

AGREEMENT
FOR
CONSULTING SERVICES

This AGREEMENT, between the Norman Utilities Authority (OWNER) and BIOSTAR E LIGHT JV, LLC, (CONSULTANT);

WITNESSETH

WHEREAS, OWNER intends to gather and submit the required information and documentation necessary under the Inflation Reduction Act of 2022 for reimbursement on the solar project completed at the Water Treatment Plan and Water Reclamation Facility;

WHEREAS, OWNER requires consulting expertise and guidance in this effort to ensure a timely and correct submittal to reduce the overall cost of the project (the SERVICES); and,

WHEREAS, CONSULTANT is prepared to provide said SERVICES; and.

NOW THEREFORE, in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be _____.

ARTICLE 2 - COMPLETION DATE

CONSULTANT shall complete the SERVICES in accordance with Attachment A, Project Schedule.

ARTICLE 3 - GOVERNING LAW

The laws of the state of Oklahoma shall govern this AGREEMENT.

ARTICLE 4 - SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT shall perform the SERVICES described in Attachment B, Scope of Services.

ARTICLE 5 - COMPENSATION

OWNER shall pay CONSULTANT in accordance with Attachment C, Compensation.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1. OWNER-Furnished Data: Upon request, OWNER will provide to CONSULTANT all data in OWNER's possession relating to CONSULTANT's SERVICES on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by OWNER. OWNER's data is provided for temporary use or copying by CONSULTANT.
- 6.2. Costs. OWNER is responsible for all costs including but not limited to: filing fees, filing preparation, tax professional service fees, legal fees for tax preparation, and other fees or costs incurred by CONSULTANT, as approved by OWNER with prior written consent in which OWNER shall not unreasonably withhold the approval of aforementioned costs should they be necessary for CONSULTANT to complete the SERVICES.
- 6.3. Access to Facilities and Property: OWNER will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its SERVICES.
- 6.4. Timely Review: OWNER will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; and transmit OWNER comments or other decisions to CONSULTANT in a timely manner.
- 6.5. Meetings: OWNER will participate in monthly progress meetings or other meetings with CONSULTANT or contractor(s) defined in Scope of Services.

- 6.6. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, OWNER will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT'S SERVICES or PROJECT construction.
- 6.7. Hazardous Substances: If hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation. CONSULTANT will, if requested by OWNER, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend necessary remedial measures at an additional fee with contract terms to be negotiated.

ARTICLE 7 - STANDARD OF CARE

CONSULTANT shall exercise the same degree of care skill and diligence in the performance of the SERVICES as is ordinarily possessed and exercised by a consultant under similar circumstances. CONSULTANT shall correct the SERVICES that fail to satisfy this standard of care. No warranty, express or implied is included in this AGREEMENT or in any drawing, specifications, report or opinion produced pursuant to this AGREEMENT.

ARTICLE 8 - LIABILITY AND INDEMNIFICATION

- 8.1 General. Having considered the potential liabilities that may exist during the performance of the SERVICES, the benefits of the PROJECT, the CONSULTANT's fee for the SERVICES and in consideration of the promises contained in this AGREEMENT, OWNER and CONSULTANT agree to allocate and limit such liabilities in accordance with this Article.
- 8.2 Indemnification and Liability. The CONSULTANT agrees to defend, indemnify, and hold harmless the OWNER, its officers, servants, and employees, from and against legal liability for all claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees) caused by a negligent act, error, or omission of the CONSULTANT in the performance of services under this Agreement. OWNER agrees to defend, indemnify, and hold harmless the CONSULTANT, its officers, servants, and employees, from and against legal liability for all claims, losses, damage, cost, and expense (including reasonable attorneys' fees and accountants' fees) caused by a negligent act, error, or omission of the OWNER in the performance of services under this Agreement, provided such indemnification shall be applicable only to the extent sovereign immunity has been waived pursuant to Oklahoma law. The CONSULTANT and the OWNER each agree to promptly service notice on the other party of any claims arising hereunder, and shall cooperate in the defense of such claims. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to OWNER at common law.
- 8.3 Employee Claims. CONSULTANT shall indemnify OWNER against legal liability for damages arising out of claims by CONSULTANT's employees. OWNER shall indemnify CONSULTANT against legal liability for damages arising out of claims by OWNER's employees.
- 8.4 Consequential Damages. To the fullest extent permitted by law, CONSULTANT shall not be liable to OWNER for any special, indirect or consequential damages resulting in any way from the performance of the SERVICES.
- 8.5 Survival. Upon completion of all SERVICES obligations and duties provided for in this AGREEMENT or if this AGREEMENT is terminated for any reason the terms and conditions of this Article shall survive.

