

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (this “MOU”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (the “City”), and **BEAUTIFUL EARTH GROUP, LLC**, a New York limited liability company (“BEG”) (the City and BEG are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### RECITALS

A. The City is a California municipal corporation and charter city located in Los Angeles County. The City’s current population is approximately 160,000 and the City is centrally located within the solar and wind resource-rich Antelope Valley. The City endeavors to become the “alternative energy capital of the world” and to this end is committed to the following: (i) becoming a Net Zero City (as that term is defined in Section 1); and (ii) establishing Smart Sister City ties with other cities around the world that are committed to similar goals.

B. BEG is an integrated sustainable energy services company engaged both domestically and internationally in upstream business activities (i.e., the development, ownership and operation of utility-scale sustainable energy generation plants), distribution and certification (including energy branding), as well as downstream business activities (including investment, development and advisory services in sectors utilizing clean, green energy including, among others, Smart Grid applications, electric vehicle infrastructure, and industrial and commercial offtakers) and various educational and promotional initiatives to encourage the uptake and usage of sustainable energy.

C. The Parties are willing and desire to cooperate and work together in an effort to achieve the City’s goal of becoming the “alternative energy capital of the world”, becoming a Net Zero City and establishing Smart Sister City ties with other cities around the world that are committed to similar goals.

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements set forth herein, the parties hereby agree as follows:

**1. Definitions.** As used in this MOU, the following terms shall have the stated meanings:

“**Advisors**” means, when used with reference to a Party, the attorneys, accountants, consultants, technical advisors, financial advisors and lenders of such Party and its affiliates.

“**BEG**” means Beautiful Earth Group, LLC, a New York limited liability company.

“**City**” means the City of Lancaster, a California municipal corporation and charter city.

“**Confidential Information**” means information, other than Excluded Information, which is disclosed either orally or in writing by or on behalf of a Party to another Party in connection with the Project and which is identified by or on behalf of the disclosing Party as confidential. In designating information as Confidential Information, the disclosing Party shall have a reasonable, good faith belief that the information is confidential or exempt from disclosure under applicable law (including, without limitation, the California Public Records Act and the Federal Freedom of

Information Act). Such information is confidential, proprietary or generally not available to the public and shall remain the property of the disclosing Party. Confidential Information shall include such information supplied prior to the date hereof by or on behalf of a Party in connection with the Project.

**“Excluded Information”** means information which:

(a) at the time of its disclosure by or on behalf of a Party was already known by or in the possession of the receiving Party;

(b) after the time of its disclosure is obtained by a Party from a third party who lawfully possesses such information and is not under any contractual, legal or fiduciary obligation to a Party to keep such information confidential;

(c) at the time of disclosure or thereafter is published or otherwise made generally available to the public, unless such publication or general availability is the result of a breach of this Agreement;

(d) at the time of disclosure or thereafter must be disclosed by the City pursuant to applicable law (including, without limitation, the California Public Records Act and the Federal Freedom of Information Act); or

(e) at the time of this Agreement or thereafter is required to be disclosed by a Party in any judicial, regulatory, or administrative proceeding, unless the judicial, regulatory, or administrative body before whom such proceeding takes place has required such data or information to be kept confidential.

**“Feasibility Studies”** is defined in Section 2.a.

**“Net Zero City”** means a city that produces sustainable, carbon free energy in amounts equal to, or exceeding, the amounts which it consumes, which may be accomplished through a combination of the following (as well as other) strategies: (i) integrating renewable and distributed energy generation sources (*i.e.*, supply side); (ii) smart grid technologies to increase energy efficiency, increase the usage of clean power, and reduce overall energy consumption, particularly at peak demand periods (*i.e.*, demand side); and (iii) energy storage technologies. As a Net Zero City, the City will make a favorable impact on its immediate environment, and also contribute to improving the environment globally, which may include, but is not limited to, the creation of thousands of new jobs focusing on power conservation, systems to support the smart grid, clean/green energy generation, and downstream activities related to companies attracted to the City for its ability to supply clean energy to manufacturing, industrial and commercial processes.

