

HOUSING REHABILITATION CONTRACT FOR SINGLE FAMILY RESIDENCE

(CDBG Funded Contract)

This Housing Rehabilitation Contract (the "Contract") is made and entered into this day of **February, 2011**, by and between the City of Las Vegas (the "City"), a municipal corporation within the State of Nevada, with offices located at City Hall, 400 Stewart Avenue, Las Vegas, Nevada, 89101, and **Distinct Energy Performance, LLC** (the "Contractor"), located at **2905 Lake East Drive #110, Las Vegas, NV 89117**.

RECITALS

WHEREAS, the City has entered into a Grant Agreement with the U. S. Department of Housing and Urban Development for participation in the Community Development Block Grant Program (the "CDBG Program") under Title I of the Housing and Community Development Act of 1974, P. L. 93-383 as amended; and

WHEREAS, the City is responsible for planning, administering, implementing, and evaluating the CDBG Program to ensure that it conforms to the HUD-approved Consolidated Plan for the City; and

WHEREAS, the City, as the Grantee receiving federal funds under the CDBG Program, has created the Single Family Residential Rehabilitation Program which utilizes CDBG funding to meet one (or more) of the three broad National Objectives of the CDBG Program, which is defined in 24 CFR Part 570.208 as follows:

1. To benefit low- and moderate-income persons,
2. To aid in the prevention or elimination of slum or blight,
3. To meet community development needs having a particular urgency;

WHEREAS, the City has entered into a deferred loan agreement with (the "Homeowner"), which will provide funds under the CDBG Program for the purpose of rehabilitating the Homeowner's residential home, and thereby helping the City to achieve one or more of the National Objectives of the CDBG Program; and

WHEREAS, the City desires to hire the Contractor to perform the rehabilitation work more fully described below on the single family home owned by the Homeowner who has qualified for funding under the Rehabilitation Program; and

WHEREAS, the Contractor possesses the necessary skills, expertise and workforce, and is properly licensed under the laws of the State of Nevada, to perform the rehabilitation work more fully described below.

NOW, THEREFORE, in view of the above-premises, the parties hereto agree as follows:

SECTION 1. Scope of Work. The Contractor, shall furnish the labor and materials, including tools and equipment, along with competent supervision of any laborers, which is necessary to (i) complete the Work which is described in Exhibit "A" attached hereto and incorporated herein; and (ii) otherwise comply with the requirements of this Contract. If applicable as a result of the nature of complexity of the Work, the Contractor agrees to submit any required shop drawings and samples for approval by the City.

SECTION 2. Project Site.

2.01 Location. The single-family residence to be rehabilitated pursuant to this Contract is located at the following address: **3026, Turquoise Road, Las Vegas, NV, 89106** (the "Project Site").

2.02 Responsibility for Protection and Security of the Work and Project Site. The Contractor is responsible for protecting and securing at all times the Work and the Project Site, from the risk of damage, injury, loss or theft by any means or caused by any manner (including acts of God, vandalism or sabotage), and the Contractor assumes that responsibility regardless of whether or not the City has required the Contractor to purchase any insurance (such as Builder Risk Insurance) which would have protected the interest of the Contractor. The Contractor shall proceed with the completion of the Work in a manner which avoids the risk of damage, injury, loss or theft by any means to the Work or to the property of the Contractor, Homeowner or any other person. The Contractor shall promptly take such reasonable precautions against any and all conditions involving such risk of damage, injury, loss or theft. The Contractor shall continuously inspect the Work (including the materials and equipment used in connection therewith) to discover and determine if any conditions exists which affect the security of the Work or the Project Site, and shall be solely responsible for correcting such conditions.

The Contractor shall cooperate with the City and the Homeowner on all security matters and shall promptly comply with any specific security requirements of the City. The Contractor's compliance with these security requirements shall not relieve the Contractor of responsibility for maintaining proper security for the items set forth above, nor shall it be construed as limiting in any manner the Contractor's obligation to undertake such reasonable action as may be required to establish and maintain secure conditions at the Project Site. The Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to the City in a timely manner.

