

AN ORDINANCE 2017-06-22-0509

**AUTHORIZING THE CITY OF SAN ANTONIO'S PARTICIPATION IN CPS ENERGY'S SOLARHOSTSA PROGRAM FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF SOLAR INSTALLATIONS ON CITY FACILITIES, APPROVAL FOR CITY DEPARTMENTS TO ENTER INTO A SOLAR LICENSE AGREEMENT WITH POWERFIN SOLARMUNDO, LLC, FOR A TERM OF TWENTY YEARS, WITH TWO FIVE-YEAR RENEWAL OPTIONS, AND ACCEPTANCE OF HOST CREDITS IN AN AMOUNT NOT TO EXCEED \$0.03 TIMES THE TOTAL KILOWATT HOURS OF THE NET ELECTRICITY RECEIVED BY CPS ENERGY FROM THE SOLAR INSTALLATION.**

\* \* \* \* \*

**WHEREAS**, CPS Energy, through power purchase agreements with operators from across the country, has eleven solar farms generating 446 megawatts of renewable power located in and around the San Antonio area, the most solar generation capacity in the state; and

**WHEREAS**, in an effort to make solar power more accessible, CPS Energy developed the Simply Solar Program which offers customers the opportunity to lease their roof for solar power generation or to purchase a share of the solar power produced at a centralized solar farm; and

**WHEREAS**, on August 12, 2015, CPS Energy and PowerFin SolarMundo, LLC (PowerFin) entered into a Power Purchase Agreement that provides for the purchase by CPS Energy from PowerFin of the electrical output from solar power generation systems to be installed and operated by PowerFin on the rooftops of CPS customers (Solar Hosts), both residential and commercial; and

**WHEREAS**, the installation of solar on municipal facilities is consistent with the goal of the SA Tomorrow Sustainability Plan, adopted by City Council in August 2016, for the City to Lead by Example by purchasing or producing renewable energy for government operations to help meet long-term renewable electric generation goals; and

**WHEREAS**, the Office of Sustainability and PowerFin have completed a desktop solar assessment to identify city facilities that can potentially serve as the most suitable Solar Hosts, including facilities from the Parks and Recreation Department, the Fire Department and the Human Services Department, and will identify alternative city facilities if these facilities are not suitable Solar Host candidates; and

**WHEREAS**, this ordinance authorizes the City of San Antonio's participation in CPS Energy's SolarHostSA Program for the installation, operation and maintenance of solar installations on city facilities; authorizes city departments opting into the program to enter into a solar license agreement with PowerFin SolarMundo, LLC, for a term of twenty years, with two five-year renewal options; and authorizes the acceptance of host credits on their monthly CPS Energy bill

in an amount not to exceed \$0.03 times the total kilowatt hours (kWH) of the "Net Electricity" received by CPS Energy from the solar installation; **NOW THEREFORE,**

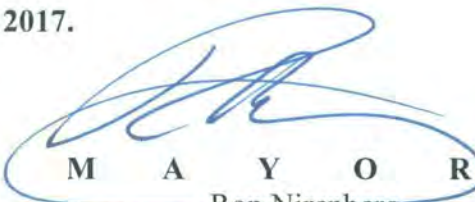
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council approves participation in CPS Energy's SolarHostSA Program for the installation, operation and maintenance of solar installations on city facilities, up to a maximum designed aggregate output of 300 kilowatts alternating current (300 kW AC), and the acceptance of Host Credits for city facilities participating in the SolarHostSA Program on their monthly CPS Energy bill in an amount not to exceed \$0.03 times the total kilowatt hours (kWH) of the "Net Electricity" received by CPS Energy from the solar installation. The Host Credits will be budgeted within the "gas and electricity" line item for each participating city facility.

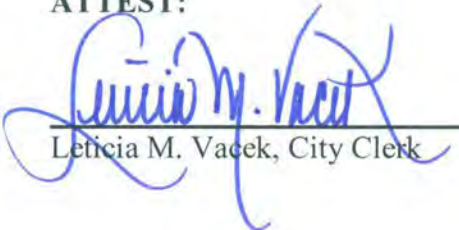
**SECTION 2.** The City Manager, or her designee, is hereby authorized to take all actions necessary to negotiate and execute a Solar License Agreement, and any other documents necessary to effectuate the purpose of this Ordinance, for each City facility opting into the program with **POWERFIN SOLARMUNDO, LLC**, for a term of twenty years, with two five-year renewal options. A copy of the Solar License Agreement, in substantially final form, is attached and incorporated herein for all purposes as **ATTACHMENT I**. The execution authority granted by this ordinance shall expire 120 days from the effective date of this Ordinance.

