CITY OF NORTH MIAMI  
COMMUNITY DEVELOPMENT BLOCK GRANT  
ELDERLY EMERGENCY REPAIR PROGRAM  
GRANT AGREEMENT

THIS AGREEMENT is entered into this day of 12/30/2020, by and among the following: Joanel Lubin & Odette Lubin, (“Owners”), Owners of the subject property; the City of North Miami (“City”), a Florida municipal corporation, having its principal office at 776 N.E. 125th Street, North Miami, Florida 33161; and Aurora Construction Corp (“Contractor”), having its principal business address at, 3555 NW 52nd Street Miami, Florida 33142, collectively referred to as “Parties”, regarding the rehabilitation of the real property legally described as:

Lot 51, Block 39, of Griffing Biscayne Park Estates, according to the Plat thereof, as recorded in Plat Book 15 at Page 13, of the Public Records of Dade County, Florida a/k/a 537 NE 132nd Street, North Miami, Florida 33161 (subject property).

WITNESSETH:

WHEREAS, since 1994, the City has received Community Development Block Grant (“CDBG”) funds from the U.S. Department of Housing and Urban Development (“HUD”) to provide a source of funding for various community and economic development programs and projects; and

WHEREAS, the City has determined through its Consolidated Plan for CDBG funds, adopted by the Mayor and City Council on July 14, 2015 under Resolution 2015-75, that it will provide assistance to eligible home Owners within the City for the purpose of rehabilitating their properties (“Project”), in accordance with CDBG criteria; and

WHEREAS, as part of the Consolidated Plan, the City has established the Elderly Emergency Repair Program (“Program”) to provide elderly emergency repairs toward exterior home repair services for elderly, age 65 or older, low and moderate income Owners of single family homes in the City; and

WHEREAS, the Owners has agreed to the Project in accordance with Program specifications; and

WHEREAS, this Agreement is entered into after compliance by the Parties with all applicable provisions of federal, state, and local laws, statutes, rules and regulations.

NOW, THEREFORE, in consideration of the mutual promises and the grant money in the amount of Three Thousand Seven Hundred Fifty Dollars and 00/100 Cents ($3,750.00), which is acknowledged, the Parties agree as follows:

1. CDBG funds for Three Thousand Seven Hundred Fifty Dollars and 00/100 Cents ($3,750.00), are being utilized in this real estate transaction for the purpose of rehabilitating the subject property.
2. The Specifications & Proposal ("Contract Documents") related to the Project, attached as Composite Exhibit "A", (as amended from time to time), represent the scope of services and responsibilities of the Parties under the Project, and the Parties agree to abide by and comply with their respective roles and responsibilities.

3. The City has the sole responsibility and obligation of interpreting the intent and purpose of the Program and Contract Documents.

4. The Project shall be performed in accordance with the applicable codes, ordinances and statutes of the City, Miami-Dade County and the State of Florida.

5. The Owners agrees to maintain the Property in good condition after the Project is completed. If the Property is located in a Federal Emergency Management Act 100-year flood plain zone, the Owners must have an active flood insurance policy.

6. The Parties acknowledge and agree that funds provided derive from CDBG Program funds appropriated to the City by HUD for the uses and purposes referred to in this Agreement.

7. The Owners acknowledges that the Property is currently occupied as their primary residence, and agree to continually occupy the Property as their primary residence.

8. The City may seek civil action and penalties including court costs, attorneys’ fees and reasonable administrative expenses should Owners fail to comply with the foregoing covenants and restrictions.

9. The City may, periodically, inspect the Property for the purpose of assuring compliance with this Agreement.

10. In the event the Owners or Contractor prevents the City from inspecting the Project for purposes of assuring compliance with this Agreement or with the Contract Documents, or prevents the City from complying with HUD regulations, federal, state or local laws, the City shall be entitled to immediately terminate this Agreement, retain all funds, seek reimbursement for any funds distributed for the Project or obtain other relief as permitted by the Agreement. Further, action by the Owners or Contractor to prevent or deny the City’s inspection of the Project will constitute a default of this Agreement, and the City shall be entitled to exercise any and all remedies at law or equity.

