

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

[Signature]
General Public

Date: 10-20, 2020

City Controller of the City of Houston, Texas

mg
ECC

FUND REF: 8300-2000 AMOUNT: 438,50 ENCUMB. NO.: FR 3-5274
52026, 52016, 52270 HL # 390,890,32

City of Houston, Texas Ordinance No. 2020-917

[Signature]

AN ORDINANCE APPROVING AND AUTHORIZING A NEW CONTRACT BETWEEN THE CITY AND THE PROPERTY OWNER(S) AT 5115 SOUTH BRAESWOOD BOULEVARD, HOUSTON, TEXAS 77096 FOR FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT TO BE PERFORMED BY BYRDSON SERVICES, LLC DBA EXCELLO HOMES (APPROVED BY ORDINANCE NO. 2016-0735); REPEALING ORDINANCE NO. 2018-0046 (PASSED COUNCIL ON JANUARY 17,2018); PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City has received a FEMA Flood Mitigation Assistance (“FMA”) grant, administered by the State of Texas, Texas Water Development Board (“TWDB”), for the elevation of flood-prone homes; and

WHEREAS, the goals of the FMA program include assisting states and communities participating in the National Flood Insurance Program in reducing or eliminating the long-term flood risks to severe repetitive loss properties; and

WHEREAS, on behalf of the homeowners that have applied to the TWDB for residential home elevation services, the City has applied for and received FMA program funds to elevate flood-prone homes; **NOW THEREFORE**,

* * * *

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

Section 1. The findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. Ordinance No. 2018-0046, passed and approved the 17th of January, 2018, and being “*AN ORDINANCE APPROVING AND AUTHORIZING A CONTRACT BETWEEN THE CITY AND THE PROPERTY OWNER(S) AT 5115 SOUTH BRAESWOOD BOULEVARD, HOUSTON, TEXAS 77096 FOR FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD MITIGATION ASSISTANCE HOME ELEVATION WORK TO BE PERFORMED BY TITAN LIFETIME FOUNDATIONS, LLC AND LINDA HEANER D/B/A ABSOLUTE CONCRETE; PROVIDING A MAXIMUM CONTRACT AMOUNT; CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY*” is hereby repealed.

Section 3. The City Council hereby approves and authorizes the contract, agreement or other undertaking 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 4. The Director is hereby authorized, in consultation with the City Attorney, to approve changes to the attached contract, agreement, or other undertaking as may be required, so long as those changes do not impair the intended purpose of the contract, agreement, or other undertaking or require the appropriation, allocation or expenditure of any funds.

Section 5. 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 6. 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 7. The total allocation for the contract, agreement or other undertaking approved and authorized hereby shall never exceed \$409,927.38 unless and until this sum is increased by ordinance of City Council.

Section 8. 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 21st day of October, 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 OCT 27 2020

Asst J. Mansel

City Secretary

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: OCT 27 2020

FUNDING SOURCE:

\$390,441.82 – Fund 5030 – Federal/State/Local - Pass Through Fund
\$ 438.50 – Fund 8300 – Water & Sewer System Operating Fund

(Prepared by Legal Dept. Kweda [Signature])
(ARC/sjl 09/09/2020) Assistant City Attorney
(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)
(L.D. File No. 0801600286002)

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

**CITY OF HOUSTON / HOMEOWNER AGREEMENT FOR
2015 FLOOD MITIGATION ASSISTANCE HOME ELEVATION PROJECT**

THIS HOME ELEVATION PROJECT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2020 by and between **the City of Houston**, (the "City"), and **Robert M. Raphael**, (the "Recipient" or the "Homeowner") (each, a "Party", and, collectively, the "Parties").

WHEREAS, the City has received a FEMA Flood Mitigation Assistance (FMA) grant, administered by the State of Texas, Texas Water Development Board ("TWDB", or the "Board") for the elevation of Flood Prone homes; and

WHEREAS, the goals of the FMA program include assisting States and communities participating in the NFIP in reducing or eliminating the long-term flood risks to severe repetitive loss properties; and

WHEREAS, the City, on behalf of the Recipient, has applied for and had approved, FMA program funds (herein "Program Funds" or "Elevation Contract Amount") to elevate the home owned by the Recipient and located at **5115 South Braeswood Drive, Houston, Texas 77096** (the "Property"); and

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS MADE AND AGREED UPON TO BE KEPT HEREIN, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

ARTICLE 1 SCOPE OF WORK, REPRESENTATIONS, AND WARRANTIES

- 1.1 The Recipient shall fully fulfill its obligations under the contract between the Recipient and the Elevation Contractor, as named in Article 2, attached hereto as Attachment A (the "Project"), in accordance with the approved scope(s) of work indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. Recipient shall comply with all applicable codes and standards in performing the work under this Agreement.
- 1.2 Recipient represents and warrants that the structure proposed for assistance from this Agreement is currently covered by a flood insurance policy, and shall remain so insured for the life of the property.
 - 1.2.1 The Recipient is responsible for maintaining a National Flood Insurance Policy (NFIP) for the lifetime of the structure, or the Recipient's ownership, whichever is longer.
 - 1.2.2 The Recipient shall purchase and maintain adequate property and casualty insurance for the structure during the term of the Project, as described in this Agreement.

- 1.3 Recipient acknowledges that the Project must be completed to at least one (1) foot above the Base Flood Elevation (BFE).
- 1.4 Recipient shall submit to the City a Certificate of Compliance and Final Elevation Certificate to certify that the structure has been elevated to at least one (1) foot above the BFE. HOA restrictions are included in Attachment E of this Agreement. In addition, Recipient shall submit a certification from a building official or licensed design professional verifying the structure was elevated to the minimum requirements of the City's Floodplain Management Ordinance is to be submitted as well. These documents shall be submitted before final payment to the Elevator Contractor can be completed.
- 1.5 With the exception of Section 1.6, 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 Federal Emergency Management Agency ("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 defined as "work on the Property that is ineligible for reimbursement through the FEMA Flood Mitigation Assistance Grant."
 - 1.5.1 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.
 - 1.5.2 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. 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.
 - 1.5.3 Any Work required to meet homeowners' association requirements is ineligible for funding.
- 1.6 The Recipient is responsible for all property taxes for the Property, and for the normal maintenance of the structure during the Project.
- 1.7 Recipient represents and warrants that the Project shall follow all applicable state, local and federal laws, regulations, requirements, and that the Recipient shall obtain (before starting Project work), and comply with, all required permits and approvals.

ARTICLE 2 FUNDING

- 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 **Byrdson Services, LLC d/b/a Excello Homes** to elevate Recipient's property. The total project costs, associated with the Recipient's chosen elevation contractor, as detailed in Attachment A, are **\$362,828.12**, as detailed below. The Recipient will be reimbursed for FMA eligible costs up to an amount not to exceed **\$409,927.38** 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 0% of the Project's local share, up to an amount not to exceed **\$409,927.38**. 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 0% due at time of execution on this contract is 0% of Home Elevation contract amount (**\$362,828.12**), plus 0% of the Subcontractor/Inspector contract amount (**\$5,000.00**), and 0% of the Temporary Lodging contract amount (**\$7,392.00**) for a total due at signing of **\$0.00**.

| TOTAL HOME ELEVATION PROJECT COSTS | |
|--|----------------|
| Item | Funding Amount |
| Home Elevation contract amount | \$362,828.12 |
| Subcontractor/Inspector contract amount | \$5,000.00 |
| Temporary Lodging contract amount | \$7,392.00 |
| Administration/Project Management contract amount | \$15,660.20 |
| <i>Cost subtotal</i> | \$390,880.32 |
| City of Houston Donation for Administration/Project Management | (\$438.50) |
| | \$390,441.82 |

Contractor will submit invoices to Recipient and City. City will be responsible for payment of such invoices to Contractor. Temporary Lodging will be paid on a cost reimbursable basis, not to exceed 100% 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.

