

1 **APPROVED AS TO LEGAL FORM:**

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4 **Thomas M. Carpenter, City Attorney**

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Exhibit A
LETTER OF INTENT

[date], 2024

Bill, Hillary, and Chelsea Clinton Foundation
Attn: Stephanie Streett, Executive Director
[55 West 125th Street, 14th Floor
New York, NY 10027]

[email]

City of Little Rock, Arkansas

Attn: [name]

[address 1]

[address 2]

[email]

Bernhard Energy, LLC

Attn: [name]

1 Allied Drive, Building 2, Suite 2600

Little Rock, AR 72202

[email]

This letter of intent (“LOI”) outlines a proposed Clinton Sustainable Energy District (“CSED”) to be initially created, developed, operated, maintained, and managed by the Bill, Hillary, and Chelsea Clinton Foundation (“Foundation”), the City of Little Rock, Arkansas (“City”), and Bernhard Energy, LLC (“Bernhard”).

1. Purpose and Intent. This LOI confirms the parties’ agreement in principle to the proposed CSED, subject to the terms and conditions of the LOI. While this LOI is not a binding agreement, the parties agree to work together in good faith and to move as quickly as is practicable to final planning and structuring for the CSED and the negotiation and execution of definitive documentation to consummate and complete the CSED.

1 2. CSED Details. Upon successful completion of due diligence, and satisfaction or waiver of all other
2 conditions set out in this LOI, the parties agree to create, develop, operate, maintain, and manage the CSED
3 as follows:

- 4 a. The Foundation will execute an energy-as-a-service (“EaaS”) transaction with Bernhard.
 - 5 i. Bernhard (via a special purpose entity (“Bernhard SPE”)) will take a concession
6 of the Foundation’s energy assets at the Clinton Presidential Center (“CPC”).
 - 7 ii. Bernhard (via the Bernhard SPE) will pay the Foundation an advance lease pay-
8 ment in exchange for the concession of the energy assets.
 - 9 iii. The Foundation will use a portion of the advance lease payment to fund improve-
10 ments necessary to operate the CSED, including installing district chilled water
11 piping to the western edge of its property line, adding the chillers and cooling tow-
12 ers necessary to provide chilled water capacity to serve the CSED, and developing
13 an off-site solar PV array that will provide renewable energy certificates that can
14 offset carbon emissions associated with the purchased utilities required to operate
15 the CSED.
- 16 b. The City will execute a separate EaaS transaction with Bernhard.
 - 17 i. Bernhard (via the Bernhard SPE) will take a concession of certain energy assets of
18 the City at various locations relevant to the CSED, including the Statehouse Con-
19 vention Center (“SCC”).
 - 20 ii. Bernhard (via the Bernhard SPE) will pay the City an advance lease payment in
21 exchange for the concession of the energy assets.
 - 22 iii. The City will use a portion of the advance lease payment to fund improvements
23 necessary to operate the CSED, including installing district chilled water piping to
24 interconnect its buildings (including various buildings in the vicinity of City Hall
25 and the SCC) and adding the equipment necessary to provide chilled water capac-
26 ity to serve the CSED.
- 27 c. Bernhard (via the Bernhard SPE) will operate and maintain the CSED during the term of
28 the EaaS arrangements.
- 29 d. Bernhard (via the Bernhard SPE) will install necessary CSED chilled water piping to in-
30 terconnect third-party CSED subscribers to the sponsors of the CSED.
- 31 e. The Foundation and the City will pay to Bernhard (via the Bernhard SPE) thermal services
32 charges (“TS Charges”) in exchange for Bernhard (via the Bernhard SPE) providing ther-
33 mal services to each party during the term of their respective EaaS arrangements.

- 1 f. As sponsors of the CSED, the Foundation and the City will receive credits (in an amount
2 to be negotiated) against their respective TS Charges if and when third parties take service
3 from the CSED, if said third party service is provided by thermal service assets funded
4 with the sponsor's capital.
5

6 The parties acknowledge and agree that the final terms, conditions, and responsibilities of, and with respect
7 to, the CSED will be determined, negotiated, and agreed upon on an ongoing basis by the parties, depending
8 upon strategic priorities and needs.
9

10 3. Development and Due Diligence. To ensure the timely and successful consummation of the CSED,
11 the parties will (i) promptly and mutually determine the timeline, schedule, terms, conditions, and other
12 development and due diligence requirements of the parties; (ii) promptly provide to each other party rea-
13 sonable access to all properties and information reasonably related to the CSED; (iii) promptly continue
14 and complete all necessary due diligence investigations on the CSED and the parties; (iv) promptly engage
15 all necessary financial, legal, and other advisors; (v) participate in all meetings reasonably requested by a
16 party with all reasonably requested personnel (e.g., management, finance, operations, facilities, and legal,
17 as applicable); and (vi) prioritize and dedicate sufficient time, funding, and management resources for the
18 performance and completion of this LOI.
19

