



MEMORANDUM

TO: Members of the Finance Committee

FROM: Rich Olson, City Manager
Dennis Gordon, Energy Officer

DATE: June 7, 2016

REF: Consideration – Execution of Agreements for Weatherization Assistance Program Contractor Services

BACKGROUND:

Over the last year, Load Management Department staff has been performing Whole House Energy Audits for our utility customers. The City's proposed fiscal year 2016-2017 budget includes an appropriation of \$360,000 for weatherization retrofits for our utility customers during the coming fiscal year. G&M Construction, Riddick Home Construction, and Martin County Community Action each submitted proposals for our program's next fiscal year. Each contractor submitted a proposal for \$45.00 per man labor hour consistent with what was paid last year. Because of the increase in unit product and the work ethics of each organization, City staff recommends the use of all three contractors to ensure the completion of the 80 units designated for fiscal year 2016-2017. The use of one contractor would limit that ability.

ANALYSIS:

Each of the three contractors shown above has demonstrated an outstanding ability in weatherization retrofitting, which is consistent with previous program standards.

The attached proposed agreements are submitted for consideration by the Council in order that Martin County Community Action, G&M Construction and Riddick Home Construction may provide weatherization retrofits for the City's utility customers next fiscal year. Each organization will perform weatherization retrofits as described in the attached agreements and collectively will weatherize 80 homes starting July 1, 2016 and ending on or before June 30, 2017.

During the fiscal year 2015-2016 weatherization program, the City was able to weatherize a total of 88 homes. All funds were expended by February of this year. Eighty-six of these homes were owner-occupied, while two of the homes were rental units. Over 50% of the homes weatherized were for elderly

individuals and six homes had disabled individuals living in them. A total of 219 people were assisted through the program and the average annual income of those involved in the program was \$28,899. The average cost per unit spent by the City was \$4,088.

Currently, the City has 66 homes on the waiting list for weatherization services in fiscal year 2016-2017.

STAFF RECOMMENDATION:

By motion, recommend that the City Council authorize Mayor Peel to execute the Agreements for Contractor Services for the Weatherization Assistance Program for fiscal year 2016-2017 as provided herein.

DLG/vdw

NORTH CAROLINA

PASQUOTANK COUNTY

THIS AGREEMENT, made and entered into this the _____ day of _____, 2016, by and between THE CITY OF ELIZABETH CITY, a Municipal Corporation organized and existing under the laws of the State of North Carolina (hereinafter called "City"), and G&M Construction, General Contractor, a North Carolina Corporation (hereinafter called "Contractor"):

WITNESSETH:

THAT WHEREAS, City desires to implement a weatherization program which allows its qualified citizens to receive assistance from City and others in improving the energy efficiency of their homes;

AND WHEREAS, Contractor is qualified to provide the services described hereinafter in order to aid City in implementing its weatherization program, and City shall pay Contractor the sums specified hereinafter for those services;

NOW, THEREFORE, the parties agree as follows:

1. Term of Agreement: The term of this Agreement shall commence on July 1, 2016 and, unless extended by City, the Agreement shall terminate on June 30, 2017.

2. Compensation: City shall pay Contractor, for services provided by Contractor and approved by City, the rate of \$45.00 per hour for labor provided by Contractor, its employees or previously approved (by City) sub-contractors. Contractor shall also be

reimbursed for material costs which have been previously authorized by City and for which Contractor produces satisfactory documentation to City as to those material costs.

3. Entire Agreement: This Agreement, and any Attachments appended prior to the execution of this Agreement, constitutes the entire agreement of the parties and no portion hereof shall be modified or altered without the express written consent of the parties.

4. Notices: Any notice required to be given pursuant to this Agreement shall be deemed delivered to the other party when given in writing and mailed by Certified Mail, Return Receipt Requested, to the address specified for each party at the conclusion of this Agreement. Such notice shall be deemed delivered as of 2 business days following the mailing of such notice.

5. Point of Contact for City: At the time this Agreement is executed, City shall designate to Contractor a person who shall serve as City's primary point of contact for Contractor with respect to this Agreement, and, unless City provides notice to Contractor as to a change in points of contact, that person so designated shall be the primary individual with whom Contractor (or its representatives) negotiates the weatherization services provided by Contractor.