11. If the Owners terminates or cancels the services of the Contractor, and the Contractor is not in default of this Agreement, the Contractor shall be compensated for labor and material expenses incurred up to the date of cancellation, plus normal profit and overhead, the total sum of which shall not exceed twenty percent (20%) of the labor and materials’ cost. As a condition of payment, Contractor shall submit verifiable written documentation of labor and materials expenses to the City. The Contractor shall be compensated from the funds provided to this Project.
12. The Owners shall not release or amend this Agreement without the prior written consent of the City.

13. The Contractor, its subcontractors, agents or employees waive any right to bring a lawsuit against the City or Owners for breach of this Agreement, and shall pursue alternative dispute resolution of all matters arising out of this Agreement.

In conjunction with the above paragraph, the Contractor, its subcontractors, agents or employees waive all rights to file a lien against the Property.

14. Payment to the Contractor for the Project shall be made as described in Exhibit “B”. After payment is made to the Contractor by the City, the City shall be automatically discharged from any and all obligations, liabilities and commitments to Owners, Contractor or any third person or entity.

15. The City desires to enter into this Agreement only if by so doing the City can place a limit on its liability for any cause of action arising out of this Agreement, so that its liability never exceeds its monetary commitment of Three Thousand Seven Hundred Fifty Dollars and 00/100 Cents ($3,750.00). Owners and Contractor express their willingness to enter into this Agreement with recovery from the City for any action arising out of this Agreement to be limited to the total amount of its monetary commitment of Three Thousand Seven Hundred Fifty Dollars and 00/100 Cents ($3,750.00), less the amount of all funds actually paid by the City pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed on the City’s liability as set forth in Section 768.28, Florida Statutes.

16. The Owners and Contractor shall hold harmless, indemnify and defend the City, its officers and employees from any and all obligations, liabilities, actions, claims, causes of action, suits or demands arising or accruing by virtue of this Agreement.

17. The Owners and Contractor shall not sublease, transfer or assign any interest in this Agreement.

18. In the event of a default, the City may mail to the Owners and the Contractor a notice of default. If the default is not fully and satisfactorily cured in the City’s sole discretion within thirty (30) days of the City’s mailing of the notice of default, the City may cancel and terminate this Agreement without liability to any other party to this Agreement. In addition, the City shall set the amount of compensation to be paid to the Contractor for the work completed up to the time of termination, including replacement of all work areas to a suitable condition.

19. In the event of a default, the City shall additionally be entitled to bring any and all legal and/or equitable actions in Miami-Dade County, Florida, in order to enforce the City’s right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions including a reasonable attorney’s fee, at trial and appellate levels, to the extent allowed by law.
20. A default shall include but not be limited to the following acts or events of an Owners, Contractor, or their agents, servants, employees or subcontractors:

   a. Failure by the Contractor to (i) commence work within thirty (30) days from the date of this Agreement, or (ii) diligently pursue construction and timely complete the project by securing a Final Certificate of Completion within two (2) months from the date of this Agreement, or (iii) provide the documentation required to make the final payment within thirty (30) days from the date when a Final Certificate of Completion is issued.

   Work shall be considered to have commenced and be in active progress when, in the opinion of the City, a full complement of workmen and equipment are present at the site to diligently incorporate materials and equipment in accordance with the project throughout the day on each full working day, weather permitting.

   b. Failure by the Contractor to comply with any applicable building, fire, life safety, housing or zoning law, rule, regulation or code.

   c. Insolvency or bankruptcy by the Owners or by the Contractor.

   d. Failure by the Contractor to maintain the insurance required by the City.

   e. Failure by the Contractor to correct defects within a reasonable time as decided in the sole discretion of the City.

   f. The breach of any term or condition of this Agreement.

21. If Owners defaults this Agreement by insolvency or bankruptcy, the following shall apply:

   a. Should this Agreement be entered into and fully executed by the Parties, funds released and the Debtor files for bankruptcy, the following shall occur:

      1. In the event the Owners files a voluntary petition under 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Owners or Contractor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the City. The Owners further agrees that in the event of this default, the City shall, at its option, be entitled to seek relief from the automatic stay provisions in effect pursuant to 11 U.S.C. 362. The City shall be entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) or (d)(2), and the Owners agrees to waive the notice provisions in effect pursuant to 11 U.S.C. 362 and any applicable Local Rules of the United States Bankruptcy Court. The Owners acknowledges that such waiver is done knowingly and voluntarily.

