

**AGREEMENT BETWEEN
THE CITY OF LAS VEGAS AND THE GREEN CHIPS**

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this 19th day of August, 2009, by and between the GREEN CHIPS (hereinafter "Green Chips"), a Nevada nonprofit corporation and the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation in the State of Nevada.

RECITALS

WHEREAS, the City has identified as strategic priorities the following: to create, integrate, and manage orderly and sustainable development and growth of the community; to support and encourage sustainability, livability and pride in the City's neighborhoods' and to promote healthy lifestyles for all segments of the community; and

WHEREAS, the City, through the Las Vegas City Council, adopted Resolution R-81-2006 which created the Green Building Program to encourage energy efficiency in city and community buildings; and

WHEREAS, the Green Building Special Revenue Fund was established as a funding source to ensure funding for buildings constructed or retrofitted to green standards; and

WHEREAS, the Las Vegas City Council adopted the Sustainable Energy Strategy, through Resolution R-50-2008, which established the goals of reducing the City's carbon footprint and implementing conservation programs involving the community; and

WHEREAS, the Energy Independence and Security Act of 2007 authorized the Energy Efficiency and Conservation Block Grant Program, which was funded by the American Recovery and Reinvestment Act of 2009, of which the City was allocated \$5,449,200; and

WHEREAS, the Energy Improvement and Extension Act of 2008 authorized issuance of Qualified Energy Conservation Bonds, a tax credit bond with a bond volume cap increased by the American Recovery and Reinvestment Act of 2009 that allows the City to issue bonds for qualified energy conservation projects; and

WHEREAS, in furtherance of the Efficiency and Conservation Grant Program and the Green Building Program, the City is desirous to fund an energy audit and retrofit program targeting low income home owners and non-profit organizations to improve the efficiency of their home energy usage and better manage their energy costs; and

WHEREAS, the City desires to enter into this Agreement with Green Chips who will utilize and leverage the funding sources of the Efficiency and Conservation Block Grant Program funded by the American Recovery and Reinvestment Act of 2009 and the

Green Building Special Revenue Fund to enhance and build an industry of home performance contracting; and

WHEREAS, the mission of Green Chips is to leverage the combined resources of public agencies and the private sector to develop green programs that directly and immediately benefit the community and its citizens; and

WHEREAS, it is the desire of the parties to enter into this Agreement which will provide resources that serve as a catalyst for Green Chips to secure resources in pursuit of its objectives held in common with the City to create and promote a sustainable Las Vegas; and

WHEREAS, Green Chips seeks to partner with Rebuilding Together, a local non-profit organization, that has been providing free home improvements to qualifying low income participants since 1994 and has the resources to identify candidate homeowners; and

WHEREAS, it is mutually beneficial for City and Green Chips to launch a pilot program for home energy audits and subsequent home improvements based on audit recommendations.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I FUNDS CONTRIBUTION

1.1 Contribution of Funds. Subject to the terms of this Agreement, the City hereby agrees to grant certain funds in an amount not-to-exceed Ninety Thousand Dollars (\$90,000) to Green Chips for the purpose of providing home energy audits and home energy improvement retrofits to eligible low income homeowners and a nonprofit organization (the "Pilot Program"). To assist in paying for administrative costs associated with the Pilot Program, the City agrees to initially disburse to Green Chips the amount of Seven Thousand Dollars (\$7,000) payable upon execution of the Agreement. The balance of funds, Eighty-three Thousand Dollars (\$83,000) will be paid upon within thirty (30) days of receipt of invoices in accordance with paragraph 2.3 (Payment) below.

1.2 Limitation of Funding. The City shall not provide any additional funding beyond the grant of Ninety Thousand Dollars (\$90,000) and the City shall not be obligated to pay claims or any excess costs incurred by Green Chips or its contractors and third parties beyond that amount, except for any additional funds approved by the Las Vegas City Council and by a written addendum mutually agreed to by both parties.

ARTICLE 2 ALLOWABILITY OF EXPENSES AND PAYMENT

2.1 Administration. The intent of this Pilot Program is to benefit the community in the City of Las Vegas to the greatest extent possible. As a condition to receiving the grant funds provided herein, Green Chips covenants and agrees to incur no more than ten percent (10%) of the total amount of grant funds (Nine Thousand Dollars (\$9,000)) towards the cost for administration of the Pilot Program. This ten percent (10%) cap includes, but not limited to, Green Chips staff costs, office supplies, packaging and shipping, rental expense, utilities and other administrative expenses necessary to conduct operations related to the work performed for the Pilot Program authorized under this Agreement.

2.2 Goals, Audit and Retrofit Expenses. The goals of the Pilot Program are that an energy audit and retrofit will be performed for one (1) non-profit organization and for ten (10) homes occupied by low income participants which will be administered by Green Chips. To achieve this, Green Chips will perform the necessary work under the Pilot Program and the City will pay Green Chips up to the not-to-exceed amounts set forth in the attached Exhibit A (Expense Schedule) for the work performed, unless modified by a mutually agreed to written amendment by both parties.

