

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**Agreement**”) is made by and between the Clinton Climate Initiative (“**CCI**”), a program of the William J. Clinton Foundation (the “**Foundation**”), located at 383 Dorchester Ave., Suite 400, Boston, MA 02127 USA, and the City of Oberlin (“**City**”). CCI and City are collectively referenced herein at times as the “**Parties.**”

BACKGROUND

CCI strives to make a measurable difference in the fight against climate change in practical, measureable, and significant ways. CCI serves as the exclusive implementing partner of the C40 Large Cities Climate Leadership Group (C40), an association of large cities around the world that have pledged to accelerate their efforts to reduce greenhouse gas emissions (“**GHG Emissions**”). In this capacity, CCI works with members of the C40, as well as other public and private partners, to develop and implement large scale projects to improve energy efficiency and directly reduce greenhouse gas emissions in buildings, waste management, transportation, outdoor lighting, ports, and other areas.

CCI has partnered with the U.S. Green Building Council (“**USGBC**”) to realize the goals of expanding sustainable business practices. USGBC is the developer of the LEED® Green Building Rating System™ and is committed to expanding sustainable business practices. USGBC is composed of more than 15,000 organizations from across the building industry, which are working to advance structures that are environmentally responsible, profitable, and healthy places to live and work.

Pursuant to an agreement between CCI and USGBC, CCI has agreed to engage local partners to, among other things, achieve the goal of creating a global program seeking to significantly reduce the impact of new developments on global climate change. The intent of this Climate Positive Development Program (the “**Program**”) is to catalyze model projects that demonstrate how communities around the world can reduce their net greenhouse gas emissions below zero (“**Emissions Goals**”) and contribute towards the restoration of natural systems (“**Ecological Goals**”). Though several environment standards for the built environment currently exist, the Program’s effort is unique in the holistic approach to project scope it is taking, and the aggressiveness of the Emissions Goals and Ecological Goals (collectively, “**Climate Positive Goals**”) it is pursuing. The Program will include the development of a standard metric and measurement protocol for quantifying GHG Emissions at the community scale (“**GHG Emissions Protocol**”). The Program will also develop and define additional protocols and best practices (collectively, including GHG Emissions Protocol, “**Climate Positive Metrics**”).

In its initial stage, the Program will integrate and deploy CCI’s full range of programs into a focused partnership with a select number of noteworthy projects (“**First Stage Developments**”). In Year 1 the Program expects commitments for 15-18 projects globally, each selected by CCI for the partner’s commitment to leading-edge innovation at scale and working on an accelerated timeframe. CCI desires to engage the undersigned City to be a part of the

Program with the understanding that the City will make best efforts to implement the GHG Emissions Protocols and Climate Positive Metrics.

City commits to collaborate with local, national and international partners to be a model Climate Positive Development and to participate in the development of Climate Positive Metrics (“**Standard Metrics Development Process**”) and GHG Emissions Protocols in cooperation with CCI, USGBC, and other First Stage Developments. In particular, the City of Oberlin commits to use its best efforts to collaborate with Oberlin College and others to pursue shared and mutual interests of climate neutrality and to accomplish the goals outlined in this agreement.

1. **Goal Commitment.** The parties agree to make use of their respective resources and to work with urgency to achieve the goal (“**Goal Commitment**”) of reducing the City of Oberlin's GHG Emissions below zero through the implementation of economically viable innovations in a combination of strategies that may include the specific strategies listed below. GHG Emissions Protocols will be mutually agreed upon and revised as necessary on an ongoing basis by CCI, participating First Stage Developments, and the City (the City of Oberlin) through a global Standard Metrics Development Process as a part of the Program.

Specific strategies which may be pursued to meet the GHG Emissions Protocol and other Climate Positive Metrics may include but are not be limited to:

- High performance green buildings.
- High efficiency power and water distribution systems.
- Utilization of clean energy produced either onsite or offsite for 100+% of total energy requirements of the development. Examples of clean energy production would include solar, wind, waste to energy, and biomass.
- Implementation of combined heat and power or heat and cooling.
- Geothermal or ground source heat systems
- Integrated waste management, including recycling and recapture of organic waste/
- Greywater systems.
- Onsite stormwater management.
- Energy efficient street lighting, such as LEDs.
- Transit-oriented development.