6. Contractor's Obligations: The Contractor agrees as follows:

(A) To perform the services specified on Schedule A attached hereto and incorporated herein by reference, which services shall be provided on the owner-occupied, single family residences designated by City and noted in a work order issued by City's designated point of contact;

(B) To comply with all applicable laws, ordinances, codes and regulations of local, state and federal governments, including the obtaining of all required permits and licenses, at no additional cost to the City. City agrees to waive its permit fees associated with weatherization services provided under this Agreement.

(C) During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

1. **Worker's Compensation** – The Contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage and minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under the contract.
2. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit of Liability. (Defense cost shall be in excess of the limit of liability.)
3. **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned

vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/underinsured motorist; and \$25,000.00 medical payment.

4. **Pollution Occurrence Insurance** – Liability insurance to protect against incidental disturbances of environmental pollutants like lead-based paint dust. The policy must provide three basic limits - \$500,000.00 per occurrence, \$500,000.00 aggregate for the policy term; and \$2,500.00 deductible per occurrence, with Contractor being financially responsible for the payment of any deductible associated with any claim thereunder.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. The Contractor may meet its requirements of maintaining specified coverage and limits by demonstrating to the City that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the City. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such

insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting any Subcontractor's liability and obligations under the contract. Additionally, any Subcontractor approved by City shall likewise be responsible for providing insurance coverage in equal amounts and terms to those required of Contractor in this Agreement.

(D) To perform work in a workmanlike manner acceptable to the City.

The Contractor shall promptly correct all work rejected as defective or non-conforming by the City, within 3 business days of City providing notice of said defects or deficiencies. In no event shall Contractor be entitled to be paid for any work which is not completed to City's satisfaction by June 30, 2017 (or any extension beyond that date which is previously agreed to by City).

(E) To repair all surfaces and work damages by the Contractor or any approved Subcontractor resulting from work under this Agreement at no additional cost to the City. Repair of existing work means that the item shall be restored to equal condition by patching or replacing and finished work shall match adjacent work in quality, design and dimension.

(F) To keep the work premises broom clean and orderly during the course of the work and remove all debris upon completion of the work.

- (G) To guarantee the work performed and materials supplied to be free from defects for a period of one year from the date of final acceptance of all the work required by this Agreement on the home. Defective work or materials shall be repaired or replaced at the election the City, within thirty days of receipt by the Contractor of written notice of the defect, at no cost to City, even if such notice is delivered to Contractor after June 30, 2017.
- (H) Acceptance of faulty work, or failure on the part of the City to discover defects, will not relieve the Contractor of responsibility to correct the defects as set forth herein within the guarantee period.
- (I) Where applicable, to provide quality materials in accordance with City's specifications and use them in accordance with generally accepted construction practices.
- (J) To fully cooperate with the City in promptly completing all necessary forms and progress reports as may be required for the proper administration of the project, as follows:
1. All work assigned to the Contractor will be identified by a Job Number established and assigned by City, and the Contractor shall similarly label all invoices, work change orders, etc. with the same number for purposes of identification; and
 2. The Contractor shall provide all required information on forms supplied by the City, or shall supply to the City the information necessary for the completion of such forms.

(K) To provide all labor, tools and equipment necessary to perform this Agreement in an efficient, workmanlike and expeditious manner.

(L) To accept work change orders as provided below:

1. Any deviation from the work specified in the work order and specifications shall be authorized only by written work change order, signed by both parties;
2. No additional payment shall be made to the Contractor because of work change order unless so specified by the order; and
3. Work change orders will be granted only for work necessitated by conditions which could not reasonably have been foreseen by the Contractor at the time of submission of the bid for each particular housing unit, it being the agreement of the parties that no work shall be performed without City's having first approved Contractor's bid associated with each housing unit to be served.

(M) That, if the City provides the materials necessary for the weatherization work to be performed, the Contractor shall:

1. Approve all materials supplied by the City and assume responsibility for all such materials;
2. Submit a written requisition for any additional materials needed to complete the job;

3. Replace any materials damaged or misused by the Contractor, or any approved Subcontractor, or through the Contractor's failure to provide proper control or safekeeping; and
4. Upon completion of all work, but before final approval, return any unused materials to the City.

