

ENERGY SAVINGS & PRODUCTION OUTPUT GUARANTY AGREEMENT

THIS ENERGY SAVINGS & PRODUCTION OUTPUT GUARANTY AGREEMENT ("**Agreement**") is made and entered into as of _____, 2021, by and between City of Norman, an Oklahoma municipal corporation and the Norman Utilities Authority, an Oklahoma public trust having as its sole beneficiary, the City of Norman, (together, "**Owner**"), and BioStar E Light JV, LLC, a Kansas limited liability company ("**Contractor**"). Owner and Contractor are referred to hereinafter individually as a "**Party**" and together as the "**Parties**".

WHEREAS, the Parties have entered into to that certain Energy Services Contract dated _____, 2021 (the "**ESC Agreement**") pertaining to the design and installation of one or more solar energy facilities listed on Schedule 1 hereto (each a "**System**") at one or more sites (each, a "**Site**") owned or leased by Owner; and

WHEREAS, the Parties now wish to enter into this Agreement relating to the overall electricity output of each System;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Guarantee: Contractor hereby guarantees to Owner that the actual monetary value from the overall electricity output of each System during each True-Up Period will be equal to or greater than the expected amount determined in accordance with Section 10 of this Agreement. In the event the actual monetary value from a System during any True-Up Period is less than the expected amount, and such shortfall is not excused in accordance with the terms of this Agreement, Owner shall be entitled to receive a Guaranty Payment calculated in accordance with Section 9 as its sole remedy for such shortfall.
2. Term: The term of this Agreement (the "**Term**") shall commence on the date the System achieves final completion pursuant to the ESC Agreement and continue for the period ending on the twenty-fifth (25) year anniversary of such date, unless earlier terminated pursuant to Section 10.
3. Throughout the Term, and as conditions to the obligations of Contractor hereunder, the Owner shall:
 - a. maintain (including making timely payments thereunder) an agreement with Contractor for the operation and maintenance of each systems;
 - b. grant reasonable access to each System to Contractor's personnel and representatives; and
 - c. not modify, alter, shade, damage, service, or repair, without Contractor's prior written approval, any part of any System, the supporting structure for any System or the associated wiring.
4. Definitions:

"Actual Electricity Production" means, for each Guaranty Year and portion thereof during the Term, a System's alternating current or "AC" electricity production in

kilowatt-hours (kWh) as metered and calculated according to the methods described herein and consistent with the System's AC electricity output measurements described in the ESC Agreement.

"Annual Degradation Rate" or "ADR" means the rate at which a System is deemed to decrease in AC kWh output each year relative to the prior year due to expected PV module degradation. The ADR is deemed to be 0.50%.

"Baseline Savings Rate" means the agreed baseline savings rate as set forth on Exhibit A.

"DAS" means Contractor's or its agent's data acquisition system that displays historical meteorological and production data over an internet connection and consists of hardware located on-site and software housed on Contractor's or its agent's DAS server. The DAS measures and logs, at minimum, the following parameters on a 15-minute average basis at each Site: actual AC electricity production of the applicable System (in kWh), solar irradiance (in W/m²), ambient and module temperature (in °C), and wind speed (in meters per second).

"Expected Production" is the expected electricity Production measured in kilowatt-hours (kWh) from the System (as adjusted for the ADR) as set forth on Exhibit A, as may be revised from time to time in accordance with this Agreement.

"Guaranty Level" is 90% of the Expected Production (as adjusted for the ADR) for the purpose of calculating the minimum monetary value of electricity purchases that shall be avoided by a System's electricity output for each year of the Term under this Agreement.

"Guaranty Year" means each consecutive year during the Term.

"Energy Savings Model" means the model representing the System to be built by Contractor that shall be used for calculating any Guaranty Payments, and is attached as Exhibit A.

"Uncertainty Allowance" or "UA" means the uncertainty associated with the instruments employed to measure the power output of the system and the environmental parameters. The parties agree that for purposes of this Agreement and the calculation of the Expected Production, the Uncertainty Allowance is 5%.