2. **City's Commitments.** City agrees to undertake the following:

- a. ***Co-Development of a Collaborative Workplan*** – City will engage in a collaborative process with CCI that will result in a mutually agreed-upon written workplan (“**Workplan**”) specifically outlining the measures CCI and City will take in support of achieving the Climate Positive Goals. This Workplan will include the identification of the projects for which the City shall make their best efforts to implement the GHG Emissions Protocols and Climate Positive Metrics. Upon its completion, the Workplan will be incorporated into this Agreement by being attached as an Exhibit.

3. **CCI Commitments.** CCI will support the Goal Commitment by:
- a. ***Co-Development of a Collaborative Workplan and Letter of Commitment and Commitment*** - CCI will engage in a collaborative process with City that will result in a Commitment Workplan as set forth in Section 2.
 - b. ***Co-Development of a Preliminary Workplan*** - CCI will engage in a collaborative process with City that will result in a Preliminary Workplan as set forth in Section 2.
 - c. ***Convening and Catalyzing Public Sector Support*** - Convening and catalyzing political will among governmental and nongovernmental organizations relevant to the City's achievement of Climate Positive Goals. Specific support may include removing barriers to strategies that help achieve Climate Positive Goals, providing technical support to policy makers, and forging active local partnerships.
 - d. ***Standards Development*** - Coordinating and developing the Climate Positive Metrics for the Program.
 - e. ***Formation of Advisory Council*** - The Program will coordinate and manage the formation and functions of an Advisory Council of international experts versed in different elements of real estate development whose functions may include providing guidance, best practices, and high level technical assistance to First Stage Developments as well as program wide assistance in standards development.
 - f. ***Project Management*** - Working closely with City in support of their commitments as set out in Section 2 of this Agreement.
 - g. ***Internal Technical Assistance*** - Providing technical assistance to the City through internal CCI experts as appropriate.
 - h. ***External third party technical assistance*** - Aiding in sourcing and managing technical assistance to the City from external resources.
 - i. ***Best practice dissemination*** - Identifying, creating, and facilitating dissemination of best practices and case studies across first stage developments.
 - j. ***Announcement and Media Outreach*** - Announcing and publicizing the collaboration and support of City as a part of the global launch of the Climate Positive Development Program at the C40 Summit in May 2011. Leverage current and future Foundation media resources and spokespeople, as appropriate, to raise awareness about the work undertaken in connection with

the Program and this Agreement and the positive role of large scale urban developments in combating climate change.

k. **Data Collection Coordination** – Coordinate evaluation and data collection efforts among the City and other participants in the Program in order to report aggregate Climate Positive Development Program results.

4. **Term/Termination.** The term of this Agreement shall commence upon the date hereof and shall continue for an initial term of two (2) years and may be renewed for additional terms upon the joint written agreement of the parties, provided, however, that: (i) termination shall not discharge any obligations of either party under Sections 8-10 of this Agreement; (ii) either party may terminate this Agreement if the other party fails to perform its obligations hereunder and such failure to perform is not cured within thirty (30) days following written notice from the complaining party of such failure to perform; and (iii) the Foundation may terminate this Agreement upon not less than ninety (90) calendar days prior written notice to City should the Foundation discontinue its work or make other significant programming changes requiring the termination of this Agreement.
5. **Press/Marketing.** Any public announcements through press releases, media advisories or other similar means regarding this Agreement or the work of the parties hereunder, including but not limited to the use of the name or logo of the City of Oberlin, shall require the prior written approval of the each party hereto regarding the issue of its own name or logo prior to such announcements.
6. **Notices.** All notices and requests in connection with this Agreement shall be given to the parties via certified mail, return receipt requested, by recognized overnight delivery service, by facsimilie, or by hand, at the addresses listed on the first page of this Agreement, or at such other addresses (including e-mail) as set forth below. All notices and requests shall be deemed given the earlier of seven (7) days after duly deposited in the mails properly addressed with postage prepaid, or when actually received.

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City Manager

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7. **Other Efforts.** The parties to this Agreement may from time to time choose to engage in additional efforts to enhance or support the work contemplated by this Agreement. Such additional efforts shall be separately agreed upon, in writing, by the parties and will be made a part of this Agreement by being attached as an addendum and/or amendment to this Agreement.

8. **Intellectual Property.** The Parties acknowledge the William J. Clinton Foundation's ownership of its name and logos, including images of President Clinton, in any format (the "**Foundation Marks**"). This Agreement shall not be construed to grant City any license to use the Foundation Marks except in reference to the parties' work as set forth in this Agreement, and in such form and manner as may be approved with the prior written consent of the Foundation. Any and all requests for use of the Foundation Marks, expressly including images or quotes of President Clinton, shall be submitted to the Foundation and will require the written approval prior to any such use.