**“Project”** is defined in Section 2.

**2. Strategy for Becoming the Alternative Energy Capital of the World.** In general terms, the Parties will work together to develop and implement a strategy for the City to become the “alternative energy capital of the world” (the “Project”). The Project will include, at a minimum, the development and implementation of a strategy for the City to become a Net Zero City and to establish Smart Sister City ties with other cities around the world that are committed to similar goals.

a. Net Zero City. The portion of the Project relative to the development and implementation of a strategy to become a Net Zero City shall include, among other things, the conducting of feasibility studies in order to analyze the potential for and feasibility of the Project, the appropriate operational and financial structures (which will require consulting with potential suppliers, service providers, lenders, domestic and international government agencies), and the approvals, licenses, permits and/or entitlements required in order for the Project to proceed and be successful (collectively, the “Feasibility Studies”). BEG shall be responsible for preparing and conducting, at its sole cost and expense, the Feasibility Studies and providing such Feasibility Studies to the City. The Feasibility Studies will include a list of potential suppliers and service providers for the Net Zero City portion of the Project, which may include suppliers and/or service providers that are affiliated with BEG (such as suppliers and/or service providers that are owned or operated by BEG, its shareholders or parent/sister companies); provided, however, that BEG shall disclose to the City in the Feasibility Studies the existence of any such relationship.

b. Smart Sister City. The goal of the sister cities portion of the Project is to “partner” with cities that share the common goal of becoming a Net Zero City. In order to become a Smart Sister City to the City under this portion of the Project, an applicant city must do the following: (i) demonstrate a commitment to the goal of producing as much energy as it consumes from sustainable resources; and (ii) achieve certain measurable benchmarks on the path to becoming a Net Zero City. Applicant cities will likely employ smart grid technology to achieve this noteworthy goal, but there are numerous ways to qualify, including, without limitation, energy saving techniques, supply and demand response strategies and local citizens working together to protect the environment. Successful applicant cities will combine the benefits of traditional pairings, including increased cultural, commercial and intergovernmental relationships, with the latest technologies and the overriding commitment to attain the status of being a Net Zero City, all in the advancement of global sustainability. BEG shall conduct the initial selection of potential Smart Sister City candidates and will present a list of such candidates to the City for its approval. Upon and subject to the City’s approval, BEG will further conduct negotiations with selected Smart Sister City candidates on behalf of the City and present the City with a report on the results of such negotiations together with its conclusions and recommendations. If, when and to the extent the City deems it appropriate, the City will enter into direct negotiations with a potential Smart Sister City to finalize formally establish a Smart Sister City relationship.

**3. Project Financing.** The Parties will explore ways to work together to secure and apply for public and private grants and subsidies (including, without limitation, federal, state and/or local grants and subsidies that may be in the form of new pilot projects and/or global carbon reduction initiatives) for the Project; provided, however, that the City shall not have or incur any obligation to finance or fund any portion of the Project.

**4. Obligation to maintain confidentiality.** Each Party agrees not to disclose any other Party’s Confidential Information without such Party’s prior written consent, except as provided in this Section 5; provided, however, a Party may disclose another Party’s Confidential Information to the Party’s officers, directors, employees, and Advisors and to its affiliates and the officers, directors, employees, and Advisors of its affiliates (collectively, “Representatives”) who need to know such Confidential Information and agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof. In addition, each Party may disclose Confidential Information received by it hereunder to any potential developer, contractor, funding source, trustee or any power or transmission provider or purchaser or any other entity that may participate in or be affected by the

development, construction, financing, ownership or operation of the Project and who agree to maintain the confidentiality of the Confidential Information in accordance with the terms hereof.

a. Use of confidential information. Each Party agrees not to use Confidential Information other than for the purpose of evaluating, negotiating, or implementing the Project. Nothing in this Agreement shall constitute an obligation of a Party to disclose Confidential Information to the other Party.

b. Disclosure pursuant to legal requirements. Notwithstanding any provision to the contrary contained herein, a disclosure by a Party that otherwise would be prohibited by this Agreement shall be permitted if such disclosure is compelled by a judicial, regulatory, administrative body of competent jurisdiction, or by law (*e.g.*, the California Public Records Act or the Federal Freedom of Information Act), but then only if in conformance with the following provisions:

(1) The disclosing Party shall:

(a) take all reasonable steps to preserve the privileged nature and confidentiality of Confidential Information, including requesting that Confidential Information not be disclosed to non-Parties or the public;

(b) give the other Party prompt notice of any legal process and, to the extent practicable, gives the other Party the opportunity to seek an appropriate protective order or to pursue such further legal action as may be necessary to preserve the privileged nature and confidentiality of Confidential Information; and

(c) provide reasonable assistance to and cooperation with the other Party to preserve the privileged nature and confidentiality of Confidential Information.