      2. Alternatively, in the event the City does not seek stay relief, or if stay relief is denied, the City shall be entitled to monthly adequate protection payments within the meaning of 11 U.S.C. 361.

      3. In the event the Owners files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Owners agrees to cure any amounts in arrears over a period not to exceed twenty-four (24) months from the date of the confirmation order, and such payments shall be made in addition to the regular monthly payments required by the Note and
Mortgage, if applicable. Additionally, the Owners shall agree that the City is over secured and, therefore, entitled to interest and attorney’s fees pursuant to 11 U.S.C. 506(b). Such fees shall be allowed and payable as an administrative expense.

b. Should this Agreement be entered into and fully executed by the Parties, and the funds have not been forwarded to Owners or Contractor, the following shall occur:

In the event the Owners files a voluntary petition pursuant to 11 U.S.C. 301 or 302, or an order for relief is entered under 11 U.S.C. 303, the Owners acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Owners acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Owners acknowledges that the Agreement is not capable of being assumed pursuant to 11 U.S.C. 365(c)(2), unless the City expressly consents in writing to the assumption. In the event the City consents to the assumption, the Owners agrees to file a motion to assume the Agreement within ten (10) days after their receipt of written consent from the City, regardless of whether the bankruptcy proceeding is pending under Chapter 7, 11, or 13 of Title 11 of the United States Code. The Owners further acknowledges that this Agreement is not capable of being assigned pursuant to 11 U.S.C. 365(b)(1).

c. Should the Parties wish to execute the Agreement after the Owners has filed for bankruptcy, the following shall occur:

1. The Owners agrees that in the event they are current Debtors in bankruptcy, at the request of the City, the Owners shall file a motion for authorization to obtain post-petition financing pursuant to 11 U.S.C. 364(d)(1). The Owners further agrees that any funds loaned or granted by the City shall be secured by a lien on the Property first in priority and ahead of any other existing lien(s), unless otherwise agreed to in writing by the City.

2. In the event of default, the City shall be entitled to pursue any and all available legal and equitable remedies, including, but not limited to, those remedies provided herein.

22. If Contractor defaults under this Agreement, by way of insolvency or bankruptcy, the following shall apply:

Should this Agreement be entered into and fully executed by the Parties and the Contractor files for bankruptcy, the following shall occur:

a. In the event the Contractor files a voluntary petition pursuant to 11 U.S.C. § 301, or an order for relief is entered under 11 U.S.C. § 303, the Contractor acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Contractor acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. § 365. The Contractor agrees to file a motion to assume the Agreement within fifteen (15) days after a voluntary petition is filed pursuant to 11 U.S.C. § 301, or within five (5) days
following the entry of an order for relief under 11 U.S.C. § 303. The City expressly reserves the right to oppose any motion to assume the Agreement filed by the Contractor under the provisions of this subparagraph. In the event the Contractor does not voluntarily assume the Agreement, or, in the event the United States Bankruptcy Court does not authorize the Contractor’s assumption of this Agreement, the Contractor acknowledges and agrees that the City may assert a valid claim of recoupment, thereby being entitled to recoup any damages suffered as a result of the Contractor’s breach of this Agreement either by failing to voluntarily assume the Agreement, or, as a result of the entry of an order by the United States Bankruptcy Court prohibiting such assignment, against any monies which may be owed by the City to Contractor under the terms of the Agreement.

b. In the event the Contractor is authorized to assume this Agreement, the Contractor acknowledges and agrees that it shall be obligated to cure any and all existing defaults upon the entry of an order by the United States Bankruptcy Court authorizing its assumption of this Agreement. Furthermore, the Contractor shall be obligated to provide adequate assurance of future performance including, but not limited to, adequate assurances that the Contractor shall complete the project contemplated by the Agreement within the time frame provided and agreed upon by the Parties under the terms and conditions of this Agreement.

