

Montclair Home Improvement Program

CONSTRUCTION AGREEMENT Program Case Number MTCLR 2105

This AGREEMENT made this 3/17/2022, by and between NELA Carpentry and Masonry LLC with a principal place of business located at 374 President Street, Saddle brook, NJ 07663, hereinafter called the "CONTRACTOR" and Jennifer Prost and Michael D. Laser, residing at 51 Christopher St., Montclair, NJ 07042, hereinafter called the "OWNER".

WITNESSETH THAT

WHEREAS the OWNER intends to repair and rehabilitate his/her property located at 51 Christopher St., Montclair, NJ 07042, and known as Block #4302, Lot #5, in the Township of Montclair, Essex County, New Jersey (hereinafter called the MUNICIPALITY), NOW, THEREFORE, the CONTRACTOR and the OWNER, for the consideration hereinafter named agree as follows:

I.

This AGREEMENT shall consist of the general terms, conditions, and references contained herein; the drawings, if any; and the work specifications and the CONTRACTOR'S bid document incorporated therein as approved by the Montclair Home Improvement Program, hereinafter called the PROGRAM. Community Grants Planning & Housing, LLC (hereinafter called CGP&H) is the PROGRAM's Administrative Agent responsible for operation and administration of the PROGRAM. (Work Specifications/Bid attached hereto as **Exhibit A** – 27 pages).

II.

The CONTRACTOR shall apply for applicable municipal permits within 10 days signing of this AGREEMENT and commence the work to be performed under this AGREEMENT within 30 days from the receipt of the NOTICE TO PROCEED. The work shall be completed within 60 days from the start of work. The time by which the work shall be completed may be extended only with the prior written approval of the OWNER and the PROGRAM. When necessary, the PROGRAM may, in its sole discretion, allow for reasonable and/or unforeseen delays including, but not limited to, inclement weather, municipal permitting delays, emergencies, delays in receipt of materials. For any delays not listed, the PROGRAM reserves the right to determine, in its sole discretion the reasonableness of the delay(s). A request for a delay must be submitted by the applicable party to the PROGRAM in writing, provide a detailed reason for the request and include a time frame for when work shall resume.

III.

The PROGRAM, in its sole discretion, reserves the right to charge a late fee of \$50.00 per day for each day that the CONTRACTOR is late in completing the work. The late fee penalty shall be initiated by a letter prepared by the PROGRAM and emailed as well as mailed to the CONTRACTOR via *Certified Mail-Return Receipt Requested, regular mail and when available via email*. The late fee penalty commences five business days after the date of mailing by the OWNER or the PROGRAM of the above referenced letter. The late fee penalty will be deducted from the CONTRACTOR's final payment and the funds will remain in the MUNICIPALITY's funding account. The PROGRAM reserves the right to waive the late fee upon written request of the CONTRACTOR if it determines that the failure to timely

complete is a result of events which it determines were beyond the CONTRACTOR'S control. Such waiver shall apply only to the events set forth in the above referenced letter.

IV.

It is the CONTRACTOR's responsibility to provide reasonable notice to the OWNER in order to schedule access to the house. It is the OWNER's responsibility to arrange for the house to be accessible to the CONTRACTOR during standard weekday business hours. If the OWNER fails to provide the CONTRACTOR access to the house during standard weekday business hours for a period of three weeks, the PROGRAM has the right to deny PROGRAM funds to the OWNER and furthermore, recapture from the OWNER any PROGRAM funds expended to date on this OWNER. Additionally, the CONTRACTOR will have the right to terminate the AGREEMENT if the OWNER does not provide access to the house during standard weekday business hours for a period of three weeks. The OWNER and the CONTRACTOR have the option to negotiate an additional hourly rate for Saturday, Sunday and/or holidays for which the OWNER shall be solely responsible to pay.

The HOMEOWNER and the CONTRACTOR are required to provide a written schedule for any pre-planned activities which *might* disrupt and/or delay completion of the work specified within this AGREEMENT. Such pre-planned activities may include vacations, medical appointments/procedures, etc. The HOMEOWNER and CONTRACTOR shall exchange schedules. A copy of each schedule shall be maintained by the PROGRAM in the HOMEOWNER's file for reference. The schedules shall be exchanged prior to execution of this AGREEMENT. Any changes to the HOMEOWNER's or CONTRACTOR's schedule shall be provided in writing, with each party and the PROGRAM receiving a copy. A time frame indicating when work shall resume must be included. Furthermore, the homeowner shall not interfere with construction progress.

V.

The OWNER and/or the PROGRAM shall pay the CONTRACTOR for the performance of the AGREEMENT, subject to conditions and deductions or additions by Change Order or late fees as provided herein, the AGREEMENT sum of **\$32,100.00***.

***Program Funds \$29,000.00. Homeowner Contribution \$3,100.00.**

VI.