**SECTION 3.** This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

**PASSED and APPROVED this 22<sup>nd</sup> day of June, 2017.**

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Andrew Segovia, City Attorney

<b>Agenda Item:</b>	27 ( in consent vote: 4, 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 23, 25, 26A, 26B, 26C, 26D, 27 )						
<b>Date:</b>	06/22/2017						
<b>Time:</b>	09:26:11 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the City of San Antonio's participation in CPS Energy's SolarHostSA Program for the installation, operation and maintenance of solar installations on City facilities; approval for City departments to enter into a solar license agreement with PowerFin SolarMundo, LLC, for a term of twenty years, with two five-year renewal options; and acceptance of host credits, for City facilities participating in the SolarHostSA Program, on their monthly CPS Energy bill in an amount not to exceed \$0.03 per total kilowatt hours (kWH) of the "Net Electricity" received by CPS Energy from the solar installation. [Roderick Sanchez, Assistant City Manager; Douglas Melnick, Chief Sustainability Officer]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

## SOLAR LICENSE AGREEMENT

THIS SOLAR LICENSE AGREEMENT (this "**Agreement**" or "**License**"), dated \_\_\_\_\_ is by and between the City of San Antonio, a Texas municipal corporation ("**Host**" or "**City**"), and PowerFin SolarMundo, LLC, a Texas limited liability company ("**PowerFin**"), both of which may be referred to collectively as "the Parties".

1. **PURPOSE.** Pursuant to this Agreement, the City is granting PowerFin a license over certain areas, as described in Section 2, of the property the City owns with an address of \_\_\_\_\_ and legally described on the attached Exhibit "A" (the "**Property**") to install, operate, inspect, maintain, repair, replace and remove the photovoltaic solar power generation system described on the attached Exhibit "B" and such cables, electric lines, ducts, transformers, monitoring systems, and other apparatus as may, in the opinion of PowerFin, be necessary or desirable for connecting the System to the electrical grid (collectively, the "**System**").

2. **LICENSE.** The area of roof where the System is installed by PowerFin and such other areas of the City's Property where the other components of the System are installed are referred to herein as the "**License Area.**" The License Area is depicted on the Property in the attached Exhibit A. The City hereby grants PowerFin a license, revocable only in accordance with the terms of this Agreement, for the Term to install, inspect, maintain, repair, and replace the System in the License Area, together with:

A. A license over such exterior areas of the Property as may be reasonably necessary for purposes of installing, operating, inspecting, replacing, maintaining, repairing and removing the System at the Property, as detailed on the attached Exhibit A;

B. A license for ingress and egress to and from the License Area to PowerFin and CPS Energy and their employees, agents, contractors and subcontractors, at all times during the Term of this Agreement, to enter that portion of the License Area for purposes of taking such actions as may be necessary for the purpose of installing, operating, inspecting, maintaining, repairing, replacing and removing the System; provided, however, that, except in the event of (1) emergency circumstances or (2) regularly scheduled maintenance where the timing has been agreed in advance by the Parties, PowerFin and CPS Energy will provide the City at least forty-eight (48) hours prior written notice. This access right shall continue for up to ninety (90) days after this Agreement expires to provide PowerFin with time to remove the System at the end of the Term. During the time that PowerFin has access rights, the City shall ensure that PowerFin's access rights are preserved and shall not interfere with such rights or access.

C. This License does not relieve PowerFin of any other approvals, permits, or licenses that may otherwise be required by the City of San Antonio, the State of Texas or the federal government. This License is subject to all pre-existing rights of others who have rights in the License Area.

D. This License does not grant PowerFin authority to use any public property beyond the License Area.

E. PowerFin agrees that each individual under its control shall abide by, conform to, and comply with all applicable laws, ordinances, rules, and regulations and will not do or permit to be done anything in violation thereof. If the attention of PowerFin is called to any such violation, PowerFin or those under

PowerFin's control will immediately desist from and correct such violation. Further, PowerFin covenants that it or those under its control shall not discriminate against any individual or group on account of race, color, sex, religion, age, national origin, or handicap in the use of the License Area.

