ORDINANCE NO. ___________

AN ORDINANCE TO DECLARE IT IMPRACTICAL AND UNFEASIBLE TO BID; TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ENFRA SOLUTIONS, LLC AND ITS AFFILIATES, IN AN AMOUNT NOT TO EXCEED FORTY MILLION DOLLARS ($40,000,000.00), NET OF ENFRA'S DISCOUNT ASSOCIATED WITH UTILIZING THE MOST FAVORABLE TAX STRUCTURE, TO PERFORM THE ASSOCIATED DESIGN, HANDLE ENGINEERING, PROCUREMENT, INSTALLATION, INTERCONNECTION, AND CITY ENERGY ASSETS IMPROVEMENTS COMMISSIONING TO ALLOW THE CITY TO PARTICIPATE IN THE CLINTON SUSTAINABLE ENERGY DISTRICT WITH THE BILL, HILARY, & CHELSEA CLINTON FOUNDATION, INC.; AND FOR OTHER PURPOSES.

WHEREAS, on October 15, 2024, the Board of Directors of the City of Little Rock, Arkansas, ("Board of Directors") adopted Resolution No. 16,478, authorizing City of Little Rock Mayor Frank Scott, Jr. ("Mayor Scott"), on behalf of the City of Little Rock, Arkansas ("Little Rock" or "City"), to execute a Letter of Intent with Bernhard Energy, LLC (which became ENFRA Solutions, LLC ("ENFRA") in May 2025) and the Bill, Hillary, & Chelsea Clinton Foundation, Inc. ("Foundation") to work towards the final planning and structuring of a sustainable energy district ("Clinton Sustainable Energy District"), and to further negotiations and prepare documentation to consummate and complete such a district; and

WHEREAS, the Foundation and ENFRA entered an energy-as-a-service ("EaaS") agreement ("Foundation EaaS Agreement"), with an effective date of June 30, 2025, which created the Clinton Sustainable Energy District; and

WHEREAS, since October 2024, ENFRA, Little Rock and the Foundation (collectively, the "Parties") have contemplated and executed due diligence regarding Little Rock's membership in the Clinton Sustainable Energy District; and

WHEREAS, on August 19, 2025, the Board of Directors passed City of Little Rock, Arkansas Resolution No. 16,791 authorizing the hiring of Stephens, Inc. ("Stephens") for financial advisory and analytical services assistance regarding the Clinton Sustainable Energy District with ENFRA ("Stephens Services"); and

WHEREAS, in the contemplated EaaS partnership, ENFRA (via a special purpose entity ("SPE") wholly owned by ENFRA and/or its affiliates) would acquire a long-term concession of certain energy assets owned by the City of Little Rock, Arkansas ("Little Rock Energy Assets") at various locations relevant to the Clinton Sustainable Energy District; and

WHEREAS, in the contemplated EaaS partnership, Little Rock would receive an advance payment from the SPE in exchange for the concession of the Little Rock Energy Assets; and

WHEREAS, ENFRA and Little Rock have performed substantial due diligence and engineering analysis on the Little Rock Energy Assets to evaluate Little Rock's participation in the Clinton Sustainable Energy District and develop a plan that includes installing district chilled water piping to interconnect certain City-owned buildings ("Little Rock EaaS Improvements"); and

WHEREAS, ENFRA's operations affiliate, ENFRA MCC, LLC ("EMCC") (via the SPE), would utilize the Little Rock Energy Assets and the Little Rock EaaS Improvements to provide thermal services to Little Rock and potential third-party subscribers to the energy district; and

WHEREAS, during the term of the EaaS agreement, Little Rock would pay to ENFRA (via the SPE) thermal services charges ("TS Charges") in exchange for certain services (as set forth below); provided, Little Rock expects to use a portion of the advance payment to fund the Little Rock EaaS Improvements which are necessary to start and maintain Little Rock's membership in the Clinton Sustainable Energy District; and