2.03 Responsibility for Construction Safety. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. The Contractor shall take all reasonable precautions for the safety of all employees on the Project Site and all other persons who may be affected thereby.

Except as otherwise stated in the Contract, if the Contractor encounters any materials reasonably believed to be asbestos, lead or polychlorinated biphenyl (PCB) on the Project Site, the Contractor shall immediately stop work in the area affected and give notice of the condition to the Homeowner and the City. The Contractor shall not resume completion of the Work in the affected area until written authorization is received from the City.

SECTION 3. Period of Performance. Time is of the essence in the performance of the Work. The Contractor shall not commence any performance under this Contract, including the delivery of materials to the Project Site, until a Notice to Proceed has been issued by the Housing Rehabilitation Specialist of the City, or his or her authorized representative. The Work is to be completed within **60** business days of the date of issuance of the Notice to Proceed, unless a longer or shorter period of completion is specified by the City in the Notice to Proceed. Any performance commenced by the Contractor under this Contract is deemed to be an acceptance of such shorter or longer period to complete the Work.

SECTION 4. Compensation. The City agrees to pay, and the Contractor agrees to accept, the following amount; to-wit: **Fifty-eight Thousand One Hundred Nine And 00/100 Dollars (\$58,109.00)** (the "Contract Sum") as full compensation for completion of the Work (including all direct and indirect expenses of the Contractor).

Payment will be made to the Contractor only after the occurrence of the following conditions:

a. The Work has been inspected and approved by the Building and Safety Department of the City and the Housing Rehabilitation Specialist.

b. A Notice of Completion, as provided by the City, has been recorded by the Contractor in the official records of the Clark County Records Office, a copy of such recorded Notice has been provided to the City, and 30 days has transpired since such recordation. The Contractor agrees to provide the City with an executed Notice of Completion within 5 days following approval of the Work by the Building and Safety Department, as evidenced by the approved final inspection card which is to be submitted by the Contractor to the City.

c. The Housing Rehabilitation Specialist has been provided with a waiver of the right to file a lien against the Project Site, or a release of such liens as may have been filed, from any and all subcontractors or workman used in the performance of the Work, which is in a form satisfactory to the Housing Rehabilitation Specialist.

d. The Contractor, Homeowner, and Housing Rehabilitation Specialist have conducted a final walk through which results in acceptance of the Work as completed by the Contractor.

In lieu providing the necessary waiver or release of liens required herein as condition to payment, if the Contract Amount is for \$1,000 or more, the Contractor may provide a bond, in a form and written by a surety which is acceptable to the City, which agrees to defend, and indemnify the Homeowner and/or the City against any and all claims and/or liens which may be filed against the Homeowner or the Project Site by any and all laborers or suppliers who may have a right to file such lien.

SECTION 5. Warranty. The Contractor agrees to promptly repair or replace any and all defects in the Work due to the faulty workmanship and/or materials which may appear during any warranty period provided by the manufacture of such materials, or for a period of 1 year after filing of the Notice of Completion by the City, whichever is longer.

SECTION 6. Changes in the Work.

6.01 Additional Work. The Contractor agrees that the City may add to or deduct from the amount of Work covered by this Agreement, and any changes so made in the amount of Work involved, or any other parts of this Agreement, shall be pursuant to a written Change Order setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon and executed by the parties. If a Change Order is not agreed to by the Contractor and City, the Contractor agrees to proceed with the changes when so ordered in writing to do so by the City so as not to delay the progress of the Work, and the Contractor may file a claim or dispute under Section 11.

6.02 Additional Compensation. The Contractor shall not be entitled to receive any additional compensation for extra work or materials or changes of any kind, even if the same was verbally ordered by the City or any of its representatives, unless a Change Order therefor has been executed by the City. If extra work was ordered by the City, and the Contractor performed the same without receiving a signed Change Order thereof from the City, the Contractor shall be deemed to have waived any claim for extra compensation therefor, regardless of any written or verbal protests or claims by the Contractor.

