



## CITY OF NORMAN, OK STAFF REPORT

---

**MEETING DATE:** 6/27/2023

**REQUESTER:** Nathan Madenwald, P.E., Utilities Engineer

**PRESENTER:** Nathan Madenwald, P.E., Utilities Engineer

**ITEM TITLE:** CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF AMENDMENT TWO TO CONTRACT K-2021-121: BY AND BETWEEN THE NORMAN UTILITIES AUTHORITY AND BIOSTAR E LIGHT JV, LLC., DECREASING THE CONTRACT AMOUNT BY \$4,000 FOR A REVISED CONTRACT AMOUNT OF \$4,896,848.80 FOR DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF A SOLAR PHOTOVOLTAIC SYSTEM TO PROVIDE ENERGY SAVINGS AND PRODUCTION GUARANTY AND FINAL ACCEPTANCE OF THE PROJECT.

---

### **BACKGROUND:**

On January 12, 2021, the City Council adopted Ordinance O-2021-28, which amended the City Code, Section 8-204 (renumbered 12-204) to allow performance-based efficiency contracts as an exception to competitive bidding requirements for City contracts. Performance-based efficiency contracts are contracts “for the design, development, financing, installation and service of any improvement, repair, alteration or betterment of any building or facility owned, operated or planned by a public entity; or any equipment, fixture or furnishing to be added or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented that will reduce utility consumption or lower operating costs, result in annual cost savings, generate additional revenues or avoid capital cost incurrence” {Oklahoma Statutes, Title 62. Section 318(A)(2)}.

Performance-based Efficiency Contracts are designed for a certain type of project; primarily projects where benefit exists in the form of savings or reduction in costs that offset the cost of the contract or service. The current version of Section 318 was adopted by the State Legislature in 2018 and made these types of contracts available to political subdivisions and public trusts.

With performance-based efficiency contracts, the public entity enters into a contract with a provider deemed by the public entity to be qualified to, among other things, finance performance-based efficiency projects for the greater of 20 years or the useful life of the project. In the case of a project that produces cost savings, the qualified provider must provide a guarantee of the anticipated savings over the term of the contract. If such savings are not achieved, the public entity is made whole by the payment of the difference between anticipated and guaranteed savings and the actual savings.

The City adopted Resolutions R-1718-119 and R-1718-120 on May 22, 2018. The first resolution (R-1718-119) was brought forth adopting the Environmental Control Advisory Board's (ECAB) updated recommendations to implement the Mayors' Climate Agreement. One of the Mayors' Climate Agreement recommendations focused on increasing renewable energy throughout the city and its utility enterprises with a goal of reaching 100 percent renewable energy consumption by the year 2050. This goal seemed achievable in step with OG&E efforts to replace their electric generation efforts with renewable energy as their large facilities are updated and large existing machinery is retired.

The second resolution (R-1718-120) was brought forth by the Sierra Club's "Ready for 100". Their initiative is for the City and its utility enterprises to achieve 100 percent renewable energy by the year 2035. This initiative is more aggressive and, either way, the City of Norman is heading towards utilizing more renewable energy as we go into the future.

On March 2, 2021, the Norman Utilities Authority (NUA) received a presentation from Connor Energy of San Diego, California, and BioStar Renewables, LLC of Overland Park, Kansas, regarding a proposal to locate solar energy production facilities at the NUA's Water Treatment and Water Reclamation facilities. On May 11, 2021, the NUA approved Contract K-2021-121 with BioStar E Light JV, LLC, (BioStar E Light) for the design, construction, operation and maintenance of a solar photovoltaic system to provide energy savings and production guaranty at the Water Reclamation Facility (WRF) and the Water Treatment Plant (WTP). As the result of this contract, approximately 36 and 21 percent of the electrical usage is guaranteed to be offset at the WRF and WTP facilities, respectively.

On April 26, 2022, the NUA approved Amendment 1 with BioStar E Light to authorize completion of site preparation work at the WRF that was not included within the original contract but was separately budgeted by the City. As design progressed, City staff and BioStar E Light determined that including this work in BioStar E Light's scope would be the most efficient method to accomplish the work by only having one civil contractor working at the site. Costs for this work were to be excluded from the performance guaranty calculation.

#### **DISCUSSION:**

The proposed Amendment 2 will eliminate further erosion control work at the site and NUA/City staff will perform any necessary plantings as required. This is desired by NUA/City staff to plant materials that provide better benefit to the environment and reduce maintenance requirements. By transferring this responsibility, the contract will be reduced by \$4,000 for a revised contract of \$4,896,848.80.

With this amendment, all work required under the contract is complete and staff recommends final acceptance of the project.

#### **RECOMMENDATION:**

Staff recommends the NUA approve Amendment 2 to Contract K-2021-121 with BioStar E Light JV, LLC decreasing the contract by \$4,000 for a total revised contract of \$4,896,848.80 and Final Acceptance of the project.