WHEREAS, ENFRA and EMCC, along with either of their applicable affiliates ("ENFRA Parties"), and other parties needed for the EaaS Project (as defined below), including those necessary to provide the financing and debt servicing for the EaaS Project, will enter into a series of agreements with Little Rock relating to the financing, debt servicing, construction, purchase, operation and maintenance of the Little Rock EaaS Improvements as part of the EaaS Project Work and Utility Cost Savings Services (as defined below) (collectively the "Little Rock EaaS Agreement"); and

WHEREAS, the ENFRA Parties will operate and maintain the Clinton Sustainable Energy District during the terms of both the Little Rock EaaS Agreement and the Foundation EaaS Agreement ("Clinton Sustainable Energy District EaaS Agreements"), subject to the terms and conditions of each; and

WHEREAS, ENFRA, subject to the terms and conditions of Clinton Sustainable Energy District EaaS Agreements, will install necessary chilled water piping to interconnect third-party subscribers to the sponsors of the Clinton Sustainable Energy District, including the Foundation and Little Rock; provided, as sponsors of the Clinton Sustainable Energy District, the Foundation and Little Rock would be eligible to receive credits (in an amount to be negotiated) against their respective TS Charges as set forth in their respective EaaS agreements; and

WHEREAS, the EaaS partnership requires certain work to design and engineer, procure materials and equipment, and then install, interconnect, and commission the improvements to certain energy assets as part of the EaaS Project ("EaaS Project Work"); and

WHEREAS, as part of the EaaS partnership, a separate arm's length design-build agreement ("DBA") is necessary as part of the Little Rock EaaS Agreement, setting forth the terms for the EaaS Project Work, delivered by the design-builder to Little Rock; and

WHEREAS, as part of the EaaS partnership, EMCC traditionally performs the EaaS Project Work contained in the DBA as well as the ongoing operations and maintenance ("O&M") and measurement and verification ("M&V") services ("Utility Cost Savings Services"); and

WHEREAS, a vital component of the EaaS partnership is that, as part of the Utility Cost Savings Services, EMCC guarantees utility cost savings for the EaaS Project Work on an aggregated basis and ENFRA's parent entity ultimately backstops that guarantee and any liquidated damages or step-in damages if owed by ENFRA or EMCC; and

WHEREAS, the Little Rock EaaS Improvements must be physically and technically compatible with the Clinton Sustainable Energy District's energy infrastructure, which has been designed and engineered by ENFRA and EMCC and will be operated by EMCC; therefore, EMCC is uniquely positioned to perform the EaaS Project Work given its complete knowledge of the Clinton Sustainable Energy District's proprietary design specifications, engineering parameters, interconnection standards, and operational controls; and

WHEREAS, the EaaS partnership provides a fully integrated solution in which the financing component, provision of thermal services, EaaS Project Work, Utility Cost Savings Services, and guaranteed savings structure are interconnected elements, which, if separately procured from different providers, would fundamentally alter the partnership and reduce or eliminate its economic and operational benefits for Little Rock (collectively the "EaaS Project").

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF LITTLE ROCK, ARKANSAS:

Section 1. ***Background.*** Consistent with the authority set forth in Ark. Code Ann. §§ 14-58-104(21), 14-58-105(a)(1) (providing that "commodities" include capital improvements for purposes of § 14-58-104), and 14-58-303(b)(2)(B), as well as Article VI – Financial Affairs – Division 4 – Purchases - Section No. 2-242 – Bids – of the City of Little Rock, Arkansas Municipal Code, the following supports a determination that ENFRA and EMCC are the sole entities capable of performing the EaaS Project Work and Utility Cost Savings Services and competitive bidding is not feasible or practical given the unique circumstances described herein:

(a) <u>ENFRA Is the Established Operator of the Existing Clinton Sustainable Energy District Infrastructure</u> – no other EaaS provider could connect Little Rock into the Clinton Sustainable Energy

District because no other provider has the exclusive right to operate the Clinton Sustainable Energy District;