2.1.1 In the event that Contractor has provided Performance and Payment Bonds, Contractor shall be entitled to request up to four (4) disbursements from the Elevation Contract Amount after completion of each phase of work and submitting the following documentation to City;

2.1.1.1 **Phase 1 Pre-elevation/mobilization** - 30% of the total Elevation Contract Amount upon receipt of inspector's report plus the submittal of the following:

- 2.1.1.1.1 Contractor itemized invoice;
- 2.1.1.1.2 Initial elevation certificate;
- 2.1.1.1.3 Contractor Non-Eligible Work Acknowledgement;
- 2.1.1.1.4 Copies of requisite permits;
- 2.1.1.1.5 Copy of fully executed Elevation Agreement between Recipient and Contractor;

- 2.1.1.1.6 Pre-elevation photographs – minimum of two (2) views each of front and back to show all four exterior walls and an adequate number of pictures for the interior;
 - 2.1.1.1.7 Signed and notarized Contractor Lien Waiver Affidavit (Interim) Form; and
 - 2.1.1.1.8 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form (if Subcontractors were used in this phase).
- 2.1.1.2 **Phase 2 Raised, ready to set, Houston Public Works – Building and Development Services inspections – second 30% of the total Elevation Contract Amount, provided that at least 60% of the Elevation construction is complete and Contractor’s submittal of the following:**
- 2.1.1.2.1 Contractor itemized invoice;
 - 2.1.1.2.2 Progress Report;
 - 2.1.1.2.2.1 Houston Public Works – Building and Development Services concurrence,
 - 2.1.1.2.2.2 Contractor provided Engineer Concurrence as to 60% completion,
 - 2.1.1.2.2.3 Copies of requisite permits,
 - 2.1.1.2.2.4 Wind Storm compliance,
 - 2.1.1.2.2.5 Grant compliance, and
 - 2.1.1.2.2.6 Recipient acceptance.
 - 2.1.1.2.3 Phase 2 elevation photographs – minimum of two (2) views each of front and back to show all four exterior walls and an adequate number of pictures for the interior;
 - 2.1.1.2.4 Signed and notarized Contractor Lien Waiver Affidavit (Interim) Form; and
 - 2.1.1.2.5 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form (if Subcontractors were used in this phase).
- 2.1.1.3 **Phase 3 Structure elevated to design height, foundation installed, mechanicals reconnected - 30% of the total Elevation Contract Amount, provided that at least 90% of the Elevation construction is complete and upon receipt of**

inspector's report plus the submittal of the following:

- 2.1.1.3.1 Contractor itemized invoice;
- 2.1.1.3.2 Progress Report;
 - 2.1.1.3.2.1 Houston Public Works – Building and Development Services concurrence,
 - 2.1.1.3.2.2 **Contractor provided Engineer Concurrence as to 90% completion,**
 - 2.1.1.3.2.3 TWIA compliance,
 - 2.1.1.3.2.4 ADA compliance (if required),
 - 2.1.1.3.2.5 Grant compliance, and
 - 2.1.1.3.2.6 Recipient acceptance.
- 2.1.1.3.3 Phase 3 elevation photographs – minimum of two (2) views each of front and back to show all four exterior walls and an adequate number of pictures for the interior;
- 2.1.1.3.4 Signed and notarized Contractor Lien Waiver Affidavit (Interim) Form; and
- 2.1.1.3.5 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form (if Subcontractors were used in this phase).

2.1.1.4 **Phase 4 Final Inspection, certificate of compliance, all grant requirements met - 10% of the total Elevation Contract Amount, provided that the elevation construction is complete and upon receipt of inspector's report plus the submittal of the following:**

- 2.1.1.4.1 Final Contractor itemized invoice;
- 2.1.1.4.2 Post Elevation - Elevation Certificate (FEMA Form 086-0-33), a blank FEMA Form 086-0-33 with its instructions is attached hereto as Exhibit H;
- 2.1.1.4.3 Certificate of compliance;
- 2.1.1.4.4 New survey (if required);
- 2.1.1.4.5 Signed and notarized Lien Waiver Affidavit Contractor (**Final**) Form;
- 2.1.1.4.6 Signed and notarized Lien Waiver Affidavit Subcontractor (**Final**) Form (if Subcontractors were used in the elevation);
- 2.1.1.4.7 Copy of Contractor Warranties that have

been signed by Recipient;

- 2.1.1.4.8 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;
- 2.1.1.4.9 Homeowner acceptance;
- 2.1.1.4.10 Grant compliance reconciliation (if non-grant work was also performed);
- 2.1.1.4.11 Contractor provided Engineer Concurrence as to 100% completion; and
- 2.1.1.4.12 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.

2.1.2 In the event that the Contractor has not provided payment and Performance Bonds, the Contractor shall not be given notice to proceed and the work shall not begin until said Performance Bond is provided. If Contractor is unable to provide a Performance Bond, the Recipient will be instructed to choose another contractor. Performance Bonds and Payment bonds shall be for the total project costs, including both grant eligible and homeowner (grant ineligible) costs.

2.1.3 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 delete the disputed item and pay the remainder of the invoice. 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.

2.2 Allowable costs shall be determined in accordance with the 2 CFR 200, 44 CFR, Part 13, and other applicable FMA program guidance. The payment to the selected Contractor shall be provided upon request from the Recipient as each phase of the project is completed and approved by the building inspection department and submittal of required receipts from the Recipient.

- 2.3 The final payment of funds to the Contractor will be made only after Project 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 by the City. Should the funding agency refuse to reimburse the City for items determined by the funding agency to be ineligible expenses, the Recipient shall be in non-compliance with this Agreement and funds shall be repaid or recaptured from the Recipient.
- 2.4 In recognition that the Recipient will have and receive full value and benefit from the Project, the Recipient waives any claim whatsoever to Project funds not received by the City from other funding sources for any reason, including failure of the City to comply with program requirements, non-appropriation, or any other reason irrespective of the City's fault or negligence.
- 2.5 Funds may be recaptured from the Recipient by the City or FEMA in the event of non-compliance with the terms and conditions of this Agreement. The Recipient consents and agrees that in the event of a final determination of non-compliance, the Recipient shall immediately remit repayment of the ineligible expenses to the City. In the alternative, any other funds due and payable to the Recipient from either FEMA or the City may be retained by the City or FEMA for purposes of recapture. Recapture may result from any non-compliance, including but not limited to: (1) failure to provide the required matching funds; and (2) failure to complete the Project within the specified time or failure to complete the Project in accordance with applicable provisions of this Agreement, FEMA regulations, or other applicable law or guidance.
- 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, Byrdson Services, LLC d/b/a Excello Construction attached hereto as Attachment A.

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 Byrdson Services, LLC d/b/a Excello Construction, the Owner has assigned its right to all monies the home is entitled to be paid by the City for the work performed by Byrdson Services, LLC d/b/a Excello Construction. Additionally, the City hereby acknowledges Byrdson Services, LLC d/b/a Excello Construction as a third party beneficiary to this Agreement, and further acknowledges that Owner has assigned its right to be paid by the City to Byrdson Services, LLC d/b/a Excello Construction.

- 2.7 Limit of Appropriation.

- 2.7.1 The City's duty to pay money to the Recipient under this Agreement is limited in its entirety by the provisions of this Section.
- 2.7.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$390,880.32 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:
- 2.7.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

SAMPLE: NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

- 2.7.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

ARTICLE 3 INCORPORATION OF LAW, RULES, REGULATIONS AND POLICIES

- 3.1 Both the Recipient and the City shall be governed by all applicable federal, Texas, and City laws, ordinances, rules, regulations, or agreements.

ARTICLE 4 PERIOD OF AGREEMENT

- 4.1 This Agreement shall commence upon the Effective Date, and shall remain in full force and effect as to its provisions, terms and conditions until two years after the effective date of this contract unless terminated earlier in accordance with the provisions of Articles 7 or 11 of this Agreement.