6.03 Prior Notice. The Contractor agrees that no claim for additional services rendered or materials furnished by the Contractor shall be valid unless notice is given to the City prior to the furnishing of the services or material.

SECTION 7 Insurance.

7.01 Required Insurance. Prior to starting Work, and for the period of this Contract, the Contractor shall procure and maintain in force and effect Workers' Compensation Insurance, with the State of Nevada or Employers' Liability Insurance, Comprehensive General Liability Insurance (with contractual coverage) and Automobile Liability Insurance.

7.02 Minimum Insurance Limits. The Contractor's Comprehensive General and Automobile Liability Insurance, as required by Paragraph 7.1 shall be written for not less than the following limits of liability:

- | | | | |
|----|---------------------------------|--------------|------------------------|
| a. | Comprehensive General Liability | | |
| 1. | Bodily Injury | \$ 1,000,000 | Each Occurrence |
| | | | (Completed Operations) |
| | | \$ 2,000,000 | Aggregate |
| 2. | Property Damage | \$ 500,000 | Each Occurrence |
| | | \$ 500,000 | Aggregate |

- b. Comprehensive Automobile Liability
 1. Bodily Injury \$ 1,000,000 Each Person
 \$ 2,000,000 Aggregate
 2. Property Damage \$ 500,000 Each Occurrence
 \$ 500,000 Aggregate
- c. Workman's Compensation in the minimum amounts as required by law.

7.03 Notice of Cancellation. The foregoing policies shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to the City. Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of Work.

SECTION 8 Indemnification. In addition to insurance requirement set forth in Section 7, the Contractor agrees to protect, indemnify and hold the City, its officers, employees and agents (collectively the "Indemnitees") harmless from each and every claim, damage, loss, suit, action, decree, judgment (including attorney fees and court costs) or other expense of any and every kind or character (collectively the "Claims"), which may be recovered from or sought against the Indemnitees as a result of, by reason of, or as a consequence of any act or omission, negligent or otherwise, on the part of the Contractor, its officers, employees, agents, subcontractors or suppliers (i) in completing the Work required hereunder, (ii) in the manufacturing or supplying (including transportation) of any materials, supplies or other products used in completion of the Work, or (iii) in performing any of the other obligations of this Contract. The Owner may retain for its protection any money due and owing the Contractor under this Contract.

The Contractor shall defend the Indemnitees against the Claims, and in the event that the Contractor fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Contractor.

SECTION 9 Breach and Remedies. If the Contractor fails at any time to: (i) supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, (ii) prosecute the Work with promptness and diligence, (iii) promptly correct defective Work or (iv) perform any of the other obligations of this Contract herein contained, and such failure continues after ten (10) days written notice thereof is provided to the Contractor by the City, the City shall be entitled at its option, to any or all of the following: 1. Terminate this Contract, and/or (2) Provide such labor, materials and equipment or perform such additional and to deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to the Contractor under this Contract. In the event that the money which is due and owing the Contract is insufficient to remedy the deficiency, the Contractor agrees to pay for such deficiency within 20 days of receipt of an invoice from the City.

SECTION 10 Termination for Convenience. The City reserves the right to terminate this Contract for any reason whatsoever (including for no stated reason), and such termination shall be effective on the date set forth in the written notice served on the Contractor pursuant to Section 12.08. In the event of such termination pursuant to this Section, the Contractor shall be

entitled to recover for the labor expenses incurred as of the effective date of the termination, and for such material expenses incurred as of the effective date of the termination if the materials cannot be returned to the supplier, or used for other projects. Such payment shall release the City of any further liability to the Contractor.

SECTION 11 Disputes. All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This Contract to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon in accordance with applicable law in any court having jurisdiction thereof.

SECTION 12 Miscellaneous Provisions.

12.01 Enforcement. The failure of the City to enforce, at any time, any of the provisions in this Contract, or failure to require at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Contract or any part thereof, or the right of City to thereafter enforce each and every such provision.

