



CITY OF EVANSVILLE

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OFFICE OF THE MAYOR
LLOYD WINNECKE

February 28, 2012

Mr. Kenneth Haney
Chairman and CEO
EarthCare Energy, LLC
4830 Wilson Road, Suite 300-132
Humble, Texas 77396

Dear Mr. Haney:

The following outlines the City of Evansville's (the "City") revised commitments to EarthCare Energy, LLC, a Texas limited liability company ("EarthCare"), with respect to the establishment of a facility in Evansville, Indiana, for the purpose of manufacturing and assembling Langson Total Flow Gas Letdown Generators (the "Product"). The establishment and operation of such a facility (the "Project") shall consist of, without limitation, (i) leasing of not less than 60,000 square-foot in a facility located in Evansville, Indiana (the "Manufacturing Facility"), for a period of not less than 24 months, (ii) establishment of EarthCare's manufacturing operations with respect to the Product at the Manufacturing Facility, (iv) execution of initial Power Purchase Agreements ("PPAs") with Vectren Corporation ("Vectren") and/or other initial customers, and (v) hiring of a minimum of 120 employees to fill newly created jobs in Evansville, all on and subject to the terms of this letter agreement (the "Letter Agreement").

Financial and Other Assistance from the City

In connection with the transactions contemplated hereunder and subject to the terms and conditions hereinafter set forth, the City shall provide to EarthCare the following:

1. The City shall provide to EarthCare a Five Million Dollar (\$5,000,000) term loan (the "Loan"), with interest payable thereon at the rate of 1.5% per annum, with repayment of all principal and outstanding interest to be made within 24 months after the date of the promissory note evidencing such Loan (the "Note"). EarthCare shall make payments of interest only on the outstanding principal balance of the Note until the first generator is installed by EarthCare on a Vectren pipeline or other initial customer's pipeline. The Note shall not include any penalty for early payment. Thereafter, EarthCare shall make payments of principal and accrued interest in equal monthly installments until paid in full on or before the second anniversary of the date of the Note. The Note shall be in a form acceptable to the City and EarthCare. Repayment of the Note shall be secured by (i) a loan guarantee from the United States Department of Energy ("DOE") to be obtained by EarthCare and (ii) each of the following to the extent available and deemed by the City to be qualified collateral during the term of the Loan: (a) a first priority, perfected security

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interest in all Products produced (including work in process and Product Inventory) for generation in support of all PPAs with Vectren or other initial customers of EarthCare, (b) a first priority, perfected security interest in manufacturing equipment purchased with the Loan proceeds, (c) a first priority, perfected security interest in inventories of raw material purchased and/or held by EarthCare in connection with the manufacture of the Products.

EarthCare shall take all necessary actions to pursue and obtain loan guarantees for clean energy manufacturing from the DOE. The parties hereto both agree and acknowledge that securing a DOE loan guarantee may not be feasible prior to execution of the agreements and documents evidencing the Loan if the accelerated schedule for the Vectren or other initial customer PPAs is to be met. In the event that EarthCare has not obtained the loan guarantee from the DOE prior to issuance of the Loan, EarthCare shall continue to diligently pursue and shall obtain such loan guarantee after the Closing of such Loan.

2. The City shall provide a grant to EarthCare of a sufficient dollar amount to cover rent on the Manufacturing Facility for a period of twenty-four (24) months from the date of the effective date of such lease. The effective date of the lease shall be no later than the date of the consummation of the Loan.
3. The City shall provide start-up office space at Innovation Pointe, 318 Main Street, Evansville, Indiana (not to exceed 500 square feet of office space), without any requirement for the payment of rent for a period up to six (6) months from the date office space is initially occupied by EarthCare. EarthCare shall execute a lease agreement for such office space on terms acceptable to the City and EarthCare. In the event that EarthCare requires the use of such office space for longer than six (6) months, the lease shall provide that rent in an amount agreed by the parties shall be due and payable monthly after the expiration of such initial six month period.
4. The City shall provide, as applicable, (a) 75% abatement on property tax for qualified equipment and leasehold improvements for 10 years if the Manufacturing Facility is located within the Enterprise Zone in Evansville; or (b) a 10 year tax phase-in on property tax for qualified equipment and leasehold improvements if the Manufacturing Facility is located in another facility within Evansville that is not in the Enterprise Zone; provided, however, the foregoing is subject to receipt of public approvals by governing bodies as may be required by any applicable, law, rule, statute or regulation.
5. The City shall provide support for EarthCare in the completion and filing of applications by EarthCare for (a) applicable and available incentives from the State of Indiana, such as venture investment grants, training grants, bond financing, or tax credits; and (b) commercial loan from local banks.

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6. The City shall use commercially reasonable efforts to provide assistance with the following services to EarthCare to support EarthCare's rapid start-up:
 - Consultation with an experienced manager of manufacturing operations with respect to power generator equipment;
 - Workforce recruitment and hiring via Grow Southwest Indiana Workforce Organization;
 - Identification of local vendors and facility procurement; and
 - Assistance with licensing, permitting and similar matters.