ARTICLE 5 WRITTEN AMENDMENT

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Recipient, with their mutual consent. Modifications shall be valid only when reduced to writing, duly signed by each of the Parties, and attached to the original of this Agreement. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

ARTICLE 6 RECORDKEEPING, PROCUREMENT AND PROPERTY MANAGEMENT

- 6.1 All original records pertinent to this Agreement shall be retained by the Recipient for three (3) years following the date of termination of this Agreement, or of submission of the final close-out report by the City, whichever is later, with the following exception:
- 6.1.1 If any litigation, claim or audit is started before the expiration of the three-year period and extends beyond the three-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved, or until the expiration of any minimum record retention requirement required by law, whichever is greater.
- 6.2 All records, including the supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and objectives of the Budget, Scope of Work and Schedule -- Attachments A and B -- and all other applicable laws and regulations. The Recipient agrees to implement and maintain a recordkeeping and financial management system sufficient to meet FEMA and State of Texas financial reporting requirements and to document that FMA funds have been used in accordance with applicable law.
- 6.3 The Recipient, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to Recipient's records at reasonable times to the City, its employees, or its agents. "Reasonable" shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the City. To the extent that the Recipient uses the services of subcontractors and consultants in the performance of the Recipient's duties and obligations under this

Agreement, this Section 6.3 shall be included in any subcontract or consultant agreement.

- 6.4 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Recipient shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Recipient's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

ARTICLE 7 REPORTS

- 7.1 The Recipient shall keep in close contact with the City, and shall notify the City of any contact information or Project circumstance changes. The City shall issue official letters, call official meetings, and require documentation to be submitted on a periodic basis. Recipient shall respond in writing to the City within ten (10) business days of the date of any written or oral inquiry by the City to ensure Project timelines are met, and compliance with the state and federal government requirements is achieved.

If all required documentation and cooperation are not provided by the Recipient to the City, the City may withhold further payments until such documentation and cooperation are completed, or the City may take such other action as set forth in Article 11.

The Recipient shall respond in writing to the City within ten (10) business days of the date of any written or oral inquiry by providing such additional Project updates or information as may be requested by the City.

ARTICLE 8 MONITORING

- 8.1 The Recipient shall constantly monitor the project performance under this Agreement to ensure that time schedules are being met, and the work included in the Contract between the Recipient and the Contractor ("Elevation Contract") in Attachments A and B is within specified time periods. Such a review shall be made for each function or activity as set forth in Attachments A and B to this Agreement and the terms and conditions of the Agreement. The City may perform on-site or other types of Project monitoring as it deems necessary. Should the elevation be found to be insufficient in meeting the stated terms of this Agreement and/or the Elevation Contract, the City may request explanations, amendments or further specifications to the submitted report to which the Recipient shall respond in writing to the City within ten (10) business days of the date of any written or oral inquiry.

ARTICLE 9 LIABILITY

- 9.1 The Recipient agrees to be fully responsible for his own negligent acts or omissions or tortious acts. Nothing herein shall be construed as consent by the City or a State agency

or subdivision of the State of Texas to be sued by third parties in any matter arising out of this Agreement.

- 9.2 The Recipient represents and warrants that hazardous and toxic materials, if present at any locations where the Project will be performed, are at levels within regulatory limits and do not trigger action by the Federal, State or local laws or regulations. The Recipient further represents and warrants that the presence of any condition(s) or material(s) on site, which are subject to Federal, State or local laws, ordinances, or regulations (including but not limited to: above ground or underground storage tanks or vessels; asbestos; pollutants; irritants; pesticides; contaminants; petroleum products; waste; chemicals; and septic tanks), shall be handled and disposed of in accordance with Federal, State, or local laws, ordinances, or regulations.

ARTICLE 10 GENERAL INDEMNIFICATION

- 10.1 *General Tort Indemnity.* **THE RECIPIENT AGREES TO AND SHALL, AT ALL TIMES, INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY FROM ALL LIABILITY AND CLAIMS, DEMANDS, DAMAGES AND COSTS OF EVERY KIND AND NATURE, INCLUDING ATTORNEY'S FEES AT TRIAL OR APPELLATE LEVELS, AND ALL COURT COSTS ARISING OUT OF INJURY TO OR DEATH OF PERSONS, AND DAMAGES TO ANY AND ALL PROPERTY, INCLUDING LOSS OF USE THEREOF RESULTING FROM OR IN ANY MANNER ARISING OUT OF THE RECIPIENT'S RELATIONSHIP WITH ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL'S PERFORMANCE UNDER THIS AGREEMENT, EXCEPTING ONLY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY. THE RECIPIENT SHALL, UPON REQUEST FROM THE CITY, DEFEND AND SATISFY ANY AND ALL SUITS ARISING FROM ITS USE OF THE PREMISES.**
- 10.2 *Environmental Indemnity.* **THE RECIPIENT AGREES TO AND SHALL, AT ALL TIMES, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY FROM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS, SUITS, DEMANDS, JUDGMENTS, LOSSES, COSTS, FINES, PENALTIES, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING ALL COSTS OF CLEANUP, CONTAINMENT OR OTHER REMEDIATION, AND ALL COSTS FOR INVESTIGATION AND DEFENSE THEREOF INCLUDING, BUT NOT LIMITED TO, COURT COSTS, REASONABLE EXPERT WITNESS FEES, AND ATTORNEY FEES) ARISING FROM OR IN CONNECTION WITH: (A) THE ACTIONS OR ACTIVITIES OF THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL THAT RESULT IN A VIOLATION OF ANY ENVIRONMENTAL LAW, ORDINANCE, RULE, OR REGULATION, OR THAT LEADS TO AN ENVIRONMENTAL CLAIM OR CITATION OR TO DAMAGES DUE TO SUCH ACTIONS OR ACTIVITIES; (B) ANY ENVIRONMENTAL, HEALTH, AND SAFETY LIABILITIES ARISING OUT OF OR RELATING TO THE OPERATION OR OTHER ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT BY THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL AT ANY TIME OR ON PRIOR TO**

THE DAY AND YEAR FIRST ABOVE WRITTEN; OR (C) ANY BODILY INJURY (INCLUDING ILLNESS, DISABILITY AND DEATH, REGARDLESS OF WHEN ANY SUCH BODILY INJURY OCCURRED, WAS INCURRED, OR MANIFESTED ITSELF), PERSONAL INJURY, PROPERTY DAMAGE (INCLUDING TRESPASS, NUISANCE, WRONGFUL EVICTION, AND DEPRIVATION OF THE USE OF REAL PROPERTY), OR OTHER DAMAGE OF OR TO ANY PERSON IN ANY WAY ARISING FROM ANY HAZARDOUS ACTIVITY CONDUCTED BY THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL. THE CITY SHALL BE ENTITLED, BUT NOT REQUIRED, TO CONTROL ANY REMEDIAL ACTION, ANY PROCEEDING RELATED TO AN ENVIRONMENTAL CLAIM.

- 10.3. *Violation of Laws Indemnity.* THE RECIPIENT AGREES TO AND SHALL AT ALL TIMES INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS, SUITS, DEMANDS, JUDGMENTS, LOSSES, COSTS, FINES, PENALTIES, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING ALL COSTS FOR INVESTIGATION AND DEFENSE THEREOF INCLUDING, BUT NOT LIMITED TO, COURT COSTS, REASONABLE EXPERT WITNESS FEES, AND ATTORNEY FEES) ARISING FROM OR BASED UPON THE VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAWS, STATUTES, ORDINANCES, RESOLUTIONS, RULES OR REGULATIONS, BY THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL.
- 10.4. *Breach of Representations, Warranties and Obligations Indemnity.* THE RECIPIENT AGREES TO, AND SHALL AT ALL TIMES INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS, SUITS, DEMANDS, JUDGMENTS, LOSSES, COSTS, FINES, PENALTIES, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING ALL COSTS FOR INVESTIGATION AND DEFENSE THEREOF INCLUDING, BUT NOT LIMITED TO, COURT COSTS, REASONABLE EXPERT WITNESS FEES, AND ATTORNEY FEES) WHICH MAY BE INCURRED BY, CHARGED TO, OR RECOVERED FROM ANY OF THE FOREGOING, ARISING DIRECTLY OR INDIRECTLY OUT OF (A) ANY BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL PURSUANT TO THIS AGREEMENT, OR (B) ANY BREACH OF ANY COVENANT OR OBLIGATION OF THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL, SET FORTH IN THIS AGREEMENT OR ANY OTHER CERTIFICATE, DOCUMENT, WRITING, OR OTHER INSTRUMENT DELIVERED BY THE RECIPIENT, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND/OR SUBCONTRACTORS, OR THOSE UNDER THEIR CONTROL PURSUANT TO THIS AGREEMENT.
- 10.5. *Indemnification Procedures.*
- 10.5.1 *Notice of Claims.* If the City or the Recipient receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party

shall give written notice to the other Party within 30 days. The notice must include the following:

- 10.5.1.1 a description of the indemnification event in reasonable detail;
- 10.5.1.2 the basis on which indemnification may be due; and
- 10.5.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification, or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that the Recipient is prejudiced, suffers loss, or incurs expense because of the delay.