(b) Physical and Technical Compatibility Requires ENFRA – for Little Rock's buildings to receive the thermal services available through the Clinton Sustainable Energy District, the City's energy assets and improvements must be physically and technically compatible with the Clinton Sustainable Energy District's existing infrastructure, a task that ENFRA, through EMCC, is solely positioned to perform given its singular knowledge of its own infrastructure, engineering requirements, and operational standards;

(c) The Guaranteed Savings Structure Is Available Only Through ENFRA – a vital and defining component of an EaaS partnership is the operator's guarantee of utility cost savings, this guarantee structure (which provides Little Rock with certainty regarding the conveyance of financial value and protects the City from under-performance risk) is available only if ENFRA and EMCC are the counterparties in the EaaS partnership;

(d) Economies of Scale Would Be Lost with Any Other Provider – as ENFRA has already performed substantial due diligence, engineering analysis, and preliminary design work through the formation of its EaaS partnership with the Foundation and in evaluating Little Rock's participation in the Clinton Sustainable Energy District, the economies of scale that make the EaaS transaction financially favorable for Little Rock depend entirely on ENFRA performing the work;

(e) No Other Provider Can Deliver the Integrated EaaS Solution – ENFRA provides a fully integrated solution: the financing component, the thermal services, the operation and maintenance services, the EaaS Project Work, and the guaranteed utility cost savings are all interconnected elements of a single structure that cannot be unbundled and separately procured from different vendors without fundamentally altering the structure in ways that would reduce or eliminate its economic and operational benefits for Little Rock;

(f) Competitive Bidding Cannot Replicate the Existing Transaction Structure – A competitive bidding process would require the City to solicit bids from other vendors for an EaaS solution that, by definition, could not replicate the Clinton Sustainable Energy District, the existing infrastructure, or the integrated guarantee structure in a manner that would make financial or technical sense for the City, as it would not produce a comparable or superior result; it would produce a fundamentally different and inferior product; and,

(g) Timing and Operational Continuity – As Little Rock's participation in the Clinton Sustainable Energy District requires timely and efficient progress to avoid disruption to the Clinton Sustainable Energy District's operational continuity and to allow the City to begin receiving the financial and sustainability benefits, a competitive procurement process would introduce constraints that may delay the operational timeline of the Clinton Sustainable Energy District and would impose costs and risks on a partnership with a structure and counterparty that are, as described above, effectively established by the pre-existing Clinton Sustainable Energy District structure.

Section 2. ***Findings***. Pursuant to the authority set forth in Ark. Code Ann. §§ 14-58-104(21), 14-58-105(a)(1) (providing that "commodities" include capital improvements for purposes of § 14-58-104), and 14-58-303(b)(2)(B), as well as Article VI – Financial Affairs – Division 4 – Purchases - Section No. 2-242 – Bids – of the City of Little Rock, Arkansas Municipal Code, the Board of Directors finds that:

(a) ENFRA is the sole source from which Little Rock can receive the EaaS services necessary to enable the City's participation in the Clinton Sustainable Energy District, as ENFRA is the established operator of the Clinton Sustainable Energy District and the only entity capable of entering into the integrated EaaS partnership, guaranteed savings structure, and operational continuity required by the City;

(b) EMCC is the sole entity capable of performing the EaaS Project Work under the DBA and providing the Utility Cost Savings Services as part of that partnership, given EMCC's proprietary knowledge of the Clinton Sustainable Energy District's design specifications, engineering parameters, and operational controls; and

(c) this is an exceptional situation in which competitive bidding for the EaaS services, the EaaS Project Work, and the Utility Cost Savings Services is not feasible or practical given the pre-existing structure of the Clinton Sustainable Energy District, the unique technical and financial requirements of the transaction, and the operational circumstances described above.