9. **Confidentiality.**
 - a. During the course of this Agreement, the parties may make available to each other certain Confidential Information (as hereinafter defined) or one party may otherwise learn of Confidential Information belonging to the other party. For purposes of this Section 10, "**Confidential Information**" means any and all confidential or proprietary information regarding a party or its business, including, without limitation, all products, patents, trademarks, copyrights, trade secrets, processes, techniques, scientific information, computer programs, databases, software, services, research, development, inventions, financial, purchasing, accounting, marketing, fundraising and other information, whenever conceived, originated, discovered or developed, concerning any aspect of its business, whether or not in written or tangible form; provided, however, that the term "Confidential Information" shall not include information (i) which is or becomes generally available to the public on a non-confidential basis, including from a third party provided that such third party is not in breach of an obligation of confidentiality with respect to such information, (ii) which was independently developed by a party not otherwise in violation or breach of this Agreement or any other obligation of one party to the other, or (iii) which was rightfully known to a party prior to entering into this Agreement.

 - b. Except as otherwise provided herein: (i) the parties shall hold in strictest confidence any of the other party's Confidential Information; (ii) the parties shall restrict access to the Confidential Information to those of their personnel with a need to know and engaged in a permitted use of the Confidential Information; (iii) the parties shall not distribute, disclose or convey Confidential Information to any third party; (iv) the parties shall not copy or reproduce any Confidential Information except as reasonably necessary to perform any obligations hereunder; and (v) the parties shall not make use of

any Confidential Information for its own benefit or for the benefit of any third party. The foregoing notwithstanding, the parties shall not be in violation of this subsection in the event that a party is legally compelled by state or federal law to disclose any of the Confidential Information, provided that in any such event the disclosing party will use its best efforts to provide the other party with reasonably prompt written notice prior to any such disclosure so that the non-disclosing party has the opportunity to obtain a protective order or other confidential treatment for the Confidential Information, and in the event that a protective order or other remedy is not obtained by the non-disclosing party, the disclosing party will furnish only that portion of the Confidential Information which, to the best of its knowledge, is legally required to be furnished.

c. The parties agree that the Foundation may, in accordance with applicable state and federal law, publish and disclose the City's otherwise Confidential Information in the form of aggregated data disclosed to Foundation, Foundation agrees to ensure that aggregated data do not inadvertently disclose the City's individually-identifiable data.

10. **Indemnification.** Each party agrees to defend, indemnify and hold harmless the other from and against and to reimburse it for any and all claims, obligations and damages, any and all taxes and any and all liabilities directly or indirectly arising out of or in connection with any breach of this Agreement or resulting or arising out of the activities of a party in connection with the work undertaken by it hereunder. For purposes of this indemnification, "claims" shall include all obligations, actual damages and costs reasonably incurred in defending any claim against the other party, including, without limitation, attorneys' and expert witness fees, court costs, other litigation expenses and travel expenses. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.
11. **Severability.** If, for any reason, any part of this Agreement is held to be invalid, that ruling shall not impair the operation of such other parts of this Agreement as may remain otherwise intelligible.
12. **Waiver.** Any waiver granted by a party hereto shall be without prejudice to any other rights such party may have, will be subject to such party's continuing review and may be revoked, in such party's sole discretion, at any time and for any reason. No party shall be deemed to have waived any right, power or option reserved by this Agreement by virtue of any custom or practice of the parties at variance with the terms hereof; any failure, refusal or neglect of the parties to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder.

13. **Choice of Law and Venue.** This Agreement shall be governed by the substantive laws of the State of Ohio, which shall prevail in the event of any conflict of law. The parties agree that either may institute any action against the other in any state or federal court of competent subject-matter jurisdiction located in the State of Ohio, and the parties hereby irrevocably submit to the jurisdiction of such court and waive any objection that it may have to either the jurisdiction of or venue in such court.
14. **No Assignment.** This Agreement may not be transferred or assigned to any other party without the express written permission of the other parties hereto.
15. **Counterparts and Facsimiles.** The parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.

Acknowledged and agreed to this 12th day of February, 2010.

City of Oberlin

The William J. Clinton Foundation

By: 

By: 

Name: Eric Norenberg

Name: Chris Johnson

Title: City Manager

Title: Finance Director

Clinton Climate Initiative

Approved as to form:

By: 

Name: Eric R. Severs

Title: Law Director