10.5.2 *Defense of Claims.*

10.5.2.1 *Assumption of Defense.* Recipient may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Recipient shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, the Recipient must advise the City as to whether or not it will defend the claim. If the Recipient does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

10.5.2.2 *Continued Participation.* If the Recipient elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

ARTICLE 11 DEFAULT, REMEDIES, TERMINATION

11.1 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 City so elects, and the City may, at its option, exercise any of the remedies set forth herein. The City may take 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:

- 11.1.1 If any warranty or representation made by Recipient in this Agreement or any previous Agreement with the City shall at any time be false or misleading in any respect;
- 11.1.2 If the Recipient shall fail to keep, observe, or perform any of the terms or covenants contained in this Agreement or any previous agreement with the City, and the Recipient has not cured such Event of Default within

- thirty (30) days of the date of written notice to the Recipient from the City;
- 11.1.3 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 Recipient's funding of the Project, and the Recipient has not cured such Event of Default within thirty (30) days of the date of written notice to the Recipient from the City;
 - 11.1.4 If any reports required by this Agreement have not been submitted to the City, or have been submitted with incorrect, incomplete, or insufficient information, and the Recipient has not cured such Event of Default within thirty (30) days of the date of written notice to the Recipient from the City;
 - 11.1.5 If the Recipient failed to perform and complete in a timely fashion any of the Project work required under the Elevation Contract as detailed in Attachments A and B, and the Recipient has not cured such Event of Default within thirty (30) days of the date of written notice to the Recipient from the City; or
 - 11.1.6 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.
- 11.2 Upon the happening of an Event of Default, and upon the Recipient's failure to timely cure, where applicable, 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 City from pursuing any other remedies contained herein or otherwise provided at law or in equity:
- 11.2.1 Terminate this Agreement;
 - 11.2.2 Commence an appropriate legal or equitable action to enforce performance of this Agreement;
 - 11.2.3 Withhold or suspend payment of all or any part of a request for payment;
 - 11.2.4 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 Recipient to reimburse the City for the amount of costs incurred for any items determined to be ineligible; and,
 - 11.2.5 Exercise any other action or remedies which may be otherwise available under law.
- 11.3 The Recipient shall return funds to 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.

- 11.4 This Agreement may be terminated by the written mutual consent of both Parties.
- 11.5 Notwithstanding the above, the Recipient shall not be relieved of liability to the City by virtue of any breach of Agreement by the Recipient. The City may withhold any payments to the Recipient, from this or any other agreement between the Recipient and the City, for the purpose of set-off, until such time as the exact amount of damages due the City from the Recipient is determined.
- 11.6 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 Director, 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. The Director is not authorized to vary the terms of this Agreement.

11.7 *Dispute Resolution*

- 11.7.1 For purposes of this Section, "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.
- 11.7.2 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 Project Administrator and Homeowner must be handled as described below:
 - 11.7.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Homeowner may abide by the decision or may appeal the decision to the Director.
 - 11.7.2.2 If Homeowner desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Homeowner must file its written appeal within seven working days following receipt of the Project Administrator's original decision. The Director shall provide Homeowner with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

ARTICLE 12 NOTICE AND CONTACT

12.1 All notices provided under or pursuant to this Agreement shall be in writing, either by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service to the representative identified below and the said notification attached to the original of this Agreement. Postage or delivery charges must be paid by the party giving the notice.

12.2 The name and address of the City contract manager for this Agreement is:

Jedediah Greenfield
2015 Federal Mitigation Assistance (FMA) Home Elevation Grant Manager
City of Houston
2015 FMA Home Elevation Grant Program
611 Walker Street, 23d Floor
Houston, TX 77002
Office: (832) 395-3218

12.3 The name and address of the Representative of the Recipient responsible for the administration of this Agreement is:

Name of Recipient: Robert Raphael
Property Address: 5115 South Braes wood Blvd
Mailing Address: _____
Telephone: 713-562-0198

12.4 In the event that different representatives are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be rendered as provided in Section 12.2 and 12.3 above.

ARTICLE 13 OTHER PROVISIONS

13.1 The validity of this Agreement is subject to the truth and accuracy of all the information, representations and materials submitted or provided by the Recipient in the Application, in any subsequent submission or response to the City request, or in any submission or response to fulfill the requirements of the Agreement, and such information, representations, and materials are incorporated by reference. The lack of accuracy thereof or any material changes shall at the option of the City cause the termination of this Agreement and the release of the City from all its obligations to the Recipient.

13.2 This Agreement shall be construed under the laws of the State of Texas, the City's Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

- 13.3 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

- 13.4 No waiver by the City of any right or remedy granted hereunder, or failure to insist on strict performance by the Recipient, shall affect, extend, or act as a waiver of any other right or remedy of the City hereunder, or affect the subsequent exercise of the same right or remedy by the City for any further or subsequent default by the Recipient. Any power approval or disapproval granted to the City under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.

- 13.4 Utilities: Homeowner is responsible for authorizing the disconnection of electricity, telephone, cable and gas as directed by the Contractor. Homeowner is responsible for all utility bills during elevation. Homeowner 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.

- 13.5 Homeowner shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Chapter 9 of the Texas Business & Commerce Code. In the case of such an assignment, the Homeowner shall immediately furnish the City 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. Homeowner shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

- 13.6 The Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

ARTICLE 14 FINANCIAL REQUIREMENTS

In addition to the requirements of Article 6 of this Agreement:

- 14.1 The Recipient agrees to maintain receipts and other documents in order to account for the receipt and expenditure of funds under this Agreement.
- 14.2 These records shall be available at all reasonable times for inspection, review or audit by State personnel and other personnel duly authorized by the City. "Reasonable" shall be

construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m. local time, Monday through Friday.

- 14.3 The Recipient shall also provide the City with the records, reports, or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement, and the Recipient shall respond in writing to the City within ten (10) business days of the date of any written or oral request.
- 14.4 The Recipient shall retain all financial records, supporting documents, statistical records and any other documents pertinent to this contract for a period of three (3) years after the date of the submission of the final expenditure report. However, if litigation or an audit has been initiated prior to the expiration of the three-year period, the records shall be retained until the litigation or audit findings have been resolved.
- 14.5 This provision does not affect the applicable statute of limitations.

ARTICLE 15 SUBCONTRACTS

- 15.1 If the Recipient subcontracts any or all of the work required under this Agreement, the Recipient shall include in the subcontract that the subcontractor is bound by the terms and conditions of this Agreement with the City.
- 15.2 The Recipient agrees to include in the subcontract that the subcontractor shall hold the City and the Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work for the Recipient.
- 15.3 Contractual arrangements shall in no way relieve the Recipient of his responsibility to ensure that all funds issued pursuant to this Agreement be administered in accordance with all Federal, State, or local laws, ordinances, or regulations.

ARTICLE 16 TERMS AND CONDITIONS

- 16.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No assurance, condition, covenant (expressed or implied), statement, representation, writing, understanding, agreement, course of action or course of conduct, or other terms of any kind, made by either Party, or any representative of either Party, which is not expressed herein shall be binding.

ARTICLE 17 ATTACHMENTS

- 17.1 All Attachments to this Agreement are incorporated as if set out fully herein.

17.2 In the event of any inconsistencies or conflict between the language of this Agreement and the Attachments hereto, the language of such Attachments shall be controlling but only to the extent of such conflict or inconsistency.

17.3 This Agreement has the following Attachments:

| | |
|--------------|--|
| Attachment A | Elevation Contract Between OWNER and CONTRACTOR |
| Attachment B | Elevation Schedule |
| Attachment C | Final Mitigation Offer |
| Attachment D | Acknowledgement of Conditions for Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds |
| Attachment E | HOA Acknowledgement |
| Attachment F | Non-Eligible Work Acknowledgement |
| Attachment G | Primary Residence Acknowledgement |
| Attachment H | Elevation Project Homeowner Acknowledgement Form for City of Houston and Texas Water Development Board Contract No. 1500011981 |

ARTICLE 18 STANDARD CONDITIONS

18.1 The Recipient agrees to be bound by the following standard conditions:

18.1.1 The State of Texas's performance and the City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature and subject to any modification in accordance with the Texas Constitution, and all applicable statutes.