3. CPS ENERGY CREDITS. PowerFin is entering into this Agreement pursuant to that certain Power Purchase Agreement between PowerFin and CPS Energy dated as of August 12, 2015 (the "**PPA**"). Pursuant to the PPA, subject to the terms and provisions thereof, and during the Term and Extension Term of this Solar License Agreement, CPS has agreed to provide a credit on the monthly bill of each CPS Customer that agrees to host PowerFin's solar power generation systems on their properties (the "**Host Credit**"). Further details and limitations regarding the Host Credit are provided on the attached letter from CPS that is attached hereto as Exhibit "C".

4. TERM.

A. Unless earlier terminated pursuant to the terms and conditions of this Agreement, the initial Term of this Agreement (the "**Initial Term**") commences on the date of the signature by the City below, which such date shall be after approval by the San Antonio City Council as evidenced by the passage of an Ordinance, and will end on the 20<sup>th</sup> anniversary of such date.

B. The Parties may by mutual agreement extend the Term of this Agreement for two additional periods of five years each after the Initial Term (each such extension, an "**Extension Term**") by delivering written notice as provided in Section 18. Notice below at least 90 days prior to the expiration of the Initial Term and subsequent Extension Term.

C. The Initial Term, together with any Extension Terms, is referred to herein as the "**Term**." Notwithstanding any other provision contained herein, the Term will automatically terminate in the event that the PPA is terminated prior to the end of such Term. PowerFin shall immediately notify the City if the PPA will be terminated prior to the end of such Term.

5. SYSTEM INSTALLATION, REPAIR. PowerFin agrees to:

A. Schedule the installation of the System at a mutually convenient date and time so that City staff are able to be present at the Property during installation;

B. Obtain and comply with all permits, permissions, and terms required and necessary for the work to be performed. This includes but is not limited to, verification of building integrity to support additional construction weight and confirmation that solar panel installation will not invalidate various roof warranties;

C. Construct the System according to the system layout attached hereto as Exhibit "B";

D. Complete all work in a professional and workman-like manner and in compliance with all building/electric codes and other applicable laws;

- E. Operate, maintain and repair the System during the Term of this Agreement at its sole cost and expense;
  - F. Provide the City with a point of contact ("**PowerFin Representative**") who can respond immediately in case of an emergency involving the System; and
  - G. Remove the System upon the expiration or termination of this Agreement and reasonably restore the License Area to its original condition prior to the installation of the System, except for normal wear and tear, such removal and restoration to be at PowerFin's sole expense; and
  - H. Keep the premises reasonably free of unwanted debris.
6. DAMAGES TO PROPERTY CAUSED BY SYSTEM. PowerFin agrees to pay for all costs of repairing any physical damage caused to City property as a result of the installation or operation of the System on the Property, or by PowerFin or any of its employees, agents, contractors and subcontractors while on the Property.
7. PROPERTY MAINTENANCE. The City agrees to:
- A. Not attempt to perform any repairs, maintenance or modifications on the System;
  - B. Promptly notify the PowerFin Representative if the System is damaged or appears unsafe or if the System is stolen;
  - C. Provide reasonable access to the License Area for purposes of inspecting, maintaining, cleaning, and repairing the System including, but not limited to, providing PowerFin with access to an exterior faucet or water source so that PowerFin may clean and maintain the System. Prior to performing any such work on the System, PowerFin will coordinate the dates and times of maintenance or repair of the System with the City. PowerFin will provide all necessary personnel and equipment to clean and maintain the System, provide a water use estimate (gallons of water per location) and frequency per location, and reimburse the City for the cost of any water so used;
  - D. Keep any trees, bushes and hedges located on City-owned property trimmed that may impact the solar production of the System;
  - E. To the extent practicable, not modify the Property in a way that shades the System;
  - F. Not remove any markings or identification tags on the System which have been previously approved by the City;
  - G. To the extent practicable, not permit or allow to exist any condition or circumstance that would cause the System not to operate as intended at the Property; and
  - H. To the extent practicable, secure and prevent damage to the System in a manner reasonably consistent with the treatment of the City's assets, while not impairing the performance of the System.