A progress payment inspection is defined as an inspection where the CONTRACTOR has indicated s/he has reached at least 40% of the AGREEMENT value and seeks an inspection for payment. An inspection shall be considered to have "failed" if 25% or more of the value of the work for which a payment is sought does not meet the Project's specifications. The CONTRACTOR shall be subject to a penalty of \$350.00 for each failed progress inspection.

A final inspection is defined as an inspection where the CONTRACTOR has indicated that s/he has completed the job in its entirety. If at the time of the final inspection, the PROGRAM Inspector determines that one or more work items do not meet the project specifications, the CONTRACTOR shall be subject to a penalty of \$375.00 for a failed final inspection. The CONTRACTOR must issue the failed final inspection penalty payment directly to CGP&H via a check prior to the PROGRAM inspector scheduling and repeating the final inspection process. CGP&H shall notify the MUNICIPALITY each time a penalty is levied.

VII.

Upon application for payment submitted by the CONTRACTOR, the PROGRAM shall make a progress payment on account of the AGREEMENT sum to the CONTRACTOR as follows:

One progress payment: minimum of 40% work complete for first inspection; balance as set forth in Section VIII below.

The CONTRACTOR shall be paid a progress payment according to the MUNICIPALITY's payment schedule and provided the work passes a satisfactory progress inspection by the PROGRAM's INSPECTOR and the completed progress payment request documents are received by the PROGRAM FINANCIAL OFFICER in a timely manner.

VIII.

Final payment by the PROGRAM to the CONTRACTOR for the performance of this AGREEMENT shall be payable according to the MUNICIPALITY's payment schedule and strictly conditioned upon all the following occurrences: (1) provided the work is satisfactorily completed and approved by the OWNER; (2) provided the work is certified satisfactory in writing by the PROGRAM'S INSPECTOR; (3) provided the final payment request documents are received by the PROGRAM FINANCIAL OFFICER in a timely manner; (4) provided the CONTRACTOR has forwarded to the PROGRAM CASE MANAGER, the Certificate and Release and Closeout Statement; and (5) the CONTRACTOR must provide the CASE MANAGER with copies of all permits taken out during the course of the Home Improvement and provide verification that permit work was inspected and approved by the appropriate MUNICIPAL Code Official. Further the CONTRACTOR does hereby warrant for a period of one (1) year that all work under this AGREEMENT shall be free from defect arising from the workmanship of the CONTRACTOR and/or any Sub Contractors, and guarantees the quality of material used therein for a period of one (1) year. In each said case, said warranties and the one (1) year period shall commence upon the date of the satisfactory final inspection by the PROGRAM'S INSPECTOR. Any and all labor warranty claims are between the OWNER and the CONTRACTOR and are to be addressed in a timely manner for both parties' responsibility of notification and resolve. The OWNER has the right to contact New Jersey Consumer Affairs to file a complaint if the CONTRACTOR is non-compliant during the warranty period. Furthermore, it is the OWNER's responsibility to review and understand the product warranties and directly address any and all product warranties with the manufacturer in a timely manner and in accordance with the applicable manufacturer's instructions or the homeowner may risk the manufacturer's denial of such claim. The warranty period is not the PROGRAM's, the PROGRAM ADMINISTRATOR's, or the MUNICIPALITY's responsibility.

IX.

The CONTRACTOR shall provide and pay for all labor, material and equipment necessary for the proper execution and completion of the work set forth in the AGREEMENT. The CONTRACTOR shall ensure that all work is done in a good workmanlike manner according to standard practices and that all materials are guaranteed to be as specified.

X.

The CONTRACTOR shall give notices required by and comply with all applicable laws, ordinances and codes of any public authority and shall at his/her own expense, secure and pay fees or charges for all permits

required for the performance of the work under this AGREEMENT, and shall pay all consumer, sales, use and other similar taxes required by law, and shall indemnify and save harmless the OWNER and PROGRAM from any and all liability resulting from the CONTRACTOR's default under this Paragraph.

XI.

The CONTRACTOR shall indemnify, defend and save harmless the OWNER, the Township of Montclair, the PROGRAM, CGP&H, and their respective employees, officers and agents from liability for any injury or damages to any and all persons and/or property, including but not limited to CONTRACTOR and CONTRACTOR's employees, officers and agents as well as subcontractors, or property resulting from CONTRACTOR's prosecution of work under this AGREEMENT, including, but not limited to the negligence of CONTRACTOR and/or CONTRACTOR's officers, employees and agents, as well as subcontractors, to the fullest extent permitted by law and/or statute, and further be responsible for any and all attorney's fees and legal fees, costs or expenses under this AGREEMENT. Coverage shall not be less than \$1,000,000.00. The CONTRACTOR shall carry or require that there be carried full and complete Worker's Compensation Insurance for all of CONTRACTOR's employees and those of CONTRACTOR's Subcontractors engaged in work on the AGREEMENT premises in accordance with the Local and State Laws Governing same. Worker's Compensation coverage shall include Employer's Liability limits of at least \$500,000 and statutory state coverage. The CONTRACTOR shall promptly provide the PROGRAM with Certificates of Insurance evidencing all insurance coverage and naming MUNICIPALITY and CGP&H as additional insured. Notice to Proceed will not be issued without the aforementioned Certificates of Insurance.