18.1.2 If mutually agreed by the parties, an extension of this Agreement shall be in writing for a period not to exceed three (3) months and shall be subject to the same terms and conditions set forth in this Agreement. There shall be only one extension of the Agreement granted to the Recipient unless the Recipient can prove to the satisfaction of the City that failure to meet the criteria set forth in the Agreement for completion is due to events beyond the control of the Recipient. Any extension of this Agreement is contingent upon receipt of written permission from the State and Federal agencies involved with this Agreement to extend their agreements with the City to accommodate an extension request of this Agreement by the Recipient.

18.1.3 All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof to the City.

ARTICLE 19 STATE LOBBYING PROHIBITION

- 19.1 No funds or resources received from the City in connection with this Agreement may be used directly or indirectly to influence legislation or any other official action by the Texas Legislature or the City.

ARTICLE 20 LEGAL AUTHORIZATION

- 20.1 The Recipient certifies, with respect to this Agreement, that the Recipient possesses the legal authority to receive the funds to be provided under this Agreement. The Recipient also certifies that the Recipient possesses the authority to legally execute and bind the Recipient to the terms of this Agreement, and that the Recipient has legal or equitable title to the property on which the Project is being accomplished.

ARTICLE 21 ASSURANCES

- 21.1 The Recipient shall comply with the Statement of Assurances included in the interlocal agreement between the City of Houston and the Texas Water Development Board, Contract No. 1500011981 (available upon request). Failure of the Recipient to comply with the federal, state, and local laws, Executive Orders, ordinances, agreements, and regulations referenced in the interlocal agreement between the City of Houston and the Texas Water Development Board, Contract No. 1500011981 (available upon request), as well as failure to comply with any other term of this Agreement or federal, state or local laws, ordinances, and regulations, shall be cause for the immediate suspension of payments or the immediate termination of this Agreement at the option of the City.

ARTICLE 22 CAPTIONS

- 22.1 Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

ARTICLE 23 AMBIGUITIES

- 23.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

ARTICLE 24 WARRANTIES

- 24.1 Contractor will be required to provide Warranties to Homeowner. Contractors will provide for services performed, 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:
- 24.1.1. A one-year workmanship and materials warranty;
 - 24.1.2. A two--year mechanical and delivery system warranty; and

24.1.3. A ten-year structural warranty.

24.2 Contractor shall also be required to agree to include such provisions in all of Contractor's subcontracts for services under this Agreement. Contractor shall not be eligible for final payment hereunder until such Warranty policy has been delivered to Homeowner, with copy provided to City with such copy signed by Homeowner evidencing Homeowner's receipt of such Warranty policy.

ARTICLE 25 NO DEBT AGAINST THE CITY

25.1 This shall not be construed as creating any debt by or on behalf of the City, and all obligations of the City of Houston are subject to the availability of funds. To the extent the performance of this Agreement transcends the fiscal year in which this Agreement is entered into, this Agreement is specifically contingent upon the continued authority of the City and appropriations therefore.

ARTICLE 26 INDEPENDENT CONTRACTOR

26.1 Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to, the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

ARTICLE 27 REMEDIES

27.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

The following Clauses are required clauses for any contract with a consultant for a grant in which the Texas Water Development Board (TWDB) is the granting agency. The Parties agree to the terms and conditions of these clauses in addition to the other provisions of this agreement. The required clauses are as follows:

ARTICLE 28 STATE AUDITOR CLAUSE

28.1 By executing this Agreement, the Recipient accepts the authority of the 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 Recipient shall comply with and cooperate in any such investigation or audit. The Recipient agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Recipient also agrees to include a provision in any subcontract related to this Agreement that requires the Recipient 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.

ARTICLE 29 FINANCIAL RECORDS

- 29.1 The Recipient(s) 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 Recipient(s) and its contracted parties shall be in a manner consistent with generally accepted accounting principles.

ARTICLE 30 OWNERSHIP

- 30.1 The Board shall have unlimited rights to technical or other data resulting directly from the performance of services 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 Recipient(s) or its contracted parties pursuant to this Agreement shall become the joint property of the Recipient(s), the City, and the Board. These materials shall not be copyrighted or patented by the Recipient(s) 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 Recipient(s) 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 Recipient(s) or Board pursuant to this Agreement may be printed by the Recipient(s) or the Board at their own cost and distributed by either at their discretion. The Recipient(s) 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.

The Recipient(s) and its contracted parties agree to acknowledge the Board in any news releases or other publications relating to the work performed under this Agreement.

ARTICLE 31 NO DEBT AGAINST THE STATE

- 31.1 This 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 therefore.

ARTICLE 32 LICENSES, PERMIT, AND INSURANCE

- 32.1 For the purpose of this Agreement, the Recipient(s) will be considered an independent Recipient and therefore solely responsible for liability resulting from negligent acts or omissions. The Recipient(s) shall obtain all necessary insurance, in the judgment of the Recipient(s), to protect themselves, the Recipient, the Board, and employees and officials of the Board from liability arising out of this Agreement.

THE RECIPIENT SHALL INDEMNIFY AND HOLD THE BOARD AND THE STATE OF TEXAS HARMLESS, TO THE EXTENT THE RECIPIENT(S) MAY DO SO IN ACCORDANCE WITH STATE LAW, FROM ANY AND ALL LOSSES, DAMAGES, LIABILITY, OR CLAIMS THEREFORE, ON ACCOUNT OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER CAUSED BY THE RECIPIENT(S), ARISING OUT OF THE ACTIVITIES UNDER THIS AGREEMENT.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

RECIPIENT

By: [Signature]
Printed Name: Robert M. Raphael
Date: 8/12/20

RECIPIENT

By: _____
Printed Name: _____
Date: _____

WITNESS:

By: [Signature]
Printed Name: Brian Ramm
Date: 9/15/2020

WITNESS:

By: _____
Printed Name: _____
Date: _____

CITY OF HOUSTON, TEXAS

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

Mayor

APPROVED:

[Signature]
Carol Ellinger Haddock, P.E., Director
Houston Public Works

COUNTERSIGNED BY:

[Signature]
City Controller

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney,
L.D. File No. 0801600286002

DATE COUNTERSIGNED:

Attachment A

Elevation Contract between Recipient and Byrdson Services, LLC d/b/a Excello Construction

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

THIS HOME ELEVATION AGREEMENT ("Agreement") is made and entered into by and between Byrdson Services, LLC d/b/a Excello Construction, a Texas limited liability company, (the "Contractor") and Robert M. Raphael (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: 5115 South 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 \$362,828.12 (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 1 Pre-elevation/mobilization** - 30% of the total Contract Price will be paid to the Contractor upon receipt of inspector's report plus the submittal of the following:
- 3.2.1 Foundation inspection is required;
- 3.2.2 The Contractor's itemized invoice;
- 3.2.3 Progress Report comprising the following:
- 3.2.3.1 Engineering feasibility letter,
- 3.2.3.2 Initial elevation certificate,
- 3.2.3.3 Copies of requisite permits, and
- 3.2.3.4 Copy of fully executed Agreement between Owner and the Contractor.
- 3.2.4 Pre-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;
- 3.2.5 Signed and notarized the Contractor Lien Waiver Affidavit (Interim) Form; and
- 3.2.6 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form.
- 3.3 **Phase 2 Raised, ready to set, building department inspections** – second 30% of the total Contract Price will be paid to the Contractor, provided that at least 60% of the elevation construction is complete, the Contractor's submittal of the following, and the appropriate approval of the Contractor's submittals.
- 3.3.1 The Contractor's itemized invoice;
- 3.3.2 Progress Report comprising the following:
- 3.3.2.1 Houston Public Works – Building and Development Services concurrence,
- 3.3.2.2 Concurrence as to 60% completion,
- 3.3.2.3 Copies of requisite permits,
- 3.3.2.4 Wind Storm compliance,
- 3.3.2.5 Grant compliance, and
- 3.3.2.6 Owner acceptance.