8. LOSS OR DAMAGE. PowerFin will bear all of the risk of loss, damage, theft, destruction or similar occurrence to any or all of the System except for such loss, damage, theft destruction or similar occurrence as is caused by the City's intentional conduct, or by the intentional conduct of the City's contractors or employees.
9. BUILDING RENOVATIONS OR REPAIRS. If the City repairs or renovates the Property within the License Area and this action requires the relocation, maintenance or adjustment of the System (including without limitation in the event of a roof replacement) and such work requires the temporary removal or modification of the System, the City will notify PowerFin prior to such repairs or renovation.
10. HOST TERMINATION OPTION. At any time the City may terminate this Agreement by giving written notice with such termination to be effective 90 days after such written notice is given to PowerFin.
11. POWERFIN TERMINATION OPTIONS. At any time following the fifth anniversary of the date of this Agreement, PowerFin may terminate this Agreement upon 90 days written notice to the City. In addition, at any time during the Term of this Agreement, if PowerFin determines, in its sole discretion, that that conditions in and around the Property warrant the removal of the System, then PowerFin may terminate this Agreement upon 90 days written notice to the City. In the event that PowerFin terminates this Agreement under this Section 11, PowerFin shall be provided reasonable time, not to exceed 90 days, to remove the System and to reasonably restore the License Area to its original condition prior to the installation of the System, except for normal wear and tear. After removal of the System, PowerFin shall have no further obligations to the City and the City shall have no further obligations to PowerFin under this Agreement.
12. TERMINATION PRIOR TO INSTALLATION. PowerFin's obligations to install the System are conditioned on PowerFin's satisfaction with all conditions related to the Property and the installation of the System, and the City understands that PowerFin may elect, in its sole discretion and with notice to the City, to terminate this Agreement at any time prior to installation, whereupon neither the City nor PowerFin shall have any remaining obligations under this Agreement nor shall the City have any claim to the Host Credits.
13. RUNS WITH LAND; MEMORANDUM. This Agreement will run with the land and be binding upon future owners of the Property. The City agrees that PowerFin has the right to record a short form of memorandum of this Agreement in the Official Public Records of Real Property of Bexar County, Texas in the form set forth at Exhibit "E", which the City is executing simultaneously with this Agreement. In the event this Agreement is terminated as provided herein, either PowerFin or the City may record a memorandum discharging the notice in the office of the Real Property Records for Bexar County, the county in which the Property is located.
14. RESERVED
15. DISCLAIMER OF HOST CREDIT AMOUNT AND DISCLAIMER OF WARRANTIES. BY EXECUTING THIS AGREEMENT, THE CITY AGREES AND ACKNOWLEDGES THAT IT HAS READ AND UNDERSTAND THE TERMS AND CONDITIONS APPLICABLE TO THE HOST CREDIT, THAT CPS IS NOT A PARTY TO THIS AGREEMENT AND THAT POWERFIN HAS NOT MADE ANY REPRESENTATIONS, WARRANTIES OR PROMISES REGARDING THE AMOUNT OF SUCH HOST CREDITS, THE PAYMENT THEREOF BY CPS, OR THE ELECTRICAL POWER TO BE GENERATED BY THE SYSTEM. THE CITY UNDERSTANDS THAT POWERFIN IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES

TO THE CITY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, DESIGN, CAPACITY, SUITABILITY OR PERFORMANCE OF THE SYSTEM.

16. INDEMNITY. PowerFin must indemnify the City and its elected officials, employees, agents, and representatives of and from any all loss, cost, liability, or expense, including court costs and attorneys' fees, arising from or relating to (a) the grant of this license, (b) PowerFin's activities under this license, or (c) PowerFin's activities or presence on or about the License Area, whether or not authorized by this Agreement.

This indemnity expressly covers the consequences of indemnitees' own negligence, whether sole or joint.

The City must promptly advise PowerFin in writing of any claim subject to this indemnity and PowerFin must, at its own cost, investigate, and defend such claim. Despite any insurance policy, the City may, at its own expense, participate in the defense without relieving PowerFin of this indemnity.

17. INSURANCE.

A. Without limiting the City's rights to indemnity under Section 16, PowerFin must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A – or better by A.M. Best and Company or provide evidence of self-insurance, in the following types and amounts:

Type	Amount
1. Worker's Compensation during the performance of improvements to the License Area or an approved alternate plan at other periods during the Term.	Statutory, with a waiver of subrogation in favor of the City
2. Employers' Liability during improvements to the License Area or an approved alternate plan at other periods during the Term.	\$500,000 per category, with a waiver of subrogation in favor of the City
3. Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed (d) Personal Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property (g) Broad Form Property Damage	For Bodily Injury and Property Damage: \$1,000,000 per Occurrence, \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage.

Any substitute for Workers' Compensation and Employers Liability must be applied in advance by the City's Risk Manager.

B. The City's Risk Manager may reasonably modify the above requirements if he determines the modification is in the City's best interest. If PowerFin believes the requested change is unreasonable, PowerFin has 60 