12.02 Unenforceable. The parties agree that if any part, term or provision of this Contract is held by the courts to be illegal or in conflict with any law of this state or the federal government, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term or provision held to be invalid.

12.03 Modification. There may be no modification of this Contract except by the written agreement of the parties herein, subject to the approval of the City's Housing Rehabilitation Specialist, or representative, which approval shall not be unreasonably withheld.

12.04 Access to Record. The City and the State of Nevada, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making an audit, examination, excerpts, copies and transcriptions. All required records must be maintained by the Contractor for five years after City makes final payments and all other pending matters are closed.

12.05 Attorney Fees. In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this Contract, or that is based thereon, the prevailing party shall be entitled to reasonable attorney's fees to be paid to the prevailing party which shall be decided by the arbitrator(s) (with respect to attorney's fees incurred prior to and during the arbitration proceedings) and by the court or courts, including any appellate court, in which such matter is tried, heard, or decided, including a court that hears a request to compel or enjoin arbitration or that hears any exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorney's fees incurred in such proceedings.)

12.06 Residential Construction Recovery Fund. NRS 624.520 requires all contractors who engage in residential construction to provide the Homeowner(s) with the Residential Recovery Fund disclosure in writing. Payment may be available from the Recovery Fund if the home is damaged financially by a project performed on the Homeowner's residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state.

12.07 Disclosures. NRS 624.600 requires disclosures by the general building contractor. A general building contractor shall provide in writing to the Homeowner of a single-family residence where he has contracted to perform work:

- a. The name, license number, business address and telephone number of:
 - (1) All subcontractors with whom he has contracted on the project; and
 - (2) All persons who furnish materials of the value of \$500 or more to be used on the project.
- b. A notice that a person described in subsection (a) may record a notice of lien upon the residence of the owner and any building, structure and improvement thereon pursuant to the provisions of NRS 108.226.
- c. An informational form, whose contents must be prescribed by the Board, regarding:
 - (1) Contractors pursuant to chapter 624 of NRS; and
 - (2) Mechanics' and materialism's liens pursuant to chapter 108 of NRS (Added to NRS by 1997, 2686) – (Submitted in revision for NRS 624.321)

12.08 Notices. Any notice required to be given under the Contract shall be deemed to have been given when the notice is (i) delivered personally, or (ii) set by facsimile machine and delivered by regular mail or certified mail, addressed as follows:

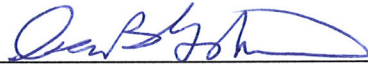
To the City: City of Las Vegas
 Director of Neighborhood Services
 City Hall, Second Floor
 400 Stewart Avenue
 Las Vegas, Nevada 89101-2986

To the Contractor: **Distinct Energy Performance, LLC**
 2905 Lake East Drive #110
 Las Vegas, NV 89117

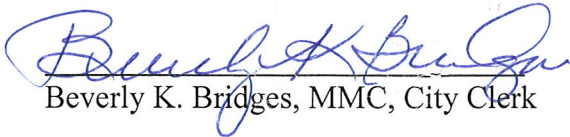
Any change in the addresses stated above shall be made in writing and delivered in the manner provided herein. In the event of suspension or termination of the Contract, notices may also be given upon personal delivery to any person whose action or knowledge of such suspension or termination would be sufficient notice to the Contractor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first above written.

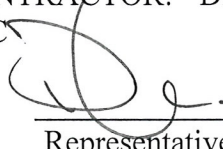
CITY OF LAS VEGAS

By: 
Oscar B. Goodman, Mayor

ATTEST:


Beverly K. Bridges, MMC, City Clerk

CONTRACTOR: Distinct Energy Performance,
LLC

By: 
Representative

Contractor Information:

Project Manager: **Harvey W. Yeaton**
Address: **2905 Lake East Drive #110**
Las Vegas, NV 89117
Phone: **702-256-7283**
NV CONTRACTOR License Number: **74777**

Approved as to form:

Robert S. Sylvain 1-10-11
Date Deputy City Attorney