RESIDENTIAL CONSTRUCTION MITIGATION PROGRAM
GRANT AGREEMENT

THIS AGREEMENT is entered into this 17th day of April, 2017, by and between the following parties: **EDUIGE JEAN-LOUIS**, owner of the subject property (Owner); 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 **REGOSA ENGINEERING SERVICES, INC.** (Contractor), having its principal business address at 15700 NE 2 Avenue, Miami, FL 33162, (Parties), regarding the rehabilitation of real property legally described as:

Lot 14, Block 16, BISCAYNE VILLAGE HEIGHTS, according to the Plat thereof, recorded in Plat Book 46, Page 57 of the Public Records of Miami-Dade County, Florida a/k/a 1035 NW 132 Street, North Miami, Florida 33168 (subject property);

WITNESSETH:

WHEREAS, the City has received funds from the State of Florida, Division of Emergency Management's Hurricane Loss Mitigation Program to provide a source of funding for the completion of home repairs to improve residential structures such as installation of hurricane resistant windows and doors and the installation of window and door opening protections; and

WHEREAS, the City will provide assistance to eligible homeowners within the City for the purpose of rehabilitating their properties (Project), in accordance with program guidelines and criteria; and

WHEREAS, the City has established the Residential Construction Mitigation Program (Program") to retrofit homes by providing advancement in safety standards of windows and doors, as well as have the homes upgraded to the latest Florida Building Code and Housing Quality standards; and

WHEREAS, the Owner 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 **$22,225.00**, which is acknowledged, the Parties agree as follows:

1. Funds in the amount of **$22,225.00** are being utilized in this real estate transaction for the purpose of rehabilitating the 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 Program.

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 Owner 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 Owner must have an active flood insurance policy.

6. The City, Contractor and Owner acknowledge and agree that funds provided derive from funds appropriated to the City by the State of Florida, Division of Emergency Management for the uses and purposes referred to in this Agreement.

7. The Owner acknowledges that the Property is currently occupied as their primary residence, and agree to continually occupy the Property as their primary residence for a period of five (5) years from this Agreement's execution.

8. It is agreed and understood that the funds provided to the Owner in order to rehabilitate the subject property constitute an indebtedness to be secured by a non-interest bearing Note and Mortgage, unless there is a default. Further the Parties agree that the indebtedness shall be partially forgiven in the amount of **$4,445.00** per year over a five (5) year period, until fully forgiven.

9. If any interest in the property is sold, assigned, subleased, conveyed or transferred, or the Note and Mortgage created by this Agreement is subordinated, whether voluntarily or involuntarily, including bankruptcy or foreclosure, within five (5) years of this Agreement's execution, such an event shall be considered a default. The indebtedness shall become payable at a rate of four percent (4%) simple interest per year on the unpaid principal amount. Any person or entity, who, subsequent to the execution of this Agreement, purchases or receives any interest in the subject property, shall be bound by the terms and conditions of this Agreement and shall execute any and all documents required by the City.

10. All conditions and restrictions of this Agreement shall be considered and construed as restrictions running with the land, and shall bind all successors, assigns and persons claiming ownership of all or any portion of the subject property for a period of five (5) years from the date the Note and Mortgage were recorded, after which time, they shall be released by the City.

11. The Owner and Contractor will not voluntarily create or permit, suffer to be created or to exist on or against the subject property, or any part, any lien superior to the City's interest, and will keep and maintain the property from the claim of all parties supplying labor or materials which will enter into construction or installation of improvements.

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

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

14. In the event the Owner 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 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 Owner 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.

15. If the Owner 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.

16. Owner shall not release or amend this Agreement without the prior written consent of the City.

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

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

19. 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.

20. 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 **$22,225.00**. Owner 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 **$22,225.00**, 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.

21. Owner 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.

22. Owner and Contractor shall not assign any interest in this Agreement.

23. In the event of a default, the City will mail to the Owner 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.

24. 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.

25. 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 Owner 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.

26. If Owner 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 Owner 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 Owner or Contractor shall acknowledge the extent, validity, and priority of the lien recorded in favor of the City. The Owner 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 Owner 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 Owner 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 Owner files for bankruptcy under Chapter 13 of Title 11, United States Code, in addition to the foregoing provisions, the Owner 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 Owner shall agree that the City is oversecured and, therefore, entitled to interest and attorneys 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 Owner or Contractor, the following shall occur:

In the event the Owner 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 Owner acknowledges that the commencement of a bankruptcy proceeding constitutes an event of default under the terms of this Agreement. Further, the Owner acknowledges that this Agreement constitutes an executory contract within the meaning of 11 U.S.C. 365. The Owner acknowledge 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 agree 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 Owner 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 Owner has filed for bankruptcy, the following shall occur:

1. The Owner agrees that in the event they are current Debtors in bankruptcy, at the request of the City, the Owner shall file a motion for authorization to obtain post-petition financing pursuant to 11 U.S.C. 364(d)(1). The Owner 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.

27. 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 default 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.

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

29. The Owner 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.).

30. Notices and Demands: All notices, demands, correspondence and communications between the City, Owner and Contractor 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: Director, Community Planning & Development
With a copy to:	City of North Miami 776 N.E. 125th Street North Miami, Florida 33161 Attn: City Attorney
If to Contractor:	Regosa Engineering Services, Inc. Gustavo Velez (Registered Agent) 15700 NW 2 Avenue Miami, FL 33162
If to Owner:	Eduige Jean-Louis 1035 NW 132 Street North Miami, FL 33168

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

31. 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.

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

33. 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.

34. 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.

[THIS SPACE 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

Eduige Jean-Louis, Owner

Witness

CONTRACTOR:

By:

Date: 4/17/17

ATTEST:

Michael A. Etienne, Esq.
City Clerk

CITY OF NORTH MIAMI

By:

Larry M. Spring, Jr.
City Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

For Jeff P. H. Cazeau, Esq.
City Attorney