(N) That time is of the essence in the performance of this Agreement. The services of the Contractor shall be undertaken and completed in such sequence as to assure their expeditious completion in accordance with the time schedule submitted by the Contractor as part of the bid package, and in light of the purposes of this Agreement, but in any event, all of the services required shall be completed not later than June 30, 2017. The Contractor must complete work on a home within 14 days of receipt of the work order associated with that home from the City.

7. Payment Schedule:

- A. That the Contractor shall not be entitled to any partial payment. Payment shall be upon completion of all (100%) of weatherization work done to each home.

The Contractor shall submit the following billing requirements for payment:

1. Contractor's receipts for materials used on any work order;
2. Contractor's Invoice; and

3. Air Sealed Data Sheets

- B. The City agrees to make payment within thirty (30) calendar days after all billing requirements have been achieved, and Contractor's work has been approved by City.

8. General Conditions:

A. Interests of the Contractor

The Contractor represents that its officers and employees, as well as any approved subcontractors used in the project, have no interest, and covenants that they will not acquire any interest, direct or indirect, which would conflict, or appear to conflict in any manner or with the performance of the Contractor's services or obligations under this Agreement. The City covenants that, in the performance of this Agreement, no person having any such interest shall be employed by City. Any breach of this provision by Contractor shall be grounds for immediate termination of this Agreement by City.

B. Independent Contractor:

With respect to any activities carried out in connection with this Agreement, the Contractor shall not be the agent of the Federal Government, or any other government, nor shall the Contractor represent to any person, foundation, group, organization or governmental entity that it is an agent for the Federal Government or any other governmental entity.

C. Assignment:

This Agreement is intended to secure the services of the Contractor because of its ability and reputation and none of the Contractor's services or obligations under this Agreement shall be assigned, contracted or transferred without the prior written consent of the City.

D. Indemnification:

1. The Contractor agrees to indemnify and hold harmless the City and its employees, the unit owner and occupants from and against all suits, actions or claims of any character, type and description brought for or on account of any damages, losses or expenses, including legal fees, arising out of performance of the work herein, caused in whole or in part by the Contractor's negligent act or omission, or that of anyone employed by Contractor for whose acts the Contractor may be liable.
2. The Contractor agrees to indemnify and hold harmless any home owner or occupant from any liability for non-payment to, or any disputes as to payment with, any subcontractor or vendor and to immediately bond and secure the release of any lien obtained against the home for work performed pursuant to this Agreement.
3. The City shall have the right to withhold from any payments due, or becoming due, to the Contractor, an amount which it deems to be sufficient to cover any expenses, costs, damages, or loss that may

be incurred by it as a result of such events as those referenced above.

E. Records:

The Contractor shall retain all papers and records in connection with work performed for a minimum of three (3) years and access will be provided to City representatives for the purpose of audit or examination of the records.

9. City's Obligations:

The City agrees:

- A. To provide work orders in conformance with City policies.
- B. To conduct timely post-work inspections to determine the acceptability of the services performed by the Contractor no later than five (5) days after notification by the Contractor of completion.
- C. To pay the Contractor promptly according to the terms of this Agreement.

10. Conduct of Agreement:

A. Delays:

When good cause is shown for delay in the work by the Contractor, the City shall make a determination specifying alternative payment procedures and/or an extension of time allocated for performance of Contractor's duties under this Agreement, based on confirmation of the delay. Such delays may include, but are not limited to, any of the

following: changes in the work, labor disputes, fire, flood, unavoidable casualty or damage to materials, an act of, or neglect by, the resident property owner or other such cause beyond the control of the Contractor.

B. Liquidated Damages:

It is understood that actual damages due to delay in the performance of the work are uncertain and difficult to ascertain. The reasonably foreseeable damages due to such delay are agreed to be the sum of twenty-five dollars (\$25.00) per day per home served. The City may withhold and retain such liquidated damages out of any monies due to the Contractor under this Agreement.

C. Termination:

1. For Fault:

If the City determines that the Contractor has failed to perform or will fail to perform all or any part of the Contractor's services or obligations required under this Agreement, the City may terminate or suspend this Agreement in whole or in part upon written notice by certified mail to the Contractor, specifying the portions of this Agreement terminated, suspended or reduced. Such notice shall specify the violation(s) of this Agreement, and, in the case of termination, shall specify a termination date of not more than ten (10) days or less than five (5) days from receipt of the notice, at which time the Agreement shall be deemed terminated. In the

event of such termination, any materials, supplies, tools or equipment provided by the City shall be returned forthwith by the Contractor.