c. In the event that the Owners defaults under this Agreement by insolvency or bankruptcy, either by filing a voluntary petition under 11 U.S.C. §§ 301 or 302, or an order for relief is entered under 11 U.S.C. § 303, Contractor fully understands, acknowledges and agrees to be fully bound by the provisions contained in Paragraph 21 (a)(1), (a)(2), (a)(3), (b) and/or (c), in the event Contractor files a voluntary petition under 11 U.S.C. § 301, or an order for relief is entered under 11 U.S.C. § 303. The Contractor further acknowledges and agrees that, in the event the City is not obligated to perform under the terms and conditions of this Agreement, as a result of the Owners defaulting under this Agreement by insolvency or bankruptcy, by filing a voluntary petition under 11 U.S.C. § 301 or 302, or an order for relief is entered under 11 U.S.C. § 303, the City shall be entitled to assert any defenses to which it may avail itself against the Owners, against the Contractor including, but limited to, any claim or right of recoupment.

23. This Agreement shall be governed by the laws of Florida, and venue shall be in Miami-Dade County, Florida.

24. The Owners shall comply with all applicable requirements as described in Title I of the Housing and Community Development Act of 1974 (42 USC 5301 et seq.).

25. Notices and Demands: All notices, demands, correspondence and communications between the Parties shall be deemed sufficiently given under the terms of this Agreement if dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:
If to the City: City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Attn: City Manager

With copies to: City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161
Attn: City Attorney
Attn: Housing & Social Services Director

If to Contractor: Aurora Construction Corp
Viera, Ovidio J (Registered Agent)
3555 NW 52nd Street
Miami, Florida 33142

If to Owners: Joanel Lubin & Odette Lubin
537 N.E. 132nd Street
North Miami, Florida 33161

or to such address and to the attention of such other person as the City, Contractor or Owners may from time to time designate by written notice to the others.

26. It is understood and agreed that all Parties, personal representatives, executors, successors and assigns are bound by the terms, conditions and covenants of this Agreement.

27. Any amendments, alterations or modifications to this Agreement will be valid when they have been reduced to writing and signed by the Parties.

28. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.

29. Should any provision, paragraphs, sentences, words or phrases contained in the Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws; or, if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

[The remainder of this page is intentionally left blank]
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date on which the last of the Parties initials or signs.

Witness
Date: 12/10/20

Witness
Date: 12/10/20

CONTRACTOR:
By:
Date: 12/10/20

APPROVED BY:

Alberte Bazile, MBA
Housing & Social Services Director
Date: 12/30/2020

ATTEST:

Vanessa Joseph, Esq., City Clerk
12/30/2020
City Clerk Date Signed

City of North Miami, a FLORIDA municipal Corporation, “City”:

Theresa Therilus, Esq., City Manager
12/30/2020
City Manager Date Signed

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Jeff P. H. Cazeau, Esq., City Attorney
12/30/2020
City Attorney Date Signed
Exhibit A

SCOPE OF SERVICES

OWNERS and CONTRACTOR agree to undertake the following repairs:

EXTERIOR

01) INSTALL EXTERIOR DOORS- (3) $3,000.00

Locations: (1) Front door (South); and (1) Side door (East), and (1) West door

Deteriorated exterior doors, show evidence of termite infestation, and are not weather tight. Door locks are compromised and not securing the door on the east side of the property.

Remove existing doors, jamb, casing, threshold, and haul these materials/debris away. Modify opening to accept standard size door as needed. Replace wood buck, if deteriorated or necessary, set buck in premium silicone sealant. Countersink all fasteners into frame; fill with wood putty and sand smooth. Repair all damaged and adjacent surfaces inside and out, caused by door removal and modifications, restoring to original condition. The door and its components shall be installed in strict compliance with the Florida Building Code product approval (or Miami/Dade NOA).