- 3.3.3 Phase 2 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;
- 3.3.4 Signed and notarized the Contractor Lien Waiver Affidavit (Interim) Form; and
- 3.3.5 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form.
- 3.4 **Phase 3 Structure elevated to design height, foundation installed, mechanicals reconnected - 30%** 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:
 - 3.4.1 The Contractor's Itemized invoice;
 - 3.4.2 Progress Report comprising the following:
 - 3.4.2.1 Houston Public Works – Building and Development Services concurrence,
 - 3.4.2.2 Concurrence as to 90% completion,
 - 3.4.2.3 TWIA compliance,
 - 3.4.2.4 ADA compliance (if required),
 - 3.4.2.5 Grant compliance, and
 - 3.4.2.6 Owner acceptance.
 - 3.4.3 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;
 - 3.4.4 Signed and notarized the Contractor Lien Waiver Affidavit (Interim) Form; and
 - 3.4.5 Signed and notarized Subcontractor Lien Waiver Affidavit (Interim) Form.
- 3.5 **Phase 4 Final Inspection, occupancy certificate, all grant requirements met - 10%** 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:
 - 3.5.1 The Contractor's Final itemized invoice;
 - 3.5.2 Post Elevation - Elevation Certificate (FEMA Form 086-0-33);
 - 3.5.3 Certificate of occupancy;
 - 3.5.4 New survey (if required);
 - 3.5.5 Signed and notarized Contractor Lien Waiver Affidavit (**Final**) Form;
 - 3.5.6 Signed and notarized Lien Waiver Affidavit Subcontractor (**Final**) Form;
 - 3.5.7 Copy of the Contractor's Warranties that have been signed by Owner;
 - 3.5.8 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;
 - 3.5.9 Owner acceptance;
 - 3.5.10 Grant compliance reconciliation (if non-grant work was also performed); and
 - 3.5.11 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.
- 3.6 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").
 - 3.6.1 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.
- 3.7 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.

- 3.8 **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 until 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.
- 3.9 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.
- 3.10 **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 Contract 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 | <ul style="list-style-type: none"> • Texas Statutory Limits for Workers' Compensation |
| Employer's Liability | <ul style="list-style-type: none"> • Bodily Injury by Accident \$1,000,000 (each accident) • Bodily Injury by Disease \$1,000,000 (policy limit) • Bodily Injury by Disease \$1,000,000 (each employee) |
| 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"> • \$1,000,000 Limit (each occurrence), subject to general aggregate Limit of \$2,000,000; • Products and Completed Operations \$2,000,000 aggregate Limit. |
| 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"> • \$1,000,000 combined single limit each occurrence for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos |
| Installation Floater | <ul style="list-style-type: none"> • Value of stored material or equipment, listed on |

| | |
|--|---|
| (Unless alternative coverage approved by City Attorney) | Certificates of Payments, but not yet incorporated into the Work |
| Excess Coverage | • \$1,000,000 each occurrence aggregate in excess of limits specified for Commercial General Liability and Automobile Liability |
| Aggregate Limits are per 12-month policy period unless otherwise indicated. | |

- 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 Contractor 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 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 United States of America, the State of Texas, and the City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas. This Contract is performable 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 17th DAY OF August, 2020.

THE CONTRACTOR

DocuSigned by:
Joellen Hall
By: JOELLEN HALL
Title: Director of Operations
BYRDSON SERVICES, LLC DBA EXCELLO CONSTRUCTION

Name: _____

THE OWNER(S)

Robert M. Raphael
Name: Robert M. Raphael

Name: _____

WITNESS

DocuSigned by:
Brian Ramm
Name: Brian Ramm
Title: Admin Coordinator

WITNESS

DocuSigned by:
Brian Ramm
Name: Brian Ramm

DATE COUNTERSIGNED

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."

Attachment B
Elevation Schedule

2016 FEMA Home Elevation Grant Program - City of Houston

Name of Elevation Contractor: Byrdson Services, LLC dba Excello Homes
 Address: 6575 West Loop South, Bellaire, Texas 77401
 Phone Number: 877.390.5438

Elevation Project Address: 5115 S. Braeswood Drive, Houston, TX 77096

current height of home: 7.84 feet:

| Item | Description | QTY | Unit Price | Price |
|--|---|-----|--------------|---------------|
| 1 Pre-Construction/Design/Development | | | | |
| | Engineering/Structural Plans/Architectural Renderings and permitting, Survey and Elevation Certificate-Interim & Final Elev Cert | 1 | \$ 9,980.00 | \$ 9,980.00 |
| | Home Inspection- photograph & document pre-existing condition of home | 1 | \$ 500.00 | \$ 500.00 |
| | | 0 | | |
| | | 0 | | |
| | Subtotal: Pre-Construction/Design/Development | | | \$ 10,480.00 |
| 2 Site Preparation/Development | | | | |
| | Mobilization, Site Prep (includes breaking up and the removal and disposal of concrete), Equipment, Labor, tree trimming | 1 | \$ 7,236.00 | \$ 7,236.00 |
| | Remove existing landscaping required for elevation,, installation of Silt fence, required erosion control | 1 | \$ 3,075.30 | \$ 3,075.30 |
| | Site toilet, dumpster and hauling off debris | 1 | \$ 6,512.40 | \$ 6,512.40 |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | Subtotal: Site Preparation/Development | | | \$ 16,823.70 |
| 3 Piles/Elevation | | | | |
| | Tunneling/Excavating (Inft) to facilitate the installation of 8"x8" concrete piling. Install 8"x8" concrete piling to support the existing concrete slab under residence to the point of refusal, where engineer has specified to provide sufficient weight load support. (approx 150 pliers) | 1 | \$ 65,124.00 | \$ 65,124.00 |
| | Raise, Shore and Align above mentioned residence to satisfy BFE and local free board requirements; according to engineer specifications. Contractor to provide all block, shims, and angle iron, or any other materials required during lift. (3618 sqft) | 1 | \$ 32,562.00 | \$ 32,562.00 |
| | | | \$ - | \$ - |
| | | | \$ - | \$ - |
| | Subtotal: Piles/Elevation | | | \$ 97,686.00 |
| 4 Utilities/Mechanicals | | | | |
| | Disconnect and reconnect/repair water, sewer / septic, gas as required by local building agencies | 1 | \$ 15,195.60 | \$ 15,195.60 |
| | Disconnect and reconnect A/C system(s) to new elevated height requirements, custom fabricated ac platform | 1 | \$ 3,618.00 | \$ 3,618.00 |
| | Disconnect and reconnect electrical as required by local building agencies | 1 | \$ 10,854.00 | \$ 10,854.00 |
| | | 0 | \$ - | \$ - |
| | Subtotal: Utilities/Mechanicals | | | \$ 29,667.60 |
| 5 Foundation | | | | |
| | Pour 24"x24" continuous reinforced concrete footer and installation of pier / column system as per engineer specifications(approx 868 LF of footers & 42 columns) | 1 | \$ 72,360.00 | \$ 72,360.00 |
| | Install four (4) sided CMU block wall with required flood vents. This includes the required rebar and concrete fill as required by the engineer. (approx 389 lf) | 1 | \$ 28,944.00 | \$ 28,944.00 |
| | Labor and materials to install engineer specified steel beams (approx 4 steel beams) | 1 | \$ 3,979.80 | \$ 3,979.80 |
| | Pour concrete slab under raised home per engineered specifications. Price includes pump truck as required (3618 sqft) | 1 | \$ 15,989.00 | \$ 15,989.00 |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | Subtotal: Foundation | | | \$ 121,272.80 |
| 6 Steps/Landings/Decks/Carpentry | | | | |
| | Construct landing and catwalks to meet program requirements (including stairs and handrails) (4'x4' front landing) | 2 | \$ 3,350.00 | \$ 6,700.00 |
| | Build a 4ft wide catwalk to connect all 3 rear doors and side door with one set of stairs in the rear of the home | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | Subtotal: Steps/Landings/Decks/Carpentry | | | \$ 6,700.00 |
| 7 ADA Approved Item | | | | |
| | ADA Approved Lift | 0 | \$ - | \$ - |
| | | 0 | \$ - | \$ - |
| | Subtotal: ADA Approved Item | | | \$ - |
| 8 Finish Out Items | | | | |
| | Spray foam insulation underneath elevated slab (closed cell insulation =Minimum of R-13 (3600sqft) | 1 | \$ 16,642.80 | \$ 16,642.80 |