2. Not for Fault:

Whenever the City determines that termination of this Agreement in whole or in part is in the best interest of the City, or in the event that termination is required by applicable law, the City may terminate this Agreement by written notice to the Contractor, specifying the services terminated and the effective date of the termination. Upon termination, the Contractor shall be entitled to, and the City shall pay, the eligible costs incurred in compliance with this Agreement until the date of the termination, plus any reasonable costs the Contractor incurs directly resulting from such termination.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly appointed and authorized representatives.

[Signatures on Following Page]

THE CITY OF ELIZABETH CITY

Joseph W. Peel, Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk

G&M Construction, General Contractor, Inc

By: _____ President

Address: 318 Rowe Lane
Blounts Creek, NC 27814

(252)229-1310

Telephone

Type/Print Name and Title

City State Zip

Fax

Witness:

Signature

Printed Name

Address

City, State, Zip

NORTH CAROLINA

PASQUOTANK COUNTY

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WITNESSETH:

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2. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit of Liability. (Defense cost shall be in excess of the limit of liability.)
3. **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned

vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/underinsured motorist; and \$25,000.00 medical payment.

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4. Upon completion of all work, but before final approval, return any unused materials to the City.

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IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly appointed and authorized representatives.

[Signatures on Following Page}

THE CITY OF ELIZABETH CITY

Joseph W. Peel, Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk

Riddick Homes, General Contractor, Inc.

By: _____ President

1311 Lincoln Street
Elizabeth City, North Carolina 27909

Address
(252)267-1938

Telephone

Type/Print Name and Title

City State Zip

Fax

Witness:

Signature

Printed Name

Address

City, State, Zip

NORTH CAROLINA

PASQUOTANK COUNTY

THIS AGREEMENT, made and entered into this the _____ day of _____, 2016, by and between THE CITY OF ELIZABETH CITY, a Municipal Corporation organized and existing under the laws of the State of North Carolina (hereinafter called "City"), and Martin Community Action, INC., a North Carolina Corporation (hereinafter called "Contractor"):

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reimbursed for material costs which have been previously authorized by City and for which Contractor produces satisfactory documentation to City as to those material costs.

3. Entire Agreement: This Agreement, and any Attachments appended prior to the execution of this Agreement, constitutes the entire agreement of the parties and no portion hereof shall be modified or altered without the express written consent of the parties.

4. Notices: Any notice required to be given pursuant to this Agreement shall be deemed delivered to the other party when given in writing and mailed by Certified Mail, Return Receipt Requested, to the address specified for each party at the conclusion of this Agreement. Such notice shall be deemed delivered as of 2 business days following the mailing of such notice.

5. Point of Contact for City: At the time this Agreement is executed, City shall designate to Contractor a person who shall serve as City's primary point of contact for Contractor with respect to this Agreement, and, unless City provides notice to Contractor as to a change in points of contact, that person so designated shall be the primary individual with whom Contractor (or its representatives) negotiates the weatherization services provided by Contractor.

6. Contractor's Obligations: The Contractor agrees as follows:

(A) To perform the services specified on Schedule A attached hereto and incorporated herein by reference, which services shall be provided on the owner-occupied, single family residences designated by City and noted in a work order issued by City's designated point of contact;

(B) To comply with all applicable laws, ordinances, codes and regulations of local, state and federal governments, including the obtaining of all required permits and licenses, at no additional cost to the City. City agrees to waive its permit fees associated with weatherization services provided under this Agreement.

(C) During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

1. **Worker's Compensation** – The Contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage and minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under the contract.
2. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit of Liability. (Defense cost shall be in excess of the limit of liability.)
3. **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned

vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/underinsured motorist; and \$25,000.00 medical payment.

4. **Pollution Occurrence Insurance** – Liability insurance to protect against incidental disturbances of environmental pollutants like lead-based paint dust. The policy must provide three basic limits - \$500,000.00 per occurrence, \$500,000.00 aggregate for the policy term; and \$2,500.00 deductible per occurrence, with Contractor being financially responsible for the payment of any deductible associated with any claim thereunder.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. The Contractor may meet its requirements of maintaining specified coverage and limits by demonstrating to the City that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the City. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such

insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting any Subcontractor's liability and obligations under the contract. Additionally, any Subcontractor approved by City shall likewise be responsible for providing insurance coverage in equal amounts and terms to those required of Contractor in this Agreement.