5. Shading. Each System's output expectations are based on current site conditions. Introducing new shade onto the solar modules will have a negative impact on performance. Contractor will not be responsible for loss of production due to shade that is introduced after the System has been installed. Building alterations, new structures, satellite dishes and new tree growth are examples of objects that cause shade if placed in close proximity to the solar array. The Owner is responsible for maintaining the current site conditions or notifying Contractor of any new shading, at which time Contractor will incorporate new shading into a revised Energy Savings Model and a revised Exhibit A, which will allow the Expected Production to reflect the new shading conditions.

6. Contingency for Equipment Failure. In the event of hardware, communication, or other failure affecting the DAS, Contractor will make reasonable efforts to resolve the failure in a timely manner. In the event that data are lost, Actual Production shall be adjusted to compensate for such lost data:
 - a. Lost Electricity Data. In lieu of lost electricity data, Contractor will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. In the event that data from the System meter are inaccurate or missing, Contractor will simulate electricity production during the missing interval utilizing measured meteorological data and solar energy modeling software. The simulated electricity production during the missing interval will be added to the Actual Electricity Production for the subject Guaranty Year.
7. Adjustment of Expected Production. Contractor, with approval from the Owner, shall submit a corresponding adjustment to Expected Production and the Energy Savings Model by revising Exhibit A accordingly, for the affected period if, and to the extent, there is a material change in the production of electricity by a System owing to any of the following events:
 - a. There are any material changes to the Scope of Work or redesigns of the System or substitution of alternate System(s) made subsequent to execution of this Agreement;
 - b. The manufacturer of the solar specific equipment including any modules, inverters, racking, combiner boxes or monitoring equipment is not able or willing to honor its product warranty to Owner or the warranty has expired and Owner does not remedy by replacement at its own expense, provided that Contractor used its best efforts to assist the Owner in its attempts to oblige the manufacturer to comply with its warranty obligations;
 - c. In the event where Contractor requires the Owner's reasonable cooperation to remedy any source of under-performance (such as tree trimming, or providing access to premises, for example) and is denied that cooperation within a reasonable amount of time;
 - d. There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
 - e. There is an extended power outage;
 - f. There is a Force Majeure Event as defined in the ESC Agreement; or
 - b) There is any change in usage of or structures on the Site, or buildings at or near the Site that materially affects the performance of the System(s) unless Contractor provides prior written consent to the change. Data Quality. Where data used in the analysis, whether meteorological, power or energy, exhibit a high degree of error or departure from expected values, those data points may be omitted from the analysis. Data points excluded will be identified and the reason for the exclusion noted.

8. True-Up and Calculation of Guaranty Payment. At the end of each Guaranty Year, Contractor shall within 120 days provide Owner with a report detailing each System's Actual Electricity Production (in AC kWh) for each Guaranty Year and the corresponding monetary value of such Actual Electricity Production at the Baseline Savings Rate (the "**Actual Utility Avoided Cost**"). For all Systems collectively for each Guaranty Year, Contractor shall also provide a true-up calculation that compares the System's Actual Utility Avoided Cost and its corresponding Guaranteed Utility Avoided Cost monetary value, and calculated as follows:

True-Up Calculation for the Utility Avoided Costs. Contractor shall perform the following true-up calculation for each Guaranty Year for all Systems (as set forth on Exhibit A):

Step One: Calculate the **Guaranteed Utility Avoided Cost** value as follows:

$$[\text{Expected Production (kWh)}] \times [.90] \times [(1 - \text{ADR})^{(\text{GUARANTY YEAR} - 1)}] \times [1 - \text{UA}] \times [\text{Baseline Savings Rate (\$/kWh)}]$$

Step Two: Calculate the **Actual Utility Avoided Cost** value as follows:

$$[\text{Actual Electricity Production (kWh)}] \times [\text{Baseline Savings Rate (\$/kWh)}]$$

Step Three: Calculate the **True-Up Amount** by subtracting the Guaranteed Utility Avoided Cost value from the Actual Utility Avoided Cost value.