- **Furnish and install new ¾ glass, in swing, impact resistant door at the front of the property.**
- Furnish and install new in-swing impact resistant six panels steel exterior door complete with jamb, casing, brick molding. Doors must be 1-3/4 inch solid core door.
- Install panoramic peephole, aluminum weather-stripping saddle, weather-stripping & spring/chain stop.
- Install tamper proof hinges.
- The doorknob should be an entry-type, which can be locked by turn button inside or a key outside. Deadbolt will have turn piece inside and keyed to knob outside. The doorknob and deadbolt shall be keyed alike. Material allowance for knob and deadbolt is $50.00 per set.
- The painting of the door is covered under the exterior painting below.
- **Material allowance for paint must be mid-grade or better of the City approved brands, which are ZERO VOC products, i.e., Benjamin Moore (Aura or EcoSpec), Sherwin Williams (Harmony), Glidden/ICI (Life master) PPG (Pure Performance), Olympic (Valspar). Housing Inspector shall verify brand and VOC level.**
- (Harmony), Glidden/ICI (Life master) PPG (Pure Performance), Olympic (Valspar). Housing Inspector to verify brand and VOC level.
****PERMIT IS REQUIRED****

2) INSTALL EXTERIOR WINDOW (1) $750.00

Locations: Rear of property

Remove existing block at the window on the northwest side of the property.
Install mullion and hurricane impact window at the opening to match the existing windows.
Window shall be similar brand as existing.

TOTAL BID AMOUNT: $3,750.00
Exhibit B

Program Regulations
All work shall be performed in accordance with applicable federal regulations, including, but not limited to Davis-Bacon Act, Contract Work Hours and Safety Standards Act and Copeland Act (Anti-Kickback Act).

All work shall be performed in accordance with the terms and conditions stipulated in the Agreement and all applicable plans and specifications. Change Orders to increase or decrease the dollar amount or which alter or deviate from the approved scope of work must be approved in writing by the City of North Miami prior to work being performed or Change Orders being undertaken/implemented. Any change in the scope of work which increases the costs of the contract is the Owners’s responsibility.

Upon execution of this agreement, the property Owners agrees and understands that a sign will be posted in the front of the property for the entire duration of this agreement. Property Owners/Purchaser acknowledges that individuals will be allowed on the property to take photographs. All projects will be subject to before and after photos and may be included in various local, state and federal reports, which are public records.

Commencing Work
The Project shall begin only after a contract has been executed, a permit pulled, proof that a Notice to Commence has been filed, and submission of a Contractor’s Certification, County-required affidavits, proof of required insurances and an up-to-date contractor’s license and occupational license.

Method of Payment
Program funds shall be disbursed to the Contractor as follows:

a. All applications for payment must be accompanied by certified statements (i.e., releases of liens and affidavits from the general contractor, all sub-contractors and suppliers) showing that the property is free and clear of mechanics, materialmen’s or any other type of liens or obligations relating to the construction of the project. Also, a copy of both sides of the permit and inspection record card must accompany each payment request. All funding entities must authorize payments.

b. Program funds shall be paid upon compliance by the contractor with the following:

1. Environment Review
   - The National environmental Policy Act (42 U.S.C. 4321, et seq.);
   - The Council on Environmental Quality Regulations (40 CFR Parts 1500 – 1508);
   - Environmental Review Procedures (24 CFR Part 58);
2. Lead Based Paint
   - Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801, et seq.);
   - HUD Lead Based Paint Regulations (24 CFR Part 35).

3. Asbestos
   - Asbestos Regulations (40 CFR 61, Subpart M);
   - U.S. Department of Labor Occupational Health and Safety (OSHA)

4. Labor Standards
   - The Davis-Bacon Act (40 U.S.C. 276a) as amended;
   - The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);

Additionally, all Parties agreed to comply with all existing federal, state and local laws and ordinances hereto applicable, as amended.

When requesting a payment, ALL of the following documents must be submitted at the same time. If there are any documents missing, the payment request package will NOT be accepted.

- Contractor’s Invoice
- Release of Liens (Painters, General Contractor & Subcontractors)
- Contractor’s Payment Request
- Home Owners’ Payment Authorization
- Subcontractor’s List
- Contractor’s Payment Request Worksheet
- Certificate of Completion (submit only with final payment)

Final payment shall be due and payable within forty-five (45) calendar days following completion of all terms of this contract and final inspection and acceptance of same by the HomeOwners and the City of North Miami.