

K19-1150

VOLUNTARY ELEVATION AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

ERNEST SMITH

4973 LAFON DR., NEW ORLEANS, LA 70126

THIS VOLUNTARY ELEVATION AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Gilbert Montañó, Chief Administrative Officer (the “**City**”), and Ernest Smith (the “**Property Owners**”). The City and the Property Owners may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

WHEREAS, the City desires to utilize Flood Mitigation Assistance (“**FMA**”) Program funds to mitigate eligible properties under the terms described in this Agreement;

WHEREAS, eligibility for the FMA program was established by the Federal Emergency Management Agency (“**FEMA**”) and the Governor’s Office of Homeland Security and Emergency Preparedness (“**GOHSEP**”);

WHEREAS, the City informed eligible Property Owners of the FMA program and invited interested property Owners to voluntarily participate in the program on a first come, first served basis;

WHEREAS, mitigation policy for the City states that the City’s preferences for mitigation activities using FMA funds are elevation and reconstruction and that acquisition is a mitigation activity not supported by the City;

WHEREAS, Property Owners affirm that they are the owners of the residential property located at 4973 Lafon Dr., New Orleans, LA 70126 (the “**Subject Property**” or the “**Structure**” by means of elevation) and were the Owners of the Subject Property on June 7, 2019;

WHEREAS, the City prepared and submitted a mitigation application, containing the Subject Property, to GOHSEP on behalf of eligible and interested Property Owners for this assistance for elevation of “Severe Repetitive Loss” structures within the City;

WHEREAS, the City was subsequently notified by GOHSEP that the applications for assistance under the FMA Program were approved. The Subject Property was listed in an application which was authorized for elevation by virtue of receipt of a letter of approval from GOHSEP dated June 13, 2019 incorporated herein by reference; and

WHEREAS, Property Owners are eligible for and desire to perform mitigation of the Subject Property.

NOW THEREFORE, the City and Property Owners for the consideration and under the conditions set forth do agree to abide by the terms below as well as the standard contract provisions and in Exhibit A which are attached hereto and made part of this Agreement:

ARTICLE I - THE PROPERTY OWNERS' OBLIGATIONS

Section A. Property Owners Obligation Requirements for Eligibility. To avoid duplication of benefits and to maintain eligibility for a FMA grant, Property Owners must not receive funds from more than one federal source for the same activity. If such other funds are received or available to Property Owners, and if receipt of such funds does not render Property Owners ineligible for the FMA program, then Property Owners will voluntarily contribute the additional funds to the project as "Property Owners Obligation." The total FMA grant will be reduced by the amount of additional funds, as long as acceptance of such additional funds has not or will not render the Property Owners ineligible for FMA. Additional eligible funds include but may not be limited to Increased Cost of Compliance ("ICC") funds and Road Home Elevation Incentive funds funded by Community Development Block Grants ("CDBG"). Additional ineligible funds include but may not be limited to Road Home Hazard Mitigation funds and State OCD-DRU Elevation Grant funds (i.e., Property Owner loses FMA eligibility if they accept these funds). The estimated Property Owner Obligation for the Subject Property is \$0.00 as shown in Exhibit A. Proof that the Property Owner Obligation has been met must be provided prior to grant funds being expended.

Section B. Continuing Eligibility. Property Owners' initial eligibility for this grant has been approved by GOHSEP by way of an approved grant application as cited in Article I, and on the condition that Property Owners meet the Property Owner Obligation requirements specified in Article II. However, continuing eligibility for this grant is on the condition that Property Owners actually meet and carry out all of the provisions of this Agreement to the satisfaction of the City and for the duration of the project. Property Owners' failure to carry out any of the provisions of this contract will result in the Subject Property being deemed ineligible for grant funding, and Property Owners will be legally responsible for paying back, within thirty calendar days, all amounts expended on the Subject Property. Property Owners will also be subject to increases to their insurance premium rates under the National Flood Insurance Program ("NFIP").