| | | | | | | |
|--|---|------|----|----------|----|------------|
| | Repair / replace concrete damaged during elevation , extend gutters | 1 | \$ | 6,874.20 | \$ | 6,874.20 |
| | | 0 | \$ | - | \$ | - |
| | | 0 | \$ | - | \$ | - |
| | | 0 | \$ | - | \$ | - |
| Subtotal - Finish/Out/Items | | | | | \$ | 23,517.00 |
| 9 Punch/Out/Items | | | | | | |
| | Final punch items | 1 | \$ | 500.00 | \$ | 500.00 |
| | | 0 | \$ | - | \$ | - |
| | | 0 | \$ | - | \$ | - |
| Subtotal - Punch/Out/Items | | | | | \$ | 500.00 |
| 10 Finishes/Landscape | | | | | | |
| | Post site cleanup | 1 | \$ | 5,427.00 | \$ | 5,427.00 |
| | 4 Pallets of Sod with labor and installation with grading | 1 | \$ | 3,618.00 | \$ | 3,618.00 |
| | | 0 | \$ | - | \$ | - |
| | | 0 | \$ | - | \$ | - |
| Subtotal - Finishes/Landscape | | | | | \$ | 9,045.00 |
| | | 0 | \$ | - | \$ | - |
| | | 0 | \$ | - | \$ | - |
| Subtotal - Grant Eligible Costs | | | | | \$ | 315,692.10 |
| 12 | Bonding and Insurance | | | | \$ | 25,832.52 |
| 13 | Profit and Overhead | | | | \$ | 11,354.00 |
| 14 | Sales Tax on Materials | | | | \$ | 4,341.60 |
| 15 | Project Management | | | | \$ | 5,607.90 |
| Total - Grant Eligible Costs | | | | | \$ | 362,828.12 |
| Owner Paid Extras (TWDB/State Approved Additions) - Non Grant Eligible Cost | | | | | | |
| 16 | Additional Elevation | 2.16 | \$ | 9,550.00 | \$ | 9,550.00 |
| 17 | Upgrade to Spiltfaced Block only ground level | 1575 | \$ | 7,875.00 | \$ | 7,875.00 |
| 18 | Upgrade to capstone | 342 | \$ | 3,762.00 | \$ | 3,762.00 |
| 19 | Upgrade Standard handrails standard iron handrails-Front | 48 | \$ | 3,280.00 | \$ | 3,280.00 |
| 20 | Additional Decking Front | 15.2 | \$ | 380.00 | \$ | 380.00 |
| 21 | Additional Decking Rear | 250 | \$ | 6,250.00 | \$ | 6,250.00 |
| 21 | Upgrade Concrete Stairs Front | 1 | \$ | 9,000.00 | \$ | 9,000.00 |
| SUBTOTAL | | | | | \$ | 40,087.00 |
| TOTAL ELEVATION PROJECT COST | | | | | \$ | 402,925.12 |

Attachment C

Final Mitigation Offer

Grantee: Texas Water Development Board

Subgrantee: City of Houston, Texas

Property Owner(s): Robert M. Raphael

Property Address: 5115 South Braeswood Boulevard, Houston, TX 77096

NFIP Policy Number: 1150612590 Repetitive Loss Number: _____

This documents the formal Mitigation Offer of Assistance for the FMA program.

1. A mitigation grant has been awarded to the City of Houston, Texas (the "City") that includes your FMA property.
2. The FMA program is a voluntary program. Neither the State nor City will use their power of eminent domain to acquire your property for open space purposes if you choose not to participate or if negotiations fail.
3. All information related to you and/or your individual property that is collected during the consultation and offer processes shall be protected consistent with the federal Privacy Act and similar State and local laws and ordinances.
4. The estimated amounts in the Consultation Agreement are finalized in the Mitigation Offer below.
5. The Final Mitigation Offer is provided to you for **Elevation**. City will complete Section A. for property acquisition or Section B. for mitigation activities other than acquisition.

For Mitigation Activities Other than Acquisition

Your Final Mitigation Offer amount is based on adjusting the cost of the mitigation activity of \$375,220.12 by applicable additions of \$0.00 and deductions (i.e., flood insurance, duplicated benefits, costs borne by you) of \$0.00.

Final Mitigation Offer: \$375,220.12

Federal Cost Share: \$375,220.12 (100%) - (includes elevation contract amount of \$362,828.12 plus Temporary Lodging budgeted amount of \$7,392.00 and \$5,000.00 in Subcontractor/Inspector budgeted amount). Actual temporary living expense will be based on number of days of temporary living incurred during the elevation.

Federal Cost Share: 100%

Non Federal Cost Share: borne by property owner: \$0.00 (0%)

You are accountable for maintenance and insurance requirements for the property during and after the mitigation project implementation (i.e., maintaining flood insurance on your property).

Your additional responsibilities may include securing a contractor, receiving funds in a bank account for the project, keeping receipts for the project in accordance with City grant and contract requirements, and other programmatic requirements as specified below by the City.

You must sign the attached Model Acknowledgement of Conditions for Mitigation of Property in a Special Flood Hazard Area for elevation, mitigation reconstruction, or dry flood proofing activities.

6. All holders of recorded interest in the property have been notified of the final mitigation offer. The holders of recorded interest are:

Robert M. Raphael

The local government and property owner will initial and date below to document each meeting related to the Mitigation Offer.

RR
Homeowner(s)

^{DS}
BR
Local Government Official(s)

7/12/20
Date

Homeowner(s)

Local Government Official(s)

Date

Homeowner(s)

Local Government Official(s)

Date

Accepting or Declining the Mitigation Offer

You have 45 days from the date of the Mitigation Offer Letter to accept or decline the mitigation offer of assistance by signing the appropriate section below and returning it to City. Failure to respond to the Mitigation Offer within 45 days of the date on this Mitigation Offer constitutes declining the Mitigation Offer.

1. You may request in writing that the Regional Administrator extend your period of time to consider the mitigation offer beyond 45 days. In your letter you must explain the extenuating circumstances. This request must be submitted before the expiration of the 45 day time period.
2. If you decline the Mitigation Offer made under the FMA program, your property will be subject to an increased flood insurance premium rate. Generally, this increase will occur upon renewal of the insurance policy. You will receive a separate Notice of NFIP Insurance Premium Rate Increase from FEMA.
3. If you decline the Mitigation Offer, you retain the right to appeal the increased flood insurance premium rate only in certain circumstances in accordance with 44 CFR Part 79.7 (d).

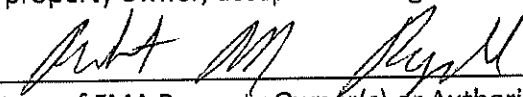
This offer of mitigation assistance remains open and available to you, even if you decline and/or appeal the offer, as long as the FMA program exists and funds are available.

Accepting the Mitigation Offer

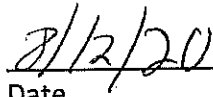
Final Mitigation Offer: **\$375,220.12**
Includes Elevation costs of **\$362,828.12**, Temporary Lodging budget of **\$7,392.00**, and **\$5,000.00** in Subcontractor/Inspector budget

Mitigation Activity: **Elevation**

I, the property owner, accept this Mitigation Offer.



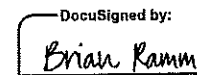
Signature of FMA Property Owner(s) or Authorized Representative(s)



Date

Signature of FMA Property Owner(s) or Authorized Representative(s)

Date

DocuSigned by:


Signature of City of Houston, Texas Representative

9/15/2020

Date

NFIP Policy Number: 1150612590

Repetitive Loss Number: _____

Declining the Mitigation Offer

Mitigation Offer Declined: I do not accept this Mitigation Offer of Assistance. I understand that FEMA will notify me of the chargeable insurance premium rate increase for my property. FEMA will issue a Notice of NFIP Insurance Premium Rate Increase to me specifying the effective date of the insurance premium rate increase for my property. Generally, this increase will occur upon renewal of the insurance policy.