Actual Electricity Production values shall be based on the revenue grade utility meter measuring the output of each System. When providing the Owner with a true-up report, the Contractor shall, upon the Owner's request, make reasonable efforts to explain the data, calculations, and the results, and shall make available the underlying data and calculations.

- a. Review and Approval of True-Up Report. Within thirty (30) days of receipt of the true-up report, Owner shall either accept the true-up report or may propose revisions to the calculated True-Up Amount. If no objection is made by Owner within the thirty (30) day period, the true-up report will be deemed accepted. Should the Owner dispute the true-up report results, Parties agree to make good-faith efforts to address and resolve the cause of the dispute.
- b. Determining the Guaranty Payment, If Any: If the True-Up Amount is a negative dollar amount, the Contractor has underperformed according to the terms of this Agreement during the Guaranty Year and owes a payment (a "**Guaranty Payment**") in this amount to the Owner. For example, a negative True-Up Amount of <\$10,000> would mean that the Contractor owes \$10,000 to the Owner. If the True-Up Amount is zero or a positive number, the Contractor has exceeded the minimum required performance under this Agreement and therefore owes no Guaranty Payment to the Owner for the Guaranty Year. The Parties agree that no Guaranty Payment that may accrue during a given Guaranty Year shall become due and payable until the end of such Guaranty Year.

- c. Making a Required Guaranty Payment. Any required Guaranty Payment shall be made by Contractor within 30 days of the later of (1) acceptance of the true-up report by Owner, or (2) resolution of any dispute of the true-up report results between Contractor and Owner.

10. Termination

- a. By the Owner. Owner may terminate this Agreement in the event any of the following occurring:
 - i. since the date of this Agreement, a material deterioration of the financial situation/solidity of the Contractor as evidenced by a failure to pay substantial amounts to other creditors for a material period of time or a serious threat that a petition in bankruptcy will be filed against Contractor; or
 - ii. Contractor fails to pay to Owner any Guaranty Payment (other than any amounts which are the subject of a bona fide dispute) within thirty (30) calendar days of written notice of such failure from Owner to Contractor.
- b. By Either Party. Either party may terminate this Agreement in the event of any of the following occurring:
 - i. any failure by the other Party to perform any of its material obligations, except payment of a Guaranty Payment, under this Agreement, which failure is not remedied within fifteen (15) calendar days of written notice of such failure from the non-breaching Party to the breaching Party; provided, however, that if such failure can be remedied, but (A) such failure cannot reasonably be remedied within such fifteen (15) calendar day period, and (B) the breaching Party commences cure of such failure within such fifteen (15) calendar day period and thereafter diligently seeks to remedy such failure, then the non-breaching Party shall not be entitled to terminate this Agreement until such time as the breaching Party ceases all reasonable endeavors to cure such failure unless such failure continues for a period of a thirty (30) calendar days from the original written notice from the non-breaching Party; or
 - ii. a Force Majeure Event, as defined in the ESC Agreement, which conditions continue for a period of sixty (60) days or more.
- c. Preservation of Rights. Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

11. Miscellaneous

- a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.
- b. Amendments. No amendment to this Agreement shall be binding on the Parties unless set out in writing, expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.
- c. No Waiver. No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to

insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

d. Successors and Assigns.

- i. Except as set forth in subsection (ii) of this section, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which shall not be unreasonably withheld.
- ii. Notwithstanding the foregoing, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its affiliates or in connection with a merger, consolidation or sale of all or substantially all of the assets of Contractor.

e. Notices. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; or (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested. Mailed notices shall be addressed as follows to:

Owner

City of Norman
201 W. Gray Street
Norman, OK 73069
ATTN: Chris Mattingly

Contractor

BioStar E Light JV, LLC
9400 Reeds Rd., Ste 150
Overland Park, KS 66207
ATTN: William Love

f. Time of Essence. Time is expressly agreed to be of the essence of this Agreement and all of the terms, conditions and provisions hereof.

g. Construction. The following rules of construction and interpretation shall govern the construction and interpretation of this Agreement:

- i. Days. Any reference to days in this Agreement shall mean calendar days unless otherwise specified.
- ii. Number and Gender. Whenever, in this Agreement, the singular number is used, the same shall include the plural and the neuter, masculine and feminine genders shall include each other, as the context may require. All numbering in this Agreement shall use English numbering conventions.
- iii. Interpretation and Joint Drafting. The Parties expressly agree that this Agreement was jointly drafted and that each had the opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not

strictly for or against any of the Parties. In the event any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or counsel for any particular Party.