Section C. Voluntary Participation. Property Owners' participation in this project is voluntary and Property Owners may withdraw from the project at any time. Property Owners who want to withdraw from the project must notify the City in writing of their decision to withdraw and the effective date of their withdrawal, and must transmit this notice by way of registered mail to: Hazard Mitigation Office, City of New Orleans, 1300 Perdido Street, Suite 9W03, New Orleans, LA 70112. If Property Owners withdraw from the project after work has begun, Property Owners are legally responsible for paying back, within 30 calendar days, all amounts expended on the Subject Property. Property Owners will also be subject to increases to their insurance premium under the NFIP.

Section D. Voluntary Flood Insurance Disclosure. Property Owners hereby grant FEMA and the State of Louisiana permission to disclose all flood insurance coverage and claim information to officials of the City for the purpose of aiding in their planning and decision-making regarding mitigation or assistance actions affecting the Subject Property under the Stafford Act, Section 404, as amended and the NFIP and other Unified Hazard Mitigation Assistance programs.

Section E. Property Owner Responsibility. Property Owners are responsible for all

aspects of work on the Subject Property, including but not limited to: the hiring and/or firing of all contractors who work on the Subject Property; the obtaining and/or maintaining of any insurances or bonding that may be needed for the acceptance, performance and completion of work performed by the contractor chosen by Property Owners (“**Property Owners’ Contractor of Choice**”); and for the provision of properly prepared written receipts and invoices for work completed. Property Owners are responsible for understanding and fully carrying out the provisions of this contract as a condition of establishing and maintaining eligibility to receive reimbursement for project costs. Property Owners are responsible for providing current contact information to the City, and for responding to requests for information from the City and/or its agent for the duration of the project.

Section F. Elevation. Property Owners understand that the lowest floor of the structure will be elevated, as required by New Orleans Municipal Code, Section 78-81, to one foot above the BFE as determined by the current adopted FIRM or three feet above the highest adjacent curb (in the absence of curbing, three feet above the crown of the highest adjacent roadway), whichever is higher. The structure will not be allowed to be elevated higher than two feet above the most stringent applicable regulation.

Section G. National Flood Insurance Requirement.

1. Property Owners must maintain flood insurance on the Subject Property both during and after completion of the project. The Subject Property must be covered by flood insurance 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. Federal Law requires that flood insurance coverage on the Subject Property must be maintained during the life of the property regardless of transfer of ownership.

2. To provide notice to subsequent purchasers of these conditions, Property Owners must adopt a deed restriction, legally filed with the Orleans Parish Civil District Court Conveyance Office. This deed restriction must include the name of the current Property Owners (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/County/Parish Ordinance. In addition to the criteria above enclosed areas below the Base Flood Elevation in identified V Zones, or areas within the limit of 1.5 foot breaking wave inundations must not exceed 299 square feet must be constructed with non-supporting breakaway walls.”

3. Property Owners agree that any failure to provide proof of insurance as required under this section authorizes the City to obtain and maintain such insurance at Property Owners’ cost and expense, and to seek reimbursement from the Property Owner. Upon any failure of the Property Owners to maintain the required flood hazard insurance, the City shall obtain and

maintain such force placed hazard insurance at the Property Owners' cost and expense.

4. Failure to comply with this section may also cause Property Owners to be liable to repay the amount of the grant award.

5. The City may exercise its rights under this section during any time it does not have proof of a current insurance policy showing compliance with this section.

Section H. Right of Access. Property Owners grant freely and without coercion the right of access and entry to the Subject Property to the City, the Parish of Orleans, the State of Louisiana, FEMA and its agents, employees, consultants, contractors and subcontractors, for the purposes stated herein.

Section I. Additional Obligations. Property Owners will, in accordance with the schedule approved by the City:

1. Provide proof of payment (in the form of processed checks or credit card receipts) for any required Property Owner Obligation detailed in Article I, Section 2 to the Property Owners' Contractor of Choice. Cash transactions will be considered ineligible and will not be reimbursed;

2. Provide transfer of grant payments for construction related activities to the Property Owners' Contractor of Choice;

3. Provide notification to the City (or its agents) in any changes to the project detailed in Exhibit A;

4. Provide contracts and proof of payment (in the form of processed checks or credit card receipts) for any reimbursements and/or activity outside of the work detailed in Exhibit A and/or deemed ineligible for FMA funding. Cash transactions will be considered ineligible and will not be reimbursed;

5. Monitor and cooperate with the Property Owners' Contractor of Choice to abide by all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement as Exhibit A: Property Owners' construction proposal.

6. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of Property Owners as set forth in this Agreement;

7. Cooperate with the Property Owners' Contractor of Choice to promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

8. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on Property Owners' behalf;

9. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty days after the approval of the associated plan change or amendment; and

10. Cooperate with the City and any person performing work for the City.

Section J. Standards. Property Owners, and any person performing work on their behalf, will perform all work under this Agreement in accordance with the most stringent flood

plain regulation standards and building codes. This shall include certification by a professional engineer licensed in the State of Louisiana that the proposed mitigation activities can be feasibly completed in compliance with applicable standards and codes, and in consideration of the current condition of the structure.

Section K. Compliance with Laws. Property Owners, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

Section L. Schedule.

1. The Property Owners' Contractor of Choice will perform all work under this Agreement according to Exhibit A.

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. Property Owners acknowledge and agree that time is of the essence in the performance of this Agreement.

Section M. Invoices.

1. The Property Owners' Contractor of Choice will submit invoices at pre-determined milestones for work performed under this Agreement to the City no later than ten calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include detailed line items of work that has been completed to meet established milestones along with all supporting documentation.

2. All invoices must be signed by an authorized representative of the Property Owners' Contractor of Choice under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

Section N. Records and Reporting.

1. Property Owners will maintain and provide to the City, State, FEMA, the Comptroller General of the United States or any of their authorized representatives access all FMA Program related books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records and other evidence pertaining to the performance of services under this Agreement, including, without limitation, costs incurred through the later of three years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Property Owner will deliver to the City all plans and records of work compiled through the date of termination.

2. Property Owners are solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

Section O. Audit and Inspection.

1. Property Owners will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of Property Owners, their employees, agents, assigns, successors and subcontractors, during normal business hours at time and location that is convenient for the City.

2. Property Owners will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires Property Owners to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Agreement. Property Owners agree they are subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

Section P. Insurance.

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, Property Owners will ensure that its Contractor of Choice will maintain all insurance required under City, State, and Federal laws in full force and effect for the duration of the work under this Agreement:

Section Q. Indemnity.

1. To the fullest extent permitted by law, Property Owners will indemnify, defend, and hold harmless the City of New Orleans, U.S. Government, FEMA, the State of Louisiana, and any agents, employees, officials, contractors, subcontractors, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Released Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of Property Owners, their agents, contractors, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to Property Owners in connection with the performance of work under this Agreement. Property Owners understand and agree that any agreements between them their Contractor of Choice for elevation and/or any other associated work or services will be between Property Owners of the and the contractor(s), and that the City is not a party to said agreements. Furthermore, Property Owners acknowledge and agree that the City is held harmless from any and all claims, expenses, demands, suits, losses, costs, and liabilities on account of bodily injury, sickness, disease, death, or destruction of tangible property, including loss of use resulting from the negligence, acts or omissions, or misconduct of contractors, its employees, agents, and subcontractors. Property Owners shall indemnify, defend, and hold harmless the City against any and all claims, demands, suits, judgments, or sums of money to any party in relation to the proper division of compensation between Property Owners' Contractor of Choice. Property Owners affirm that the City shall not be held responsible for any repairs to the property described in this agreement or damages to said property during or after the mitigation project is completed.