Section 3. ***Authorization — EaaS Services Agreement with ENFRA Solutions, LLC.*** The Board of Directors hereby authorizes the City Manager to dispense with competitive bidding pursuant to Ark. Code Ann. §§ 14-58-104(21), 14-58-105(a)(1), and 14-58-303(b)(2)(B), as well as Article VI – Financial Affairs – Division 4 – Purchases - Section No. 2-242 – Bids – of the City of Little Rock, Arkansas Municipal Code, and to enter a sole source contract with ENFRA Solutions, LLC and any necessary affiliates for ENFRA's EaaS services. This would enable Little Rock to receive the benefits of ENFRA's development, operation, and maintenance of the Clinton Sustainable Energy District. As due diligence associated with the Little Rock Energy Assets and infrastructure is currently occurring, upon the completion of the due diligence, the Board of Directors further authorizes the City Manager to take all necessary steps associated with negotiating the applicable terms of the Little Rock EaaS Agreement consistent with this ordinance, including the terms set forth in Section Five (5) below.

Section 4. ***Authorization — EaaS Project Work and Utility Cost Savings Services with ENFRA MCC, LLC.*** The Board of Directors hereby authorizes the City Manager to dispense with competitive bidding pursuant to Ark. Code Ann. §§ 14-58-104(21), 14-58-105(a)(1), and 14-58-303(b)(2)(B), as well as Article VI – Financial Affairs – Division 4 – Purchases - Section No. 2-242 – Bids – of the City of Little Rock, Arkansas Municipal Code, and to enter the Little Rock EaaS Agreement with EMCC for the EaaS Project Work and Utility Cost Savings Services for the Little Rock EaaS Improvements and the provision of thermal services throughout the term of the Little Rock EaaS Agreement, to be set forth in the DBA and other necessary documents, as part of the overall EaaS solution. As due diligence associated with the Little Rock Energy Assets and infrastructure is currently occurring, upon the completion of the due diligence, the Board of Directors further authorizes the City Manager to take all necessary steps associated with negotiating the applicable terms of the Little Rock EaaS Agreement, consistent with this ordinance, including the terms set forth in Section Five (5) below.

Section 5. *Little Rock EaaS Agreement Terms*. Under Sections Three (3) and Four (4) above, the City Manager is authorized to enter into any applicable contracts, leases or agreements related to the EaaS Project Work and Utility Cost Savings Services, as part of the Little Rock EaaS Agreement, including those needed for financing, legal services, debt servicing, construction, purchase, operation and maintenance. Subject to the verification and recommendations from Stephens as part of the Stephens Services, the City of Little Rock City Manager shall ensure that the Little Rock EaaS Agreement includes or provides for (a) a term not to exceed thirty (30) years; and (b) financial terms and outcomes consistent with the following: (i) a total cost of the EaaS Project Work in an amount not to exceed forty million dollars ($40,000,000.00), net of ENFRA's discount associated with utilizing the most favorable tax structure ("EaaS Project Work Amount"); (ii) an advance payment from the SPE in exchange for the concession of the Little Rock Energy Assets net of the EaaS Project Work Amount, as determined upon completion of the due diligence and set forth in the final Little Rock EaaS Agreement ("Net Advance Payment"); (iii) the cost of the EaaS partnership over the term recovered through the TS Charges will include the EaaS Project Work Amount, the Net Advance Payment, and applicable EaaS industry-standard costs and fees associated with the EaaS Project, including but not limited to financing costs and transaction fees; and (iv) an effective cost of capital, net of projected operating cost savings, that shall not exceed five and one-half percent (5.5%).

Section 6. *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the ordinance.

Section 7. *Repealer.* All ordinances, resolutions, bylaws, and other matters, or parts of thereof, which are in conflict with any provision of this ordinance are hereby repealed to the extent of such conflict.

PASSED: July 21, 2026

ATTEST:

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Allison Segars, City Clerk

APPROVED:

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Frank Scott, Jr., Mayor

APPROVED AS TO LEGAL FORM:

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Thomas M. Carpenter, City Attorney

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