ARTICLE 9 - INSURANCE

During the performance of the SERVICES under this AGREEMENT CONSULTANT shall maintain the following insurance:

- 9.1 Worker's compensation insurance for CONSULTANT's employees as required by Oklahoma Workers Compensation Statutes.
- 9.2 Comprehensive general liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 per occurrence for property damage.
- 9.3 Comprehensive automobile liability insurance with a minimum of \$125,000 per accident for bodily injury or death and \$25,000 for property damage.
- 9.4 Professional Liability (errors and omissions) insurance with a minimum policy value of \$1,000,000.

CONSULTANT shall furnish OWNER certificates of insurance that shall include a provision that such insurance shall not be canceled without at least thirty days written notice to OWNER. All PROJECT contractors shall be required to include OWNER and CONSULTANT as additional insured on their General Liability Insurance policies.

CONSULTANT and OWNER each shall require its insurance carriers to waive all rights of subrogation against the other and its directors, officers, partners, commissioners, officials, agents and employees for damages covered by property insurance during and after the SERVICES. A similar provision shall be incorporated into all contractual arrangements entered into by OWNER and shall protect OWNER and CONSULTANT to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

CONSULTANT shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the PROJECT; (2) the failure of any contractor, subcontractor, vendor or other PROJECT participant, not under contract to CONSULTANT, to fulfill contractual responsibilities to the OWNER or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates and licenses required for any construction unless such responsibilities are specifically assigned to CONSULTANT in Attachment B, Scope of Services.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Since CONSULTANT has no control over the cost of labor, materials or equipment furnished by others or over the resources provided by others to meet PROJECT schedules, CONSULTANT's opinion of probable costs and of PROJECT schedules shall be made on the basis of experience and qualifications as a consultant. CONSULTANT does not guarantee that proposals, bids, or actual PROJECT costs will not vary from CONSULTANT's cost estimates.

ARTICLE 12 - REUSE OF DOCUMENTS

Upon OWNER's request CONSULTANT shall furnish OWNER with deliverables and/or other data on electronic media. All documents, including but not limited to, drawings, specifications and computer software prepared by CONSULTANT pursuant to this AGREEMENT are instruments of Service in respect to the PROJECT. Said documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the PROJECT or on any other PROJECT.

ARTICLE 13 - TERMINATION

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this AGREEMENT. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

OWNER may terminate or suspend performance of this AGREEMENT for OWNER's convenience upon written notice to CONSULTANT. CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to OWNER. If termination or suspension is for OWNER's convenience, OWNER shall pay CONSULTANT for all the SERVICES performed to date, amount not to exceed the normal fee amount due for the SERVICES rendered and termination or suspension expenses. Upon restart, an equitable adjustment shall be made to CONSULTANT's compensation.

ARTICLE 14 - DELAY IN PERFORMANCE

Neither OWNER nor CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this AGREEMENT, such circumstances include, but are not limited to abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riot and other civil disturbances; strikes, work slowdowns and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or SERVICES required to be provided by either OWNER or CONSULTANT under this AGREEMENT.