2. Property Owners' indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither Property Owners nor any of their agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. Property Owners have an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) Property Owners are ultimately absolved from liability.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Section A. Property Owners represent and warrant to the City that:

1. Property Owners are duly authorized representatives, and have the full power and authority to enter into and execute this Agreement;

2. Property Owners' Contractor of Choice has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. Property Owners' Contractor of Choice is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of Property Owners' Contractor of Choice, its employees, or its subcontractors in the performance of this Agreement;

4. Property Owners are not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair Property Owners' performance of this Agreement;

5. Property Owners have no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. Property Owners are not in breach of any federal, state, or local statute or regulation applicable to Property Owners;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to Property Owners' Contractor of Choice's most favored customer for the same or substantially similar services;

8. Property Owners have read and fully understand this Agreement and are executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by Property Owners and the execution of this Agreement by Property Owners' representative constitutes a sworn statement, under penalty of perjury, by Property Owners as to the truth of the foregoing representations and warranties.

Section B. Convicted Felon Statement. Property Owners comply with City Code § 2-8(c) and no principal, member, or officer of Property Owners has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

Section C. Non-Solicitation Statement. Property Owners have not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or

secure this Agreement. Property Owners have not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

Section D. Reliance. Property Owners acknowledge that the City is relying on these representations and warranties and that Property Owners' obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

Section A. Administration. The City will:

1. Administer this Agreement through the Hazard Mitigation Office (the "Department");
2. Provide Property Owners with FMA Program related forms to detail grant awards and responsibilities and other documents deemed necessary for Property Owners' performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by Property Owners.

Section B. Payment. The City will make payments to Property Owners at the rate established in this Agreement as detailed in Exhibit A based upon Property Owners' Contractor of Choice's certified invoices, except:

1. The City's obligation to pay is contingent upon Property Owners' Contractor of Choice's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City may set off any amounts due to Property Owners against any amounts deemed by the City to be owed to the City by Property Owners pursuant this Agreement; and
3. All funding owed to the Property Owners under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
4. The City is not obligated under any circumstances to pay for any work performed or costs incurred by Property Owners that: exceed the maximum aggregate amount payable established by this Agreement and described in Exhibit A; are beyond the scope or duration of this Agreement and described in Exhibit A; arise from or relate to the any change order within the scope of the Agreement and described in Exhibit A; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of Property Owners, their Contractor of Choice, or their subcontractors; or the City is not expressly obligated to pay under this Agreement.
5. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute.
6. If this Agreement is terminated for any reason, the City will pay Property Owners only for the work satisfactorily performed through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - FUNDING

Section A. Initial Eligibility and Total Grant Amount. Property Owners are initially eligible under FMA for an amount not to exceed \$197,510.00 unless otherwise approved by GOHSEP, for the elevation of the structure located at the subject address. This amount includes up to a 100% Federal share with the remainder being the Non-Federal share to be provided by Property Owners. The initially estimated amount of the grant may be reduced due to cost reasonableness review(s) and in order to comply with 2 C.F.R. Part 200. Approved project work elements (i.e., line items) and cost estimates are incorporated herein as Exhibit A. Other work elements are not eligible for FMA funding.

Section B. Final Maximum Amount. The final maximum amount payable under this Agreement will be based upon the approval of properly prepared receipts and invoices covering eligible project expenses. Should the final cost of elevating the structure and associated costs be less than the not-to-exceed amount stated above, reimbursement will only cover actual documented costs for approved line items.

Section C. The stated compensation is inclusive, and includes no additional amounts for, Property Owners' costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse Property Owners any other charges or fees and Property Owners will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

Section D. Property Owners will immediately notify the City in writing of any reduction to the costs relating to the performance of the work done to the Subject Property.

Section F. Owner Displacement During Elevation. Property Owners may be eligible for reimbursement for 100% of the cost of housing for the duration of the time the structure is not legally habitable. This reimbursement is generally capped at \$1,500.00. Reimbursement will be based on Property Owners providing appropriate documentation and proof of payment.

ARTICLE V - DURATION AND TERMINATION

Section A. Initial Term. The initial term of this Agreement is three years from the Effective Date.

Section B. Extension. The City may extend the term this Agreement for no more than five one year periods pursuant to validly executed amendments, provided that: any extension of this Agreement is subject to and contingent upon the encumbrance of funds; the City determines that the extension facilitates the continuity of services provided under this Agreement.