(D) To perform work in a workmanlike manner acceptable to the City.

The Contractor shall promptly correct all work rejected as defective or non-conforming by the City, within 3 business days of City providing notice of said defects or deficiencies. In no event shall Contractor be entitled to be paid for any work which is not completed to City's satisfaction by June 30, 2017 (or any extension beyond that date which is previously agreed to by City).

(E) To repair all surfaces and work damages by the Contractor or any approved Subcontractor resulting from work under this Agreement at no additional cost to the City. Repair of existing work means that the item shall be restored to equal condition by patching or replacing and finished work shall match adjacent work in quality, design and dimension.

(F) To keep the work premises broom clean and orderly during the course of the work and remove all debris upon completion of the work.

- (G) To guarantee the work performed and materials supplied to be free from defects for a period of one year from the date of final acceptance of all the work required by this Agreement on the home. Defective work or materials shall be repaired or replaced at the election the City, within thirty days of receipt by the Contractor of written notice of the defect, at no cost to City, even if such notice is delivered to Contractor after June 30, 2017.
- (H) Acceptance of faulty work, or failure on the part of the City to discover defects, will not relieve the Contractor of responsibility to correct the defects as set forth herein within the guarantee period.
- (I) Where applicable, to provide quality materials in accordance with City's specifications and use them in accordance with generally accepted construction practices.
- (J) To fully cooperate with the City in promptly completing all necessary forms and progress reports as may be required for the proper administration of the project, as follows:
1. All work assigned to the Contractor will be identified by a Job Number established and assigned by City, and the Contractor shall similarly label all invoices, work change orders, etc. with the same number for purposes of identification; and
 2. The Contractor shall provide all required information on forms supplied by the City, or shall supply to the City the information necessary for the completion of such forms.

(K) To provide all labor, tools and equipment necessary to perform this Agreement in an efficient, workmanlike and expeditious manner.

(L) To accept work change orders as provided below:

1. Any deviation from the work specified in the work order and specifications shall be authorized only by written work change order, signed by both parties;
2. No additional payment shall be made to the Contractor because of work change order unless so specified by the order; and
3. Work change orders will be granted only for work necessitated by conditions which could not reasonably have been foreseen by the Contractor at the time of submission of the bid for each particular housing unit, it being the agreement of the parties that no work shall be performed without City's having first approved Contractor's bid associated with each housing unit to be served.

(M) That, if the City provides the materials necessary for the weatherization work to be performed, the Contractor shall:

1. Approve all materials supplied by the City and assume responsibility for all such materials;
2. Submit a written requisition for any additional materials needed to complete the job;

3. Replace any materials damaged or misused by the Contractor, or any approved Subcontractor, or through the Contractor's failure to provide proper control or safekeeping; and
4. Upon completion of all work, but before final approval, return any unused materials to the City.

(N) That time is of the essence in the performance of this Agreement. The services of the Contractor shall be undertaken and completed in such sequence as to assure their expeditious completion in accordance with the time schedule submitted by the Contractor as part of the bid package, and in light of the purposes of this Agreement, but in any event, all of the services required shall be completed not later than June 30, 2017. The Contractor must complete work on a home within 14 days of receipt of the work order associated with that home from the City.

7. Payment Schedule:

- A. That the Contractor shall not be entitled to any partial payment. Payment shall be upon completion of all (100%) of weatherization work done to each home.

The Contractor shall submit the following billing requirements for payment:

1. Contractor's receipts for materials used on any work order;
2. Contractor's Invoice; and

3. Air Sealed Data Sheets

- B. The City agrees to make payment within thirty (30) calendar days after all billing requirements have been achieved, and Contractor's work has been approved by City.

8. General Conditions:

A. Interests of the Contractor

The Contractor represents that its officers and employees, as well as any approved subcontractors used in the project, have no interest, and covenants that they will not acquire any interest, direct or indirect, which would conflict, or appear to conflict in any manner or with the performance of the Contractor's services or obligations under this Agreement. The City covenants that, in the performance of this Agreement, no person having any such interest shall be employed by City. Any breach of this provision by Contractor shall be grounds for immediate termination of this Agreement by City.