20 4. Conditions. The parties acknowledge and agree that consummation of the CSED is conditioned on
21 the following:
22

- 23 a. Each party, in its sole determination, concluding that the CSED makes operational and
24 economic sense;
25 b. Each party completing satisfactory due diligence review of the CSED and the other parties;
26 c. Each party agreeing to a transaction and consideration structure;
27 d. Each party obtaining and/or making all necessary approvals, consents, and filings from and
28 with all necessary boards, officers, third parties, and governmental agencies;
29 e. Each party satisfying all applicable legal and regulatory requirements;
30 f. The absence of any material adverse change in the business, operations, financial condi-
31 tion, or properties of the parties, or any event that may result in such material adverse
32 change; and
33 g. The negotiation and execution of definitive documentation for the CSED and correspond-
34 ing EaaS arrangements.

1 5. Definitive Documentation. The complete and final terms for the CSED and corresponding EaaS
2 arrangements will be set out in definitive documentation, which will be executed by the parties. The defin-
3 itive documentation will contain customary terms, conditions, responsibilities, representations, and warran-
4 ties for transactions of this nature. Bernhard will provide the Foundation and the City with initial drafts of
5 the definitive documentation for the CSED and corresponding EaaS arrangements. The parties will use their
6 best efforts to consummate the definitive documentation within 120 days after the date of this LOI as first
7 set out above (“Effective Date”).

8
9 6. Term; Termination. The term of this LOI will start on the Effective Date and end on December 31,
10 2024. At the end of the term, the parties may continue the relationship as mutually agreed in writing. Not-
11 withstanding anything to the contrary in this LOI, each party has the right to terminate the LOI upon no
12 less than [30] days written notice to each other party.

13
14 7. Statement of Intention Only. This LOI constitutes a non-binding statement of the parties’ respective
15 intentions with respect to the CSED. No party will be obligated by this LOI to enter consummate the CSED
16 or into an EaaS arrangement or other transaction. A binding commitment with respect to the CSED will
17 result only from the parties’ subsequent execution of definitive documentation. Notwithstanding the fore-
18 going, the parties acknowledge and agree that the sections “Statement of Intention Only,” “Expenses,”
19 “Confidentiality/Proprietary Rights,” “Publicity,” “Relationship of the Parties,” “Governing Law,” and
20 “Dispute Resolution” in this LOI are binding and enforceable legal and contractual obligations of the parties
21 that will survive termination and expiration of this LOI.

22
23 8. Expenses. Unless otherwise expressly provided in this LOI or in subsequent definitive documenta-
24 tion, each party will bear its own costs and expenses in connection with this LOI and the CSED, including
25 the negotiation and consummation of any definitive documentation. Notwithstanding the foregoing, if the
26 parties consummate an EaaS arrangement via definitive documentation, Bernhard may include its costs
27 incurred in developing the EaaS proposals and final EaaS arrangements as part of the project costs.

28
29 9. Confidentiality; Proprietary Rights. Each party has obtained and will obtain Confidential Infor-
30 mation (as defined below) from or on behalf of each other party. Except as required by applicable law or
31 an order of a court or governmental authority, each party will keep all Confidential Information strictly
32 confidential and, with respect to each other party’s Confidential Information, will not directly or indirectly
33 (i) use it for any purpose other than performing this LOI; (ii) publish, disclose, or otherwise make it avail-
34 able to any third party; (iii) use it in competition with or to the detriment of the other party, or for the benefit
35 of any third party; or (iv) otherwise misappropriate it in any manner, except as permitted by the other party

1 in writing. For this LOI, “Confidential Information” means all non-public information that would be un-
2 derstood by a reasonable person to be confidential or proprietary in a commercial context, including but not
3 limited to all non-public information (whether written or verbal) exchanged by the parties about or related
4 to their respective operations and organizations. Confidential Information expressly excludes any infor-
5 mation that: (i) is or becomes generally available to the public on a non-confidential basis, including from
6 a third party, provided that such third party is not in breach of an obligation of confidentiality with respect
7 to such information; (ii) a party had in its possession prior to the receipt of such information from the other
8 party; or (iii) a party authorizes in writing may be disclosed. Except as expressly permitted in this LOI, each
9 party retains all rights in and to its respective Confidential Information. For clarity, the EaaS arrangements
10 and their specific terms, and all know-how used by Bernhard to create the EaaS proposals and develop the
11 potential EaaS arrangements, are Confidential Information of and proprietary to Bernhard. After the end of
12 the term of this LOI, each party has a continuing obligation to maintain the confidentiality of the Confiden-
13 tial Information of the other parties and to avoid its unauthorized use or disclosure.