Section C. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving Property Owners written notice of the termination at least thirty calendar days before the intended date of termination.

Section D. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement

without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

Section E. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to Property Owners. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

Section F. Suspension. The City may suspend this Agreement at any time and for any reason by giving two business day's written notice to Property Owners. Property Owners will resume work upon five business day's written notice from the City.

ARTICLE VI - NON-DISCRIMINATION

Section A. Equal Employment Opportunity. In hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

Section B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

Section C. Incorporation into Subcontracts. Property Owners will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

Section D. Termination. The City may terminate this Agreement for cause if Property Owners fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE VII - INDEPENDENT CONTRACTOR

Property Owners, Property Owners' Contractor of Choice, and anyone else employed by Property Owners are an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold themselves or any of their employees, subcontractors or agents to be an employee, partner, or agent of the City.

ARTICLE VII - NOTICE

Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director of Hazard Mitigation, Office of Homeland Security
& Emergency Preparedness
City of New Orleans
1300 Perdido St. 9th Floor
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To Property Owners:

Ernest Smith
4973 Lafon Dr.
New Orleans LA 70126

Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE VIII - ADDITIONAL PROVISIONS

Section A. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

Section B. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; Exhibit A (Construction contract, cost breakdown, engineering footprint, financial obligation document).

Section C. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Property Owners, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Property Owners pursuant to this Agreement without regard to Property Owners' otherwise satisfactory performance of the Agreement.

Section D. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Section E. Assignment. This Agreement and any part of Property Owners' interest in it are not assignable or transferable without the City's prior written consent.

Section F. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

Section G. Jurisdiction. Property Owners consent and yield to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waive any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

Section H. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

Section I. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or Property Owners on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

Section J. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

Section K. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

Section L. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

Section N. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

Section M. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

Section N. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145). Property Owners shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations 29 CFR part 3, ("Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). In accordance with the Act, Property Owners are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Property Owners shall report all suspected or reported violations to the responsible component.

Section O. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Property Owners shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5).

Section P. Energy Efficiency: Pursuant to Federal regulations and Federal law. Property Owners shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 89 Stat.871). Standards, orders, or requirements are issued under section 306 of the Clean Air Act (42 U.S.C. 7609), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.

Section Q. Owner Displacement During Elevation. Property Owners may be entitled to a partial reimbursement of Owner Displacement costs for a period not to exceed sixty days. Displaced tenants who cannot inhabit the Subject Property as a result of the mitigation activity will be partially compensated under the Uniform Relocation Act; however, the use of HMGP grant funds to partially cover Owner Displacement costs is limited to a maximum of sixty calendar days at the appropriate FEMA owner displacement guideline level.

In the event partial reimbursement of Property Owners' Displacement costs is approved, entitlement will not commence until after the Property Owners receive a "Notice to Proceed" letter from the City.

Section R. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by

IN WITNESS WHEREOF, the City and Property Owners, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: [Signature]
GILBERT MONTAÑO
CHIEF ADMINISTRATIVE OFFICER

Executed on this 6 of December, 2019

FORM AND LEGALITY APPROVED:

Law Department

By: [Signature]

Printed Name: Tracy Tyler

BY: [Signature]

ERNEST SMITH

433-574739
SOCIAL SECURITY NUMBER

4973 Lafon Dr
ADDRESS

BY: _____
CO-OWNER:

SOCIAL SECURITY NUMBER

ADDRESS

[EXHIBIT A CONTAINED ON NEXT PAGE]

this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

ARTICLE IX - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

**EXHIBIT "A" TO THE VOLUNTARY ELEVATION AGREEMENT
BETWEEN**

THE CITY OF NEW ORLEANS

AND

ERNEST SMITH

4973 LAFON DR., NEW ORLEANS, LA 70126

**FLOOD MITIGATION ASSISTANCE
PROGRAM**

**FINANCIAL OBLIGATION DOCUMENT
(1 PAGE)**

For the following property:

4973 LAFON DR., NEW ORLEANS, LA 70126