(2) If the City receives a request for records concerning the Project under the California Public Records Act or the Federal Freedom of Information Act, the City shall:

(a) give notice to BEG of the request within three (3) business days of receipt, along with a copy thereof;

(b) consult and reasonably cooperate with BEG concerning the request and the anticipated response thereto, including identifying particular records which the City believes may be subject to disclosure;

(c) provide BEG with the opportunity to respond and comment on the records identified by the City under Section 4.b.(2)(b) which response BEG shall provide within five (5) business days after such identification of records. If BEG objects to the disclosure of a record, BEG shall cite the statutory basis for such objection. The City shall not disclose such record; provided, however, that if the person requesting the records files a legal action to compel disclosure, BEG shall reimburse the City for any and all costs incurred in defending such action, including costs and attorney's fees, and for plaintiff's costs and attorneys' fees paid if awarded by the court in a final judgment.

c. Delivery of confidential written materials. Any written materials conveyed under this MOU, which the disclosing Party believes constitute Confidential Information, shall be clearly marked "CONFIDENTIAL."

d. Return of written materials. Upon request by a Party, the other Party shall return all written Confidential Information to the requesting Party or, at the election of the requesting Party, shall destroy such written Confidential Information. Upon receipt of such a request, fifteen (15) days shall be allowed for the Party receiving the request to assemble and return or, if so elected in accordance with this paragraph, to destroy all written Confidential Information in the possession of the Party receiving the request. The receiving Party shall not be deemed to have retained or failed to destroy any Confidential Information which is in electronic form if such information is deleted from local hard drives so long as no attempt is made to recover such information from servers or back-up source. Notwithstanding the foregoing, the either Party may retain a printed or electronic set of Confidential Information in the offices of its legal counsel solely for purposes of enforcement of agreements and compliance with applicable regulatory requirements. Each Party's legal counsel shall make such retained set of Confidential Information available for review at its offices by the other Party's legal counsel upon reasonable notice. Any obligation to destroy records under this Agreement shall be consistent with and subject to applicable provisions of state and federal law.

**5. Publicity.** No Party shall issue any press release or otherwise publicize or disclose to any unnecessary third party the details of the corroborative work undertaken as part of this MOU without the prior written consent of the other Parties, which consent shall not be unreasonably withheld and shall either be given or refused within five (5) days of the request therefor. This paragraph shall not apply to any statements made by a Party in connection with, or at the time of, the approval of this MOU.

**6. Notices.** Any approval, disapproval, demand, document or other notice ("Notice") which any Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile transmission, or (vi) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the Party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

To City: City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534  
Attn: Mark Bozigian  
Fax No.: (661) 723-6141

To BEG: Beautiful Earth Group, LLC  
179 Columbia Street, PH  
Brooklyn, NY 11231  
Attn: Yakov Balakhovsky  
Fax No.: (718) 624-2990

Such addresses may be changed by Notice to the other Party(ies) given in the same manner as provided above.

**7. Term and Termination.** This MOU shall become effective immediately once approved by the City's governing body and shall terminate upon the earliest to occur of the following: (a) the execution by the Parties of one or more definitive agreements with respect to the subject matter of this MOU; or (b) twenty-four (24) months from the date hereof. The term of this MOU can be extended upon the written mutual agreement of the Parties. Notwithstanding any other provision of this MOU, including the provisions of this Section 7, either Party may terminate this MOU at any time by providing at least thirty (30) days written notice of such termination to the other Party.

**8. Non-Binding Effect.** This MOU is intended to serve as a general basis for commencing negotiations for one or more definitive agreements between the Parties with respect to the matters referenced herein. This MOU does not contain all the detailed provisions to be incorporated in any such definitive agreement(s), but does reflect the current mutual intentions of the Parties. With the exception of Section 4 and 5 hereof, which are intended to be binding upon the Parties, the Parties shall not have any legal obligation under or by virtue of this MOU, including any obligation to enter into any definitive agreement or other contract, to provide any services, to disclose any information, to make any investment or pay any consideration or compensation, whether or not expressly described herein; provided that the Parties agree to cooperate in good faith along the lines described in this MOU.

**9. Representations and Warranties.** Each Party hereby represents and warrants to the other Party that this MOU: (i) has been validly executed and delivered by such Party; (ii) has been duly authorized by all corporate or other action of such Party necessary for the authorization thereof; and (iii) does not violate or interfere with any contract or legal requirement applicable to such Party.

**10. Entire Agreement.** This MOU constitutes the entire agreement of the Parties relating to the transactions contemplated herein and supersedes all prior contracts or agreements with respect to those matters, whether oral or written.

**11. Assignment.** Neither Party shall make any total or partial sale, grant, transfer, conveyance or assignment of the whole or any part of this MOU without prior written approval of the other Party.

**12. Non-Exclusive Relationship.** The relationship established by this MOU is non-exclusive. Each Party expressly reserves the right to contract for the service(s) and/or product(s) that

is/are within the scope of this MOU with as many additional clients, persons or other entities as that Party, in its sole discretion, sees fit.

**IN WITNESS WHEREOF**, the Parties have caused this MOU to be executed by their duly authorized representative as of the date first written above.

**CITY:**

**CITY OF LANCASTER**, a California municipal corporation and charter city

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Legal Counsel

**BEG:**

**BEAUTIFUL EARTH GROUP, LLC**, a New York limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_