of its own choosing and have not relied upon the advice of any counsel other than its own.
20. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.
21. Modification. This Agreement can be modified or amended only by a written agreement signed by all parties.

22. **No Admission of Liability.** The Parties agree that this Agreement is not an admission of liability by any Party but is rather a compromise of disputed liability, the express purpose of which is to settle existing claims, preclude any additional claims and avoid the uncertainties and costs of litigation.
23. **Notice.** Any notice required to be made under the terms of this Agreement must be in writing and may be delivered in person to any party or may be sent by courier or first-class mail, postage prepaid, as follows:

To the City:

City of Houston Public Works  
611 Walker St. 24th Floor  
Houston, TX 77002  
Attn: Carol Elinger Haddock, PE

To Homeowner:

Waleed Al Ali and Dana Marafi  
4718 North Braeswood Blvd  
Houston, TX 77096

To the Surety:

Great Midwest Insurance Company  
Attn: Surety Claim Department  
800 Gessner Rd 6th Floor  
Houston, TX 77024  
Reference Claim Number: GC011892

The addresses and persons listed above may be changed at any time by giving written notice in accordance with this provision.

24. Benefit. This Agreement is strictly for the benefit of the Parties to this Agreement and they expressly declare that they do not intend to confer any rights or benefits whatsoever on any third party.
25. Other Acts. The Parties agree to undertake such other acts and execute such other documents as may be reasonably necessary to affect the purpose and intent of this Agreement.
26. Invalidity. If any provision of this Agreement is found to be invalid, all the other provisions shall remain in full force and effect.
27. Litigation Costs. In the event of any dispute arising out of or relating to this Agreement, whether or not suit or other proceeding is commenced, and whether in mediation, arbitration, trial, appeal, administrative proceedings, or in any bankruptcy action, the prevailing party shall be entitled to recover its litigation costs including, without limitation, filing fees, expert witness fees and costs and reasonable attorney's fees.
28. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**HOMEOWNERS**

By: Waleed Alali  
DocuSigned by: 9EDB4F3A293A492...

Printed Name: Waleed Alali

By: Dana Marafi  
DocuSigned by: 699F8BE4F8E8498...

Printed Name: Dana Marafi

**GREAT MIDWEST INSURANCE COMPANY**

By: James E. Rudnik

Printed Name: James E. Rudnik  
Sr. Manager, Surety Claims

**CITY OF HOUSTON, TEXAS**

ATTEST/SEAL:

\_\_\_\_\_  
City Secretary

APPROVED:

\_\_\_\_\_  
DocuSigned by: Carol Ellinger Haddock  
3C410872B3453... DS  
Carol Ellinger Haddock, P.E., Director *ED*  
Houston Public Works

APPROVED AS TO FORM:

\_\_\_\_\_  
DocuSigned by: Arnold Colunga  
434BCF0998D490...  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

CITY OF HOUSTON, TEXAS

Signed by:

\_\_\_\_\_  
Mayor

COUNTERSIGNED BY:

\_\_\_\_\_  
City Controller

DATE COUNTERSIGNED:

\_\_\_\_\_