Should such circumstances occur the non-performing party shall, within a reasonable period after being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

ARTICLE 15 - COMMUNICATIONS

Any communication required by this AGREEMENT shall be made in writing to the address specified below:

CONSULTANT: Andy Stancati, Senior V.P. Underwriting
BIOSTAR E LIGHT JV, LLC
9400 Reeds Road, Suite 150
Overland Park, KS 66207
913-369-4114
astancati@biostarrenewables.com

OWNER: Nathan Madenwald, Utilities Engineer
City of Norman – Utilities Department
225 N Webster Avenue
P.O. Box 370
Norman OK 73069 / 73070
405-366-5426
nathan.madenwald@normanok.gov

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and OWNER.

ARTICLE 16 - WAIVER

A waiver by either OWNER or CONSULTANT of any breach of this AGREEMENT shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 17 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid Provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision, which is of the essence of this AGREEMENT, be determined void.

ARTICLE 18 – NON-DISCRIMINATION

In connection with the performance of work under this contract, the CONSULTANT agrees as follows:

- A. The CONSULTANT agrees not to discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender

identity or expression, familial status, or marital status, including marriage to a person of the same sex. The CONSULTANT shall take affirmative action to ensure that employees are treated without regard to their race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT and any companies subcontracted shall agree to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of the City of Norman setting forth the provisions in this section.

- B. In the event of the CONSULTANT's noncompliance with this nondiscrimination clause, the contract may be canceled or terminated by the City Council. The CONSULTANT may be declared by the City Council ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the CONSULTANT.
- C. The CONSULTANT agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this agreement.

ARTICLE 19 - INTEGRATION

This AGREEMENT represents the entire and integrated AGREEMENT between OWNER and CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT. This AGREEMENT, including its attachments and schedules, may only be changed by a written amendment executed by both parties. The following attachments and schedules are hereby made a part of this AGREEMENT:

- Attachment A - Schedule
- Attachment B - Scope of Services
- Attachment C - Compensation

ARTICLE 20 - SUCCESSORS AND ASSIGNS


OWNER and CONSULTANT each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this AGREEMENT and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, OWNER and CONSULTANT have executed this AGREEMENT.

DATED this 20 day of June 2023.

BIOSTAR E LIGHT JV, LLC - CONSULTANT

ATTEST

By: 
Title: CEO


Executive Coordinator

NORMAN UTILITIES AUTHORITY - OWNER

APPROVED as to form and legality this _____ day of _____, 20_____.

City Attorney

APPROVED by the Trustees of the Norman Utilities Authority this _____ day of _____, 20_____.

ATTEST

By: _____
Title: _____

ATTACHMENT A
SCHEDULE

Contract and services will be from July 1, 2023 through receipt of Federal reimbursement.

ATTACHMENT B
SCOPE OF SERVICES

Provider agrees to provide the following services per the Agreement:

1. Summarize all project costs for tax professional review.
2. Provide supporting evidence for tax professional review.
3. Introduce Owner to a certified tax professional to assist the Owner with the filing of IRS forms necessary to claim the direct pay of the investment tax credit.
4. Assist Owner and tax professional in answering any questions relevant to the project costs for the filing of the IRS forms to claim the direct pay investment tax credit per the Inflation Recovery Act of 2022.

Provider hereby agrees to provide these services but in no way guarantees, certifies, or warrants that OWNER will receive the direct pay investment tax credit from the IRS, nor does it guarantee, certify, or warrant that OWNER will receive a specific dollar amount for the investment tax credit. OWNER expressly agrees that Provider is not providing any tax opinion or tax advice and that OWNER should rely solely on the opinion and advice of certified tax professionals.

ATTACHMENT C
COMPENSATION

The OWNER agrees to compensate CONSULTANT for these services at a rate not to exceed ten percent funds reimbursed for the project or one hundred sixty thousand dollars, whichever is less. If no funds are received by the OWNER, no compensation to the CONSULTANT will be provided. The CONSULTANT agrees that any work completed is done at risk and no compensation may be received. If funds are received by OWNER, the timing of compensation will be within 30 days after funds have been received, deposited and are available for the OWNER to distribute.

Funds for filing fees, filing preparation, tax professional service fees, legal fees for tax preparation, and other fees or costs incurred by CONSULTANT, as approved by OWNER with prior written consent, shall not exceed \$5,000.00.