2.3 Payment.

A. As work is completed as set forth in Section 3.2, Green Chips shall submit invoices to the City to be paid within thirty (30) days of receipt. Each invoice shall include: (i) the invoice date, (ii) the period of performance, (iii) the summary of expenses, (iv) the name of the contractors, (v) the amounts paid to each contractor named in the invoice; and (vi) the description of the work performed by each contractor named in the invoice. Green Chips shall submit an original invoice to:

Department of Finance and Business Services
ATTN: Accounts Payable
City of Las Vegas
400 Stewart Ave.
Las Vegas, NV 89101 – 2986

B. Green Chips shall forward a copy of the original invoice to:

Planning and Development Department
ATTN: Denise Kaplan
731 South 4th St.
Las Vegas, NV 89101

ARTICLE 3
AGREEMENT TERM AND SCOPE OF WORK

- 3.1 **Agreement Term.** The term of this Agreement is effective on the date entered into the first paragraph of this Agreement upon execution of an authorized agent of the City. The term of this Agreement will expire on September 30, 2010, unless extended by written mutual agreement of both parties.
- 3.2 **Scope of Work.** As a condition to this Agreement, Green Chips agrees that it will enter into an agreement with Rebuilding Together to facilitate the administration of the Pilot Program funded by this Agreement. Rebuilding Together will identify the qualifying participants who are eligible to receive energy improvement work on their homes. Green Chips will identify the qualifying nonprofit organization that is eligible to receive energy improvement work. The Pilot Program will be conducted in the following manner:
- A. Participants will learn about Green Chips and approve an energy audit to be conducted on the participant's home residence or the non-profit organization's place of business. This process will include an in-person question and answer session with a representative of Green Chips and Rebuilding Together as well as requiring a signed waiver from the participant.
 - B. An energy audit will occur after the participant explicitly authorizes entry in writing and actually allows entry into the respective home or business property by an energy contractor who has met all certifications required by the HomeFree NV program. After the audit is conducted, it will then be reviewed by Green Chips and Rebuilding Together to identify suitable and affordable work to be done.
 - C. With the home/business energy improvement information provided by Green Chips and Rebuilding Together, the participant will determine the scope of work that will be performed on the home or place of business.
 - D. Selection of a contractor will be made by Rebuilding Together.
 - E. Work will be performed by the contractor selected by the participant.
 - F. Information and education about specific improvements will be provided by Green Chips and Rebuilding Together to participants in order to assist the participant in maintaining and maximizing the benefits of the home/business energy improvements.

- 3.3 **Audit Report.** Green Chips will provide to City a copy of the completed energy audit reports performed by the energy contractors.

ARTICLE 4 OTHER TERMS AND CONDITIONS

- 4.1 **Legal Notice.** All legal notices required pursuant to the terms and conditions of this MOU shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this MOU shall be deemed to have been given when:

- (i) Received by the party to whom it is directed by hand delivery or personal service;
- (ii) Transmitted by facsimile with confirmation of transmission, or
- (iii) Sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY: City of Las Vegas
 Planning and Development Department
 ATTN: Denise Kaplan
 731 South 4th Street
 Las Vegas, Nevada 89101
 Phone: (702) 229-6253

FOR GREEN CHIPS: Gary A. Wood, PE
 Renewable Energy Program Manager
 Southern Nevada Water Authority
 100 City Parkway, Suite 700
 Las Vegas, NV 89106
 Ph: 702-691-5393
 Fax: 702-691-5220

4.2 Disputes.

- A. For each claim or dispute arising between the parties under this Agreement, the parties shall attempt to resolve the matter through escalating levels of their respective managements. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration or litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by Green Chips, Green Chips

shall notify the City of its intent to proceed further with the claim or dispute, and in response thereto, the City shall notify Green Chips as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify Green Chips in the notice of its intent to proceed with further resolution and in the same notice as to whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.

B. If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.

C. The laws of the State of Nevada shall govern this Agreement and the venue for purposes of such litigation or arbitration shall be in the City.

4.3 **Termination for Convenience.** Either party shall have the right at any time to terminate further performance of this Agreement, in whole or in part, for any reason whatsoever. Such termination shall be effected by written notice from the terminating party. On the effective date of the termination, Green Chips shall terminate all work and take all reasonable actions to mitigate expenses. Green Chips shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay Green Chips within 30 days after receipt of a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of the costs for the work pursuant to this Agreement and actually performed by Green Chips.

4.4 **Indemnification.** Green Chips shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") harmless from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including, attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City, as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of Green Chips, its officers, employees, or agents in the performance of the terms, conditions and covenants of Agreement, regardless of whether the Liabilities were caused in part by the City.

4.5 **Assignment.** Neither party may assign their rights nor delegate their duties under this Agreement without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Agreement.

4.6 **Waiver.** Waiver of any of the terms of this Agreement shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the

provisions of this Agreement, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Agreement, or to affect the right of the City to thereafter enforce each and every provision of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of this Agreement.

- 4.7 **Audit of Records.** Green Chips agrees to maintain the financial books and records (including supporting documentation) pertaining to the obligations, terms and conditions of this Agreement according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Agreement, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If Green Chips stops operations, Green Chips shall forward copies of these books and records to the City to be retained by the City for the period of time required herein.
- 4.8 **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.
- 4.9 **Modification/Amendment.** This Agreement shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Agreement shall be null and void, and may not be relied upon by either party.
- 4.10 **Public Records.** The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). All of the City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Agreement and all supporting are deemed to be public records.
- 4.11 **Entire Agreement.** This Agreement represents the entire and integrated agreement between the City and Green Chips. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.
- 4.12 **Counterpart Signatures.** This Agreement may be executed in counterparts, all such counterparts will constitute the same Agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and

upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

By: 
OSCAR B. GOODMAN, Mayor

“City”

ATTEST:


BEVERLY K. BRIDGES, CMC, City Clerk

APPROVED AS TO FORM:

 8/6/09
Date

GREEN CHIPS

By: 
GWEN MIGITA, Vice President

“Green Chips”

EXHIBIT A
EXPENSE SCHEDULE

<u>Item No.</u>	<u>Description</u>	<u>Not-to-Exceed Expense Amount</u>
1	Non-profit energy audit	\$2,000 per non-profit
2	Non-profit retrofit	\$18,000 per non-profit
3	Home energy audit	\$800 per home
4	Home energy retrofit	\$5,500 per home