In addition, I understand that I have the right to appeal an increase in flood insurance premium rate only in certain circumstances and have received information from the subgrantee on the specific grounds for appeal and that process. Failure to respond to this offer within 45 days constitutes declining the Mitigation Offer of Assistance.

N/A

Signature of FMA Property Owner(s) or Authorized Representative(s)

Date

Signature of FMA Property Owner(s) or Authorized Representative(s)

Date

Signature of City of Houston, Texas Representative

Date

NFIP Policy Number: 1150612590

Repetitive Loss Number: _____

Attachment D

Acknowledgement of Conditions
For Mitigation of Property in a Special Flood Hazard Area
With FEMA Grant Funds

Property Owner: **Robert M. Raphael**
Street Address: 5115 South Braeswood Boulevard
COUNTY: Harris State: TX Zip Code: 77096
Legal Description: **LT 9 BLK 36 MEYERLAND SEC 8 R/P 1**

As a recipient of Federally-funded hazard mitigation assistance under the Flood Mitigation Assistance program, as authorized by 42 U.S.C. §4102a, the Property Owner accepts the following conditions:

1. That the Property Owner has insured all structures that will **not** be demolished or relocated out of the SFHA for the above-mentioned property to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less, through the National Flood Insurance Program (NFIP), as authorized by 42 U.S.C. §4001 *et seq.*, as long as the Property Owner holds title to the property as required by 42 U.S.C. §4012a.
2. That the Property Owner will maintain all structures on the above-mentioned property in accordance with the flood plain management criteria set forth in Title 44 of the Code of Federal Regulations (CFR) Part 60.3 and City Ordinances as long as the Property Owner holds title to the property. These criteria include, but are not limited to, the following measures:
 - i. Enclosed areas below the Base Flood Elevation will only be used for parking of vehicles, limited storage, or access to the building;
 - ii. All interior walls and floors below the Base Flood Elevation will be unfinished or constructed of flood resistant materials;
 - iii. No mechanical, electrical, or plumbing devices will be installed below the Base Flood Elevation; and
 - iv. All enclosed areas below Base Flood Elevation must be equipped with vents permitting the automatic entry and exit of flood water.

For a complete, detailed list of these criteria, see the City Ordinance.

3. The above conditions are binding for the life of the property. To provide notice to subsequent purchasers of these conditions, the Property Owner agrees that the County will legally record with the county or appropriate jurisdiction's land

records a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. §5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the flood plain management criteria of Title 44 of the Code of Federal Regulations Part 60.3 and City Ordinance."


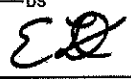
4. Failure to abide by the above conditions may prohibit the Property Owner and/or any subsequent purchasers from receiving Federal disaster assistance with respect to this property in the event of any future flood disasters. If the above conditions are not met, FEMA may recoup the amount of the grant award with respect to the subject property, and the Property Owner may be liable to repay such amounts.

(Continued on next page)

This Agreement shall be binding upon the respective parties' heirs, successors, personal representatives, and assignees.

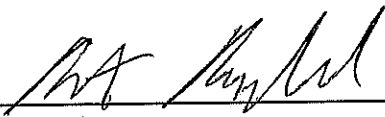
THE CITY OF HOUSTON, TEXAS

A home-rule municipal corporation, principally located in Harris County, Texas

By:  ^{DocuSigned by:} 
Name: Carol Ellinger Haddock, P.E.
Title: Director, Houston Public Works

of the City of Houston, Texas

&


Robert M. Raphael

WITNESSED BY:

 ^{DocuSigned by:}
Name of Witness: Brian Ramm

SEAL


Notary Public

ACKNOWLEDGEMENT

State of Texas, County of Harris

Before me, Jedediah Greenfield, on this day personally appeared Robert M. Raphael, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 12th day of August, 2020.

 ^{DocuSigned by:}
Notary Public's Signature

Attachment E

HOA Acknowledgement

Property Owner: **Robert M. Raphael**
Street Address: 5115 South Braeswood Boulevard
COUNTY: Harris State: TX Zip Code: 77096

This is to acknowledge that I live in a neighborhood that has a Homeowner Association. I further acknowledge that the grant does not cover costs for items required by the HOA that are not otherwise grant eligible (such as concrete steps, finishes on the three-sided enclosures, etc.)

I acknowledge that it is my responsibility to get HOA concurrence for the work to be done relative to the elevation

By signing below, I acknowledge that I have or will obtain HOA approval for all required alterations, additions or changes made to the exterior of the above listed home.



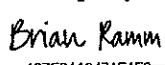
Signature of Property Owner(s)

8/12/20

Date

Signature of Property Owner(s)

Date

DocuSigned by:

167F3110471F4F2...

Signature of City Representative

9/15/2020

Date

Attachment F

Non-Eligible Work Acknowledgement

Property Owner: **Robert M. Raphael**
Street Address: 5115 South Braeswood Boulevard
COUNTY: Harris State: TX Zip Code: 77096

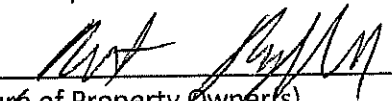
I/We, hereby acknowledges; grant eligible expenses include items such as lifting of a home, minimum Code compliant ingress and egress; utility disconnect and reconnections, and temporary living during elevation for owner occupants.

I/We, hereby acknowledge; City allows for non-grant eligible items to be completed during the elevation (such as upgrade to split faced block). These will be limited to items where the cost would be significantly greater, or impractical, if not completed at the time of elevation.

I/We, hereby acknowledge; FEMA, the State, and the City require that all non-eligible items are contracted for and paid for at 100% prior to notice to proceed.

I/We, hereby acknowledge; Contractors are not allowed complete ANY non-elevation work gratis and the homeowners are not allowed to request or accept any free work. Failure to abide by this will jeopardize the grant for the home being elevated, and may result in a required refund of all grant funds;

I/We, hereby acknowledge, I/We are required to report any offers by the contractor to complete any work for free either during or after the elevation is complete.



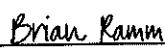
Signature of Property Owner(s)

8/12/2020

Date

Signature of Property Owner(s)

Date

DocuSigned by:


Signature of City Representative

9/15/2020

Date

Attachment G

Primary Residence Acknowledgement

Property Owner: **Robert M. Raphael**
Street Address: 5115 South Braeswood Boulevard
COUNTY: Harris State: TX Zip Code: 77096
FEMA Home Elevation Grant Number: 1500011981

Temporary living reimbursement is eligible only for primary owner occupants. I acknowledge that the home listed above is my primary residence, and not a secondary or vacation home.

As primary residence, all of the following apply:

This address is listed on:

- Voter Registration Card;
- Federal and state tax returns;
- Driver's License or car registration; or
- Homestead Exemption.

By signing below, I acknowledge that I am requesting temporary living reimbursement because this is my primary residence.



Signature of Property Owner(s)

8/12/20

Date

Signature of Property Owner(s)

Date

Signature of City Representative

Date

Attachment H

Elevation Project Homeowner Acknowledgement Form for City of Houston and Texas Water
Development Board Contract No. 1500011981

Property Owner: **Robert M. Raphael**
Street Address: 5115 South Braeswood Boulevard
COUNTY: Harris State: TX Zip Code: 77096

I hereby acknowledge that the inclusion of my residence listed above in the City of Houston's application is not a guarantee that it will be elevated. The City is awarded a specific budget that the City must adhere to, and this budget cannot be exceeded. There is no guarantee of elevation until I have a fully executed contract for elevation between me and my chosen contractor AND a fully executed elevation agreement between me and the City of Houston.

I hereby acknowledge that if I choose to do any modifications in anticipation of being elevated, it will be 100% at my own risk. Further, I will not commit to temporary housing until my chosen contractor has been given notice to proceed and I/we have a known start date for elevation. Any cost of temporary living, to include any deposits, is non-reimbursable if incurred prior to the elevation construction start date.

I hereby acknowledge that any improvements or modifications MUST be properly permitted by the City of Houston.



Signature of Property Owner(s)

8/12/2020

Date

Signature of Property Owner(s)

Date

DocuSigned by:



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Signature of City Representative

9/15/2020

Date