XII.

The OWNER shall indemnify, defend and save harmless the Township of Montclair, the PROGRAM, CGP&H, and their respective employees, officers and agents from liability, for any injury or damages to any and all persons resulting from CONTRACTOR'S and/or CONTRACTOR's employees, officers and agents as well as subcontractors prosecution of work, including but not limited to the negligence of CONTRACTOR'S employees, officers and agents as well as subcontractors, to the fullest extent permitted by law and/or statute, and further be responsible for any and all attorney's fees and legal fees, costs or expenses, under this AGREEMENT.

XIII.

The CONTRACTOR shall not assign this AGREEMENT without the prior written consent of the OWNER and the PROGRAM.

All communication on all decision matters between the OWNER and CONTRACTOR must only be directed to and confirmed by those individuals named as OWNER(S) as identified and named in the introductory paragraph above, unless the OWNER(S) provides to the CONTRACTOR and the PROGRAM a written Power of Attorney identifying their representative authorized to communicate on the behalf of the OWNER(S). No other household members or individuals shall be authorized to communicate or act on behalf of the OWNER(S) and shall not be recognized by the CONTRACTOR, MUNICIPALITY or PROGRAM.

XIV.

The CONTRACTOR shall, at all times enforce strict discipline and good order among his/her employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him/her.

XV.

The CONTRACTOR at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work, the CONTRACTOR shall remove all waste materials and rubbish from and about the Project as well as tools, surplus materials, construction equipment, machinery and materials, and shall leave the Project Area "Broom Clean" or its equivalent.

XVI.

The CONTRACTOR shall protect the OWNER(S)'s property both real and personal from damage and shall arrange for adequate coverings of all furniture, floors and other property and the removal and replacement of rugs, etc. as necessary. The OWNER shall cooperate with the CONTRACTOR in the performance of this work.

XVII.

The OWNER, without invalidating the AGREEMENT, may request changes in the work consisting of additions, deletions, or modifications. All such changes in the work **must** be approved in writing by the PROGRAM, via a PROGRAM change order form, prior to proceeding with the change order work. Upon the PROGRAM's approval, the AGREEMENT Sum and the AGREEMENT Time shall be adjusted accordingly. A CONTRACTOR failing to follow the PROGRAM's established change order procedures shall assume the risk of denied payment for change order work. Change orders must be requested prior to the final payment request and do not constitute an additional inspection. No changes to custom order items are allowed. The AGREEMENT Sum and AGREEMENT Time may be changed only by Change Order. The amount of credit to the OWNER arising from a Change Order shall be determined by mutual AGREEMENT.

XVIII.

The OWNER and the CONTRACTOR shall not enter into any side or additional AGREEMENT during the course of the PROGRAM's rehabilitation. The OWNER may hire the CONTRACTOR for additional work **following** the completion of the work to be funded by the PROGRAM. If an OWNER enters into a side or additional agreement with the CONTRACTOR **during** the PROGRAM's rehabilitation, the PROGRAM has the right to deny PROGRAM funds to the OWNER and furthermore, recapture any PROGRAM funds expended to date.

XIX.

No Officer, Employee or Member of the Governing body of the County of Essex, the MUNICIPALITY and/or the PROGRAM who exercises any functions or responsibilities in connection with the carrying out of the PROJECT to which this AGREEMENT pertains shall have any private interest, direct or indirect, in this AGREEMENT or in the proceeds of this AGREEMENT Loan or Grant.

XX.

The title to all work completed in the course of construction and all materials, on account of which any payment has been made, shall be in the OWNER.

XXI.

Should the CONTRACTOR default or neglect to carry out the work in accordance with the AGREEMENT, or fail to perform any provision of the AGREEMENT ("Deficiencies") either the OWNER, with prior written approval of the PROGRAM, or the PROGRAM in consultation with the OWNER may terminate the AGREEMENT. However, prior to such termination, the CONTRACTOR shall be given an opportunity to exercise their right to remedy the identified Deficiencies in the following manner: (1) the OWNER shall advise the PROGRAM of the Deficiencies in writing; (2) upon which the PROGRAM shall conduct an inspection to verify the Deficiencies or if during the standard PROGRAM inspection processes the PROGRAM inspector identifies the Deficiencies; (3) the PROGRAM then shall provide the CONTRACTOR with a list of deficiencies in writing and notice (either written via certified and regular mail, or electronic mail with confirmation of delivery receipt); (4) said notice providing the CONTRACTOR with seven (7) days (beginning on the third (3rd) day after mailing of the written notice or one (1) day after email transmission), to remedy the Deficiencies according to industry standards and the mutual approval of the OWNER and PROGRAM. CONTRACTOR may request a reasonable amount of additional time to remedy the Deficiencies should circumstances beyond their control make it not possible to complete the work within the seven (7) day remedy time period ("Additional Time Request"). The decision whether or not to grant the Additional Time Request shall be in the sole discretion of the PROGRAM. Should the CONTRACTOR fail to address and remedy the Deficiencies within the prescribed time period, the PROGRAM in consultation with the OWNER shall terminate the AGREEMENT and provide the OWNER and CONTRACTOR with the notice of AGREEMENT termination. Upon AGREEMENT termination, the PROGRAM in consultation with the OWNER, shall arrange to have the Deficiencies remedied, the costs of which shall be deducted from any final payment due and owing to the CONTRACTOR. If the cost to remedy the Deficiencies exceeds the AGREEMENT balance due to CONTRACTOR, the OWNER'S lien may be increased by the PROGRAM for the difference.

XXII.

Should a dispute arise pertaining to this AGREEMENT the PROGRAM shall endeavor to resolve differences. If either the OWNER or the CONTRACTOR wishes to challenge the PROGRAM decision, the challenging party shall timely submit in writing to the PROGRAM the reasons for disagreeing with the PROGRAM decision, at which time the PROGRAM will refer the matter to the MUNICIPALITY for further resolution.

XXIII.

The CONTRACTOR is prohibited from using paint containing either lead based or lead dryer and/or tinting agents which aggregates more than one percent (1%) lead by weight. Furthermore, the CONTRACTOR acknowledges he/she must be in compliance with the EPA RRP Rule (40 CFR Part 745) regarding rehabilitation construction affecting lead based paint in houses built prior to 1978 and that the CONTRACTOR and CONTRACTOR'S crew and, when applicable, subcontractors are in compliance with the EPA RRP Rule for certification and training. The CONTRACTOR takes full responsibility to know the lead-based paint requirements in this section, which are additionally spelled out in the attached work specifications applicable section.

XXIV.

The signing of this AGREEMENT serves as a non-collusion affidavit. The CONTRACTOR swears that neither he/she nor those he/she represents in signing this AGREEMENT colluded directly or indirectly with

any other CONTRACTOR, firm, or person to submit a collusive or sham Cost Estimate in connection with the improvements stated and price agreed upon in the Work Write-Up.

XXV.

This AGREEMENT and the Documents referred to under Section I above constitute the entire AGREEMENT between the parties, and any previous written AGREEMENT concerning the work contemplated by this AGREEMENT is hereby revoked. It is further agreed by the parties hereto that, in consideration of the approval of this AGREEMENT by the PROGRAM, no change or modification of this AGREEMENT hereinafter made shall be binding upon either party without the written approval of the PROGRAM of such change modification.

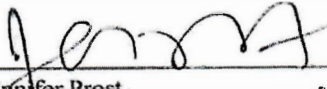
XXVI.

Failure by the OWNER to comply with any section of this AGREEMENT shall constitute an event of default under the terms of the Mortgage and Mortgage Note.

XXVII.

This AGREEMENT which shall be effective as of the day and year first written above, shall be construed under the Laws of the State of New Jersey.

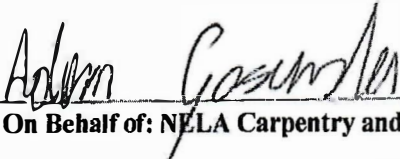
By signing this AGREEMENT, the OWNER(S) and the CONTRACTOR acknowledge that they have read, understood and shall abide by all provisions in this AGREEMENT in its entirety, including all additions, attachments and amendments, including but not limited to, Exhibit A, and further acknowledge that they were provided ample opportunity to review the AGREEMENT with legal counsel and any other individuals of their choosing, as well as request and receive information regarding any part of this AGREEMENT prior to its execution.

HOMEOWNER's Signature 
Jennifer Prost

CO-OWNER's Signature 
Michael D. Laser


The person signing below hereby certifies that he/she is empowered and authorized on behalf of the contractor company named below to execute the contract:

COMPANY NAME NELA Carpentry and Masonry LLC

CONTRACTOR's Signature 
On Behalf of: **NELA Carpentry and Masonry LLC**

CONTRACTOR: Print Name and Title ADAM GOSIENSKI / PRESIDENT

Witnessed: Montclair Home Improvement Program

BY: 
Matthew P. Hynes, Program Inspector