B. Independent Contractor:

With respect to any activities carried out in connection with this Agreement, the Contractor shall not be the agent of the Federal Government, or any other government, nor shall the Contractor represent to any person, foundation, group, organization or governmental entity that it is an agent for the Federal Government or any other governmental entity.

C. Assignment:

This Agreement is intended to secure the services of the Contractor because of its ability and reputation and none of the Contractor's services or obligations under this Agreement shall be assigned, contracted or transferred without the prior written consent of the City.

D. Indemnification:

1. The Contractor agrees to indemnify and hold harmless the City and its employees, the unit owner and occupants from and against all suits, actions or claims of any character, type and description brought for or on account of any damages, losses or expenses, including legal fees, arising out of performance of the work herein, caused in whole or in part by the Contractor's negligent act or omission, or that of anyone employed by Contractor for whose acts the Contractor may be liable.
2. The Contractor agrees to indemnify and hold harmless any home owner or occupant from any liability for non-payment to, or any disputes as to payment with, any subcontractor or vendor and to immediately bond and secure the release of any lien obtained against the home for work performed pursuant to this Agreement.
3. The City shall have the right to withhold from any payments due, or becoming due, to the Contractor, an amount which it deems to be sufficient to cover any expenses, costs, damages, or loss that may

be incurred by it as a result of such events as those referenced above.

E. Records:

The Contractor shall retain all papers and records in connection with work performed for a minimum of three (3) years and access will be provided to City representatives for the purpose of audit or examination of the records.

9. City's Obligations:

The City agrees:

- A. To provide work orders in conformance with City policies.
- B. To conduct timely post-work inspections to determine the acceptability of the services performed by the Contractor no later than five (5) days after notification by the Contractor of completion.
- C. To pay the Contractor promptly according to the terms of this Agreement.

10. Conduct of Agreement:

A. Delays:

When good cause is shown for delay in the work by the Contractor, the City shall make a determination specifying alternative payment procedures and/or an extension of time allocated for performance of Contractor's duties under this Agreement, based on confirmation of the delay. Such delays may include, but are not limited to, any of the

following: changes in the work, labor disputes, fire, flood, unavoidable casualty or damage to materials, an act of, or neglect by, the resident property owner or other such cause beyond the control of the Contractor.

B. Liquidated Damages:

It is understood that actual damages due to delay in the performance of the work are uncertain and difficult to ascertain. The reasonably foreseeable damages due to such delay are agreed to be the sum of twenty-five dollars (\$25.00) per day per home served. The City may withhold and retain such liquidated damages out of any monies due to the Contractor under this Agreement.

C. Termination:

1. For Fault:

If the City determines that the Contractor has failed to perform or will fail to perform all or any part of the Contractor's services or obligations required under this Agreement, the City may terminate or suspend this Agreement in whole or in part upon written notice by certified mail to the Contractor, specifying the portions of this Agreement terminated, suspended or reduced. Such notice shall specify the violation(s) of this Agreement, and, in the case of termination, shall specify a termination date of not more than ten (10) days or less than five (5) days from receipt of the notice, at which time the Agreement shall be deemed terminated. In the

event of such termination, any materials, supplies, tools or equipment provided by the City shall be returned forthwith by the Contractor.

2. Not for Fault:

Whenever the City determines that termination of this Agreement in whole or in part is in the best interest of the City, or in the event that termination is required by applicable law, the City may terminate this Agreement by written notice to the Contractor, specifying the services terminated and the effective date of the termination. Upon termination, the Contractor shall be entitled to, and the City shall pay, the eligible costs incurred in compliance with this Agreement until the date of the termination, plus any reasonable costs the Contractor incurs directly resulting from such termination.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly appointed and authorized representatives.

[Signatures on Following Page]

THE CITY OF ELIZABETH CITY

Joseph W. Peel, Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk

Martin Community Action, INC.

By: _____ President

314 East Ray St
Williamston, NC 27892

Address
(252)792-7111

Telephone

Type/Print Name and Title

City State Zip

Fax

Witness:

Signature

Printed Name

Address

City, State, Zip