- iv. Entire Agreement. This Agreement and any agreements executed by the Parties on the date of this Agreement contain the whole agreement between the Parties relating to the transactions contemplated therein and supersede all previous agreements between the Parties relating to these transactions.
 - (1) Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those repeated in this Agreement and any other agreement entered into on the date of this Agreement between the Parties) made by or on behalf of any other party at any time before the signature of this Agreement. Each party waives all rights and remedies which, but for this subsection, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- v. Article and Section References. All cross-references in this Agreement to articles, sections and subsections, unless specifically directed to another agreement or document, refer to articles, sections and subsections of this Agreement.
- vi. Captions. The titles of the various exhibits, schedules or attachments to this Agreement and of the various articles, sections or subsections of this Agreement:
 - (1) are inserted for convenience, identification and ease of reference purposes only,
 - (2) do not form part of this Agreement, and
 - (3) are in no way intended to define or limit the scope, extent or intent of this Agreement or any of the provisions of this Agreement and shall not in any way affect the interpretation, application or construction of this Agreement or any of the provisions of this Agreement.
- vii. Severability. The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.
- viii. Multiple Counterparts. This Agreement and any amendments of this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF NORMAN

CONTRACTOR

Date: _____, 20__

Date: May 5, 2021

By: _____

By: [Signature]

Print Name: _____

Print Name: WILLIAM P. LOVE

Print Title: _____

Print Title: MANAGER

Attest:

City Clerk

NORMAN UTILITIES AUTHORITY

Date: _____, 20__

By: _____

Print Name: _____

Print Title: _____

Attest:

Approved as to form and legality this ____ day of _____, 2021.

Kathryn Walker, City Attorney/General Counsel

Schedule 1: System(s)

ID	SYSTEM DESCRIPTION	SIZE (DC)	METER ID	LOCATION
#1-A	Solar Array 1 - Water Treatment Plant	300.0	128899922	3000 E Robinson St, Norman, OK
#1-B	Solar Array 1B - Water Treatment Plant	300.0	128899957	3000 E Robinson St, Norman, OK
#2-A	Solar Array 2A - Water Reclamation Facility	300.0	1842192/56966409G	3500 Jenkins Ave, Norman, OK
#2-B	Solar Array 2B - Water Reclamation Facility	300.0	130607728/68743480G	3500 Jenkins Ave, Norman, OK
#2-C	Solar Array 2C - Water Reclamation Facility	500.0	129326032/52304056G	3500 Jenkins Ave, Norman, OK
#2-D	Solar Array 2D - Water Reclamation Facility	300.0	130267248/56965632G	3500 Jenkins Ave, Norman, OK
#2-E	Solar Array 2E - Water Reclamation Facility	270.0	11998945	3500 Jenkins Ave, Norman, OK

