

City of Fayetteville Item Review Form

2013-0247

Legistar File Number

01/07/13 14 pm

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Peter Nierengarten

Submitted By

Sustainability and Strategic Planning

Department

Action Required:

Approval of a Memorandum of Understanding with the Clinton Foundation for delivering a HEAL (Home Energy Affordability Loan) pilot project for up to 50 City of Fayetteville Employees and approval of a Budget Adjustment.

Does this item have a cost? Yes

\$5,000.00

\$8,592.00

Cost of this request

Category or Project Budget

Program or Project Name

1010.6310.5315.00

\$0.00

Account Number

Funds Used to Date

Program or Project Category

Project Number

\$3,592.00

Remaining Balance

Fund Name

Budgeted Item?

Budget Adjustment Attached?

Yes

V20130812

Previous Ordinance or Resolution # _____

12-13-13 P03:41 RCOVD

Original Contract Number: _____

[Signature]



Comments:

[Signature] 12-19-13

Paul A. Bachman 12-19-2013

[Signature]

[Signature] 12-19-13
[Signature] 12/20/13



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A. 16
Clinton Foundation's Building Retrofit
Home Energy Affordability Loan Program
THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan

Thru: Don Marr, Chief of Staff

CC: Paul Becker, Finance Director

From: Peter Nierengarten, Sustainability & Strategic Planning Director *An*/

Date: December 17, 2013

Subject: HEAL Memorandum of Understanding with the Clinton Foundation and Budget Adjustment

RECOMMENDATION

Approval of a Memorandum of Understanding with the Clinton Foundation for delivering a HEAL (Home Energy Affordability Loan) pilot project for up to 50 City of Fayetteville Employees and approval of a Budget Adjustment.

BACKGROUND

Home Energy Affordability Loan (HEAL), a project of the Clinton Foundation's Clinton Climate Initiative- Arkansas (CCI-AR), is a unique, energy-based employee benefits program designed to improve quality of life at the homeowner level, by reducing GHG emissions and improving energy performance of homes. By enlisting employers to offer the HEAL program to qualifying employees, the program is able to make a large-scale and rapid impact in energy usage, GHG emissions and employment opportunities.

The HEAL process begins by identifying energy efficiency improvement opportunities in qualified employees homes through energy audits. The program accesses low interest financing to complete recommended residential efficiency improvements. The employee then retires the debt through payroll deductions, with a "pay as you save" amortization schedule that ties payments to the savings realized through lower utility bills. This effectively increases the participant's disposable income over the life of the improvements.

In late January the Clinton Foundation is schedule to begin the roll out of HEAL for up to 50 City of Fayetteville employees. The program will consist of two information and sign-up meetings for employees on Jan 29th – 31st, residential energy audits for enrolled employees in February, Personal Energy Plan meetings in late February and access to low interest loans for construction of the recommended improvements.

BUDGET IMPACT

The cost to offer the HEAL program to up to 50 employees is \$5000. A budget adjustment will move funding for the program from Fund Balance to the Sustainability and Strategic Planning Department's Contractual Services Budget.

Budget Year	Division: Department:	Request Date	Adjustment Number
BY 2014	Sustainability & Strategic Planning Chief of Staff	1/7/2014	

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Approval of a Memorandum of Understanding with the Clinton Foundation for delivering a HEAL (Home Energy Affordability Loan) pilot project for up to 50 City of Fayetteville Employees and approval of a Budget Adjustment.

CITY\kspringer 12/18/2013 3:14 PM	Legistar# / Date: 2013-0247 / 1/7/2014 Legistar Title HEAL_CONTRACT Budget & Information Management Use Only Type: A B C D E P
Division Head  CITY\kspringer 12/18/2013 3:14 PM	
General Ledger Date _____	
Posted to General Ledger Initial _____ Date _____	
Checked / Verified Initial _____ Date _____	

TOTAL BUDGET ADJUSTMENT		<u>5,000</u>	<u>5,000</u>	
Account Name	Account Number	Increase / (Decrease)		Project Sub Number
Contract services	1010.6310.5315.00	Expense	Revenue	.
Use of fund balance	1010.0001.4999.99			.
				.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A MEMORANDUM OF UNDERSTANDING WITH AND TO PAY \$5,000.00 TO THE CLINTON FOUNDATION'S BUILDING RETROFIT HOME ENERGY AFFORDABILITY LOAN PROGRAM AND TO APPROVE A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Memorandum of Understanding with the Clinton Foundation's Building Retrofit Home Energy Affordability Loan Program, agrees to pay the Clinton Foundation \$5,000.00 and authorizes Mayor Jordan to sign this attached contract, and approves the attached budget adjustment.

PASSED and APPROVED this 7th day of January 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“**Agreement**”) is made by and between the City of Fayetteville (“**Participating Employer**”), and the Clinton Foundation’s Building Retrofit Home Energy Affordability Loan program (“**HEAL**”) (Participating Employer and HEAL are occasionally referred to herein as “**Parties**”).

BACKGROUND

The Clinton Foundation (the “**Foundation**”) operates the Clinton Climate Initiative (“**CCI**”), which aims to create and advance solutions to the core issues driving climate change. CCI’s HEAL program (“**CCI HEAL**”) is the nation’s first employer-assisted energy efficiency program. It was designed by CCI to retrofit homes and facilities, create jobs, reduce greenhouse gas emissions, and to overcome the barriers of residential energy savings by bringing a simplified energy efficiency delivery model to the individual homeowner through the workplace.

In order to generate demand for single family energy retrofits, CCI HEAL has identified select employers to participate in HEAL and offer the program to their employees through the workplace (“**Participating Employers**”). Together, CCI HEAL and the Participating Employers market HEAL by educating employees on the benefits of home energy efficiency and enroll them in the program (“Employee Participants”). In order to lower the barrier of residential energy efficiency, CCI HEAL also facilitates access to third party financing for Employee Participants where low interest loans for retrofits are repaid through payroll deductions.

For each Employee Participant, CCI HEAL estimates home energy usage during a site visit by recording a structure’s physical attributes using computer energy modeling and simulation software (“**Residential Audit**”). Once a Residential Audit is complete and an Employee Participant decides to move forward in the process, CCI HEAL provides assistance with next steps, which may include: pre-construction improvement definition, rebate estimation, rebate determination and filing, post-construction building performance modeling and post construction quality assurance inspection (collectively, “**Retrofit Services**”).

CCI HEAL and Participating Employer desire to work together to offer the HEAL program to employees of the Participating Employer pursuant to the terms of this Agreement.

1. **Participating Employer Deliverables**. In support of the goals of this Agreement, Participating Employer agrees to:
 - a. **Funding**. Remit \$5,000.00 to CCI HEAL to facilitate Residential Audits for up to 50 Employee Participants and Retrofit Services for up to 50 Employee Participants. The full amount shall be due within thirty days of the execution of this Agreement following receipt of an invoice from CCI HEAL.
 - b. **Staff Point of Contact**. Dedicate Participating Employer Staff and provide access to on-site facilities for the purpose of marketing HEAL to Participating Employer’s workforce in order to maximize participation in Residential Audit and Retrofit Services;

- c. Employee Outreach. Provide consistent and ongoing marketing and messaging to employees to market and ensure maximum participation in the HEAL program;
 - d. Payroll Deduction Service. Enter into an agreement with a third party financial institution to provide payroll deductions for repayments of Employee Participant retrofit loans;
 - e. Timeline Commitment. Commit to a mutually agreed date for the kick-off presentation of the HEAL program and subsequent recruitment of Employee Participant;
 - f. Data Collection. Assist CCI HEAL in the collection of Employee Participant-specific data required under this Agreement including but not limited to twelve (12) months of utility baseline data, utility reduction information, and at least thirteen (13) months of post-retrofit utility bills.
2. **CCI HEAL Deliverables**. In support of the goals of this Agreement, CCI HEAL agrees to:
- a. Program Development. Work with Participating Employer's designated STAFF contact to develop employee participation eligibility criteria and requirements;
 - b. Employee Outreach. Provide marketing and recruitment sessions for Participating Employer personnel at a mutually agreeable time and location;
 - c. Marketing Materials. Provide marketing materials, if requested, for distribution to eligible employees;
 - d. Program Documents. Provide relevant program documentation, agreements and releases to Employee Participants that are necessary to facilitate the Residential Audits and Retrofit Services;
 - e. Residential Audits. Facilitate Residential Audits of Employee Participant homes and provide Employee Participants with a Personal Energy Plan including specific retrofit recommendations and analysis;
 - f. Retrofit Services. Provide Retrofit Services including the introduction of Employee Participants to HEAL participating contractor(s) and other contractor options and conduct post construction building performance modeling and post construction quality assurance inspection;
 - g. Data Collection. Collect post-retrofit utility usage data for analysis and provide to Participating Employer the resulting estimates of energy savings and greenhouse gas emissions reductions for the homes of Employee Participants.
3. **Joint Commitments**. The Parties agree to jointly undertake the following:
- a. Employee Eligibility. Set appropriate employee eligibility criteria for participation in the HEAL program and jointly promote the program to qualifying employees;
 - b. Financing Options. Work to identify and/or establish low-interest financing options with a third party financial institution through which Participating Employer facilitates repayment of Employee Participant loans from payroll deductions;
 - c. Optimize Participation. Market, promote and implement the HEAL program within the Participating Employer workforce in a manner that maximizes participation of eligible employees;
 - d. Data Collection. Regularly share program results and participation data, activities, milestones and impact between CCI HEAL and Participating Employer;

- e. **Program Assessment.** Continually review and assess program operations and evaluate additional opportunities to increase program performance;
 - f. **Closed-Enrollment Date.** Evaluate and advise one another (or mutually agree, as the case may be) to a closed-enrollment date when additional employees will no longer be able to join the program.
4. **Term/Termination.** The term of this Agreement shall commence upon the execution of this Agreement and shall continue through December 31, 2014. Notwithstanding the foregoing, either party may terminate this Agreement upon sixty (60) days prior written notice, provided, however, that during such period the Parties agree to work together in good faith to facilitate a process for collection of post-Retrofit Services data for the period following termination for any Employee Participant homes for which all anticipated data has not already been collected as of the date of termination.
5. **Press/Media.** Any public announcements through press releases, media advisories, media alerts or other similar, press-related means regarding this Agreement or the work of the Parties hereunder shall require the prior written approval of the Parties hereto prior to such announcements.
6. **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.
7. **Intellectual Property.**
- a. The Parties acknowledge the Foundation's ownership of the Clinton Foundation's name and logos, the name and logos of the Foundation's programs and initiatives, specifically including the HEAL name and logos, and, as President Clinton's, Hillary Rodham Clinton's and Chelsea Clinton's (the "**Clintons**") representative, the name, voice, likeness and images of the Clintons in any format (collectively, the "**Foundation Marks**"). This Agreement shall not be construed to grant any license to use the Foundation Marks without the prior written consent of the Foundation. Any and all requests for use of the Foundation Marks, expressly including images or quotes of the Clintons, shall be submitted to the Foundation and will require its written approval prior to any such use.
 - b. The Foundation acknowledges Participating Employer's ownership of its name and logos and the name and logos of its programs and initiatives ("**Participating Employer Marks**"). This Agreement shall not be construed to grant the Foundation any license to use Participating Employer's 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 Participating Employer. Any and all requests for use of the Participating Employer's Marks shall be submitted to the Participating Employer and will require the written approval prior to any such use.
8. **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, "**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 to the contrary notwithstanding, the Parties shall not be in violation of this subsection in the event that a party is legally compelled to disclose any of the Confidential Information, provided that in any such event the disclosing party will provide the other party with reasonably prompt written notice prior to any such disclosure so that the non-disclosing party may 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 is legally required to be furnished.
9. **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.
10. **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.

11. **Choice of Law and Venue.** This Agreement shall be governed by the substantive laws of the State of Arkansas, 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 Washington County, Arkansas, 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.
12. **No Assignment.** This Agreement may not be transferred or assigned to any other party without the express written permission of the other Parties hereto.
13. **Notice.** 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 facsimile, or by hand, at the addresses listed below, 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.

City of Fayetteville
Name: Peter Nierengarten
Title: Sustainability Director
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Fayetteville, AR 72710
Phone: (479) 575-8272
Fax: (479) 575-8202
Email: pnierengarten@fayetteville-ar.gov

Clinton Climate Initiative HEAL Program
Martha Jane Murray, Program Manager
Clinton Foundation
610 President Clinton Avenue, 2nd Floor
Little Rock, AR 72201
(501) 748-0442
(501) 371-9992
mjmurphy@clintonfoundation.org

With copy to:
Kit Williams
City Attorney
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701
Phone: (479) 575-8313
kwilliams@fayetteville-ar.gov

14. **Force Majeure.** Neither party shall be liable to the other party for any delay in or failure of performance if such delay or failure arises from any event beyond the reasonable control of the affected party ("Force Majeure Event"), provided that when a Force Majeure Event occurs, the affected party shall promptly give written notice thereof to the other party.
15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

Acknowledged and agreed to this 3 day of Dec., 2013.

City of Fayetteville

By: _____

Lioneld Jordan

Mayor

Clinton Foundation

By: Andrew Kessel

Andrew Kessel

Chief Financial Officer