14

15 Notwithstanding any language set out above, as it relates to the City, whether to release information ob-
16 tained by the City pursuant to this LOI shall be governed by the Arkansas Freedom of Information Act. In
17 the event the City is asked to disclose confidential information pursuant to a request duly made under the
18 Arkansas Freedom of Information Act, as determined by the City, the City will use its best efforts to notify
19 Bernhard and/or the Foundation, as applicable, immediately of the pending request, providing cooperation
20 with Bernhard and/or the Foundation, as applicable, in seeking an appropriate protective order to limit the
21 disclosure of information subject to redaction. The final decision as to what information is subject to release
22 shall be made by the City Attorney for the City.

23

24 10. Other Proposals. During the term of this LOI and for 24 months after expiration or termination of
25 this LOI, in consideration of the time and resources that the parties have previously devoted and will con-
26 tinue to devote to the CSED, and the various diligence review activities undertaken by the parties and their
27 respective affiliates, the parties will not, directly or indirectly through any director, employee, affiliate,
28 representative, agent, or otherwise: (i) solicit, initiate, encourage, or assist in the submission of any inquir-
29 ies, proposals, or offers from any person or other entity or group relating to any project similar to the CSED
30 (an “Alternative Proposal”); (ii) participate in any discussions or negotiations regarding an Alternative Pro-
31 posal or provide any person or entity any information concerning the CSED; or (iii) otherwise assist or
32 participate in, facilitate or encourage, any effort to make or enter into an Alternative Proposal. If any party
33 receives any inquiry, proposal, or offer for an Alternative Proposal, the party agrees to inform each other
34 party promptly of the terms thereof and the identity of the party making the inquiry, proposal, or offer. If a

1 party has already received any such inquiries, proposals or offers, the party agrees that after the execution
2 of this LOI, it will not pursue those inquiries, proposals or offers. Nothing in the foregoing will prohibit
3 the parties from developing separate transactions with Bernhard, nor will anything in this LOI obligate the
4 parties to develop or consummate said transactions simultaneously or contemporaneously.

5
6 11. Publicity. The parties agree to consult with each other prior to, and otherwise cooperate in the prep-
7 aration and issuance of, any statements or communication to the public or press regarding or relating to the
8 CSED. No party will issue any statement or publication without each other party's prior written consent,
9 unless required under applicable law or regulation. Each party will give adequate prior notice to each other
10 party of any such required statement or communication in order to provide time for consultation and coop-
11 eration. Notwithstanding the foregoing, the parties acknowledge and agree that the first public announce-
12 ment of the CSED is anticipated to be made in connection with a CPC event currently scheduled for No-
13 vember 2024, and the parties agree to consult with each other prior to, and otherwise cooperate in the
14 preparation and issuance of, the statements and communications to the public and press for such event.

15
16 12. Relationship of the Parties. The parties are independent contractors and will not be considered un-
17 der this LOI or otherwise as having employee, joint venture, or partner status, and no party nor its agents
18 and employees will be eligible to receive or participate in any benefit plans offered by either other party.

19
20 13. Governing Law. This LOI will be governed by and construed according to the laws of the State of
21 Arkansas without regard to the conflicts of law principles.

22
23 14. Dispute Resolution. All disputes, controversies, or claims ("Disputes") arising out of or relating to
24 this LOI will in the first instance be the subject of a meeting between a representative of each party who
25 has decision making authority with respect to the matter in question. Should the meeting either not take
26 place or not result in a resolution of the Dispute within 20 business days after notice of the Dispute is given
27 to the parties, then (i) with respect to Disputes of fact, the parties will resolve such Dispute by arbitration
28 administered by the American Arbitration Association under its Commercial Arbitration Rules; or (ii) with
29 respect to non-fact Disputes, the parties will resolve such dispute, first, by mediation under terms and con-
30 ditions mutually agreeable to the applicable parties, and, second, if mediation does not take place or is not
31 successful, by applicable legal proceedings. The venue for all dispute resolution matters will be in Little
32 Rock, Pulaski County, Arkansas.

33
34 15. Entire Agreement. This LOI represents the entire agreement between the parties with respect to the
35 subject matter of the LOI and supersedes all prior agreements and understandings, oral or written, between

1 the parties with respect to the subject matter. This LOI may be amended and modified only by the written
2 agreement of each party.

3
4 16. Counterparts. The parties may execute this LOI in counterparts, each of which is an original, in-
5 cluding electronic or PDF copies, all of which together will constitute one and the same agreement.

6
7 *[Signatures are on the following page]*

8
9

1 **ACCEPTED AND AGREED** as of the Effective Date:

2

3

4 **BILL, HILLARY, AND CHELSEA**
5 **CLINTON FOUNDATION**

BERNHARD ENERGY, LLC

6

7 Signature: _____

Signature: _____

8 Name: _____

Name: _____

9 Title: _____

Title: _____

10

11 **CITY OF LITTLE ROCK, ARKANSAS**

12

13

14 Signature: _____

15 Name: _____

16 Title: _____

17

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19

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[Signature page to Letter of Intent for CSED]