Obligations of EarthCare

In exchange for the above services and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by EarthCare, EarthCare hereby represents, warrants and covenants to the City as follows:

1. Prior to consummation of the Loan transaction contemplated hereby, EarthCare shall apply for and take all actions necessary to secure from the DOE a loan guarantee of the Loan to be made by the City to EarthCare.
2. As soon as reasonably practicable and in any event, prior to consummation of the Loan transaction contemplated hereby, EarthCare shall execute initial PPAs with Vectren and/or other initial customers that provide for minimum installed capacity at not less than the price and upon the terms as shall be required (a) to cover all capital costs of equipment for the Project and costs of installation of such equipment, and as shall be required for all operating and maintenance expenses with respect to such equipment and the Project and Manufacturing Facility over the term(s) of the PPA(s), and (b) to provide earnings sufficient to allow EarthCare to timely pay back the Loan to the City within the 24 month term of the Note. EarthCare shall obtain final regulatory approvals by all applicable utility regulatory commissions for each PPA.

Prior to consummation of the Loan transaction contemplated hereby, EarthCare shall provide a pro forma financial statement to the City demonstrating that the PPAs with Vectren or other initial customers shall provide adequate cash flow to timely repay the Loan.

3. Pursuant to the terms of the loan agreement evidencing the Loan, EarthCare shall agree to use the proceeds of the Loan only for the following purposes:

- (a) 64.0% Down payment on manufacture of first generating units to support Vectren or other customer PPAs; together with all materials for the manufacture of Products and assembly and installation of the above-referenced equipment;
- (b) 14% Engineering and design for the Product and Manufacturing Facility, to be capitalized as part of new product design and facility leasehold improvements;
- (c) 12.0% Leasehold improvements to the Manufacturing Facility;
- (d) 2.0% start-up and organizational costs to be amortized; and legal fees associated with Loan execution, guarantee, and asset collateralization;
- (e) 4.0% Computer/office equipment and software/technology; and
- (f) 4.0% Working capital.

Notwithstanding the foregoing, the City and EarthCare acknowledge and agree that the above-referenced percentages are estimates based on current knowledge of the parties, and that flexibility may be required as to the actual percentages of proceeds to be used for each category referenced above. In the event that EarthCare believes that any of the above-referenced percentages need to be modified, EarthCare shall provide the City with written notification; provided, however, that the uses of the proceeds may not violate the terms of either loan agreement to be executed by EarthCare.

4. Upon receipt of the Loan proceeds, EarthCare shall immediately set-up offices in Evansville and begin staffing as required to select, design the layout, and begin procurement and outfitting of the Manufacturing Facility.
5. EarthCare shall grant to the City the right to audit EarthCare's financial records and subsequent agreements as may be required to verify uses of Loan proceeds as set forth above and to protect the City's interest in EarthCare's operations and collateral.
6. EarthCare shall take all necessary steps to monetize the value of the initial Vectren PPA to provide additional capital for the start-up of its manufacturing operations in Evansville;
7. EarthCare shall apply a sufficient amount of the earnings from the initial installed capacity on Vectren's or other initial customer's system toward repayment of the Loan within the term of the Note before allocating any income to re-investment, other debt service, or distributions to EarthCare's members; provided, however, EarthCare

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shall be permitted to make tax distributions to its members as necessary to make quarterly tax payments based on EarthCare's revenues provided that all such tax distribution amounts shall be subject to advance verification by the City;

8. EarthCare shall pay to the City, as additional compensation for the services provided hereunder, \$0.005/kWh generated pursuant to the PPAs, up to a maximum of \$32,000,000, which amounts shall be paid within a term of not more than 15 years from the date of the Loan and which amounts shall be paid in monthly installments on the fifteenth day of each month for the kilowatt hours generated for the preceding month. EarthCare shall allocate sufficient revenues from all PPAs executed with Vectren or other customers to make such payments to the City; and
9. EarthCare shall hire a minimum of 120 employees to fill newly created jobs at the Manufacturing Facility in Evansville over the period from the date hereof until March, 2015. EarthCare shall pay to such employees average wage rates equal to or greater than the local average wage rates for comparable jobs.

The City and EarthCare agree and acknowledge that manufacture of the initial units for the Vectren PPAs or other initial customer PPAs may have to be temporarily contracted to third parties until the Manufacturing Facility is fully operational. EarthCare agrees and acknowledges that time is of the essence in producing and installing the first units so that revenue generation can begin and repayment of the Loan can commence. EarthCare hereby agrees to use its best efforts to complete the purchase and installation of the equipment necessary to manufacture the Products as expeditiously as practicable.

The above-referenced obligations of EarthCare shall survive consummation of the Loan and the other transactions contemplated hereby.

In the event that EarthCare defaults under this Agreement or otherwise breaches or fails to perform any of the above-referenced representations, warranties or covenants, the City shall provide notice to EarthCare of such failure, default or breach and EarthCare shall have a period of thirty (30) days to cure such failure, default or breach. In the event that EarthCare fails to cure such failure, default or breach within such thirty (30) day period, the City may, in its sole discretion, require EarthCare to, and in such event EarthCare shall, pay to the City the amount of all tax and other incentives granted to EarthCare prior to the date of such Default, including without limitation, rent on the Manufacturing Facility and office space, abated property tax amounts and amounts that would have been due but for the phase in of property taxes. In addition, the City may pursue any other remedies against EarthCare that may be available at law or in equity.

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Conditions to Closing

The obligation of the City to consummate the transactions contemplated hereby shall be subject to the satisfaction of the following conditions, any one or more of which may be waived by the City:

1. EarthCare shall execute and deliver in form acceptable to the City the Note, a loan agreement related thereto and any and all other documents as shall be reasonably required by the City or its advisors to evidence the Loan transaction contemplated hereby, including, without limitation, all documents and agreements as may be necessary to evidence to the first priority security interests to be granted by EarthCare to the City as contemplated hereby.
2. EarthCare shall execute and deliver to the City leases for the Manufacturing Facility and the above referenced office space on terms and conditions acceptable to the City.
3. EarthCare shall provide all supporting documentation and information for the Loan as may be requested by the City or its advisors to the extent that such documentation is not subject to any prohibitions on the disclosure thereof pursuant to the terms of an executed nondisclosure agreement ("NDA"), which documentation and information shall include, without limitation, licenses and other applicable legal agreements, business information and financial statements of EarthCare; provided, however, if EarthCare claims that it is not permitted to disclose such documentation or information pursuant to the terms of an NDA, EarthCare shall provide an executed copy of such NDA to the City for its review and to permit the City to confirm such disclosure prohibition.
4. EarthCare shall obtain any and all consents and approvals as may be required in connection with the consummation of the transactions contemplated hereby, including, without limitation, the consent and approval of all governmental bodies, entities or subdivisions required by applicable laws, rules, regulations or statutes to consummate the transactions contemplated hereby. The City shall use reasonable efforts to assist EarthCare in obtaining all such consents and approvals.
5. From time to time on and after the date hereof, and without any further consideration, EarthCare shall execute and deliver such other instruments and take such other actions as the City or its advisors may reasonably request in order more effectively to consummate the transactions contemplated hereby.
6. On the date of the consummation of the Loan, there shall be no suit, action or other proceeding, or order of any nature issued by a governmental authority directing that the transactions contemplated hereby not be consummated as herein provided and no

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proceeding or lawsuits shall have been commenced or threatened by or before any governmental authority with respect to any of the transactions contemplated hereby.

7. Prior to the consummation of the Loan transaction, EarthCare shall provide to the City a letter from Langson Energy addressed to Mayor Winnecke which outlines the agreement between Langson Energy and EarthCare with respect to Langson Energy's intellectual property.

Miscellaneous

1. Each party is and shall be responsible for its own fees and expenses incurred in connection with the transactions contemplated hereby.
2. This Letter Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties on the subject matter hereof.
3. This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to its rules of conflicts of laws. EarthCare hereby irrevocably submits to the jurisdiction of any federal or state court located within the State of Indiana over any dispute arising out of or relating to this Letter Agreement or the transactions contemplated hereby.
4. All the terms and conditions of this Letter Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto. EarthCare may not assign any of its rights, benefits, interests or obligations under this Letter Agreement without the prior written consent of the City.
5. Nothing in this Letter Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Letter Agreement.
6. If one or more provisions of this Letter Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Letter Agreement and the balance of the Letter Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.
7. EarthCare hereby acknowledges and agrees that (a) the City would be irreparably injured in the event of a breach by EarthCare of its obligations hereunder, and (b) monetary damages may not be an adequate remedy for the City in the event of a

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breach by EarthCare hereunder, and (c) in the event of a breach by EarthCare hereunder, the City shall be entitled to seek specific performance or other injunctive relief with respect thereto (without posting of a bond), in addition to any other remedy that the City may have in equity or at law.

8. The City's financial obligations shall be limited to the obligations specifically set forth herein.

This Letter Agreement is being presented in duplicate original counterparts. If you are in agreement with the foregoing, please sign and return one original of this Letter Agreement to the undersigned, which thereupon will constitute our agreement with respect to its subject matter. This Letter Agreement may be executed in one or more original or facsimile counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Letter Agreement.

Sincerely,



Lloyd Winnecke
Mayor of the City of Evansville

ACCEPTED AS OF THIS
1st DAY OF March, 2012:

EARTHCARE ENERGY, LLC

By: Kenneth D. Haney
Kenneth Haney, Chairman and CEO