Exhibit A: Energy Savings Model used for calculation of Guaranty Payment

ID	SYSTEM DESCRIPTION			EXPECTED PRODUCTION (kWh)	METER BASELINE SAVINGS RATES		BASELINE TOTAL EXPECTED ENERGY SAVINGS			\$ 276,455.99		
#1-A	Solar Array 1 - Water Treatment Plant			473,058	\$	0.101437	TOTAL EXPECTED ENERGY PRODUCTION (KWH)			3,579,790		
#1-B	Solar Array 1B - Water Treatment Plant			473,058	\$	0.150112						
							BLENDED BASELINE SAVINGS RATE			\$ 0.0772		
#2-A	Solar Array 2A - Water Reclamation Facility			473,059	\$	0.063838						
#2-B	Solar Array 2B - Water Reclamation Facility			473,059	\$	0.051136	CALCULATE ANNUAL PENALTY PAYMENT:					
#2-C	Solar Array 2C - Water Reclamation Facility			788,429	\$	0.061336	ACTUAL UTILITY AVOIDED COSTS - GUARANTEED UTILITY AVOIDED COSTS					
#2-D	Solar Array 2D - Water Reclamation Facility			473,057	\$	0.069578	= TRUE-UP AMOUNT					
#2-E	Solar Array 2E - Water Reclamation Facility			426,070	\$	0.083319	IF TRUE-UP AMOUNT >\$0, NO PAYMENT IS DUE.					
TOTAL				3,579,790								
GUARANTEED UTILITY AVOIDED COSTS							ACTUAL UTILITY AVOIDED COST					
YEAR	EXPECTED PRODUCTION (kWh)	90% EXPECTED PRODUCTION (kWh)	UNCERTAINTY ALLOWANCE	BASELINE SAVINGS RATE (\$/kWh)	GUARANTEED UTILITY AVOIDED COSTS	ACTUAL ELECTRIC PRODUCTION (kWh)	BASELINE SAVINGS RATE (\$/kWh)	ACTUAL UTILITY AVOIDED COSTS				
Year 1	3,579,790	3,221,811	x	\$ 0.0772	=		\$ 0.0772	=				
Year 2	3,561,891	3,205,702	x	\$ 0.0772	=		\$ 0.0772	=				
Year 3	3,544,082	3,189,673	x	\$ 0.0772	=		\$ 0.0772	=				
Year 4	3,526,361	3,173,725	x	\$ 0.0772	=		\$ 0.0772	=				
Year 5	3,508,729	3,157,856	x	\$ 0.0772	=		\$ 0.0772	=				
Year 6	3,491,186	3,142,067	x	\$ 0.0772	=		\$ 0.0772	=				
Year 7	3,473,730	3,126,357	x	\$ 0.0772	=		\$ 0.0772	=				
Year 8	3,456,361	3,110,725	x	\$ 0.0772	=		\$ 0.0772	=				
Year 9	3,439,079	3,095,171	x	\$ 0.0772	=		\$ 0.0772	=				
Year 10	3,421,884	3,079,696	x	\$ 0.0772	=		\$ 0.0772	=				
Year 11	3,404,775	3,064,297	x	\$ 0.0772	=		\$ 0.0772	=				
Year 12	3,387,751	3,048,976	x	\$ 0.0772	=		\$ 0.0772	=				
Year 13	3,370,812	3,033,731	x	\$ 0.0772	=		\$ 0.0772	=				
Year 14	3,353,958	3,018,562	x	\$ 0.0772	=		\$ 0.0772	=				
Year 15	3,337,188	3,003,469	x	\$ 0.0772	=		\$ 0.0772	=				
Year 16	3,320,502	2,988,452	x	\$ 0.0772	=		\$ 0.0772	=				
Year 17	3,303,900	2,973,510	x	\$ 0.0772	=		\$ 0.0772	=				
Year 18	3,287,380	2,958,642	x	\$ 0.0772	=		\$ 0.0772	=				
Year 19	3,270,943	2,943,849	x	\$ 0.0772	=		\$ 0.0772	=				
Year 20	3,254,588	2,929,130	x	\$ 0.0772	=		\$ 0.0772	=				
Year 21	3,238,316	2,914,484	x	\$ 0.0772	=		\$ 0.0772	=				
Year 22	3,222,124	2,899,912	x	\$ 0.0772	=		\$ 0.0772	=				
Year 23	3,206,013	2,885,412	x	\$ 0.0772	=		\$ 0.0772	=				
Year 24	3,189,983	2,870,985	x	\$ 0.0772	=		\$ 0.0772	=				
Year 25	3,174,033	2,856,630	x	\$ 0.0772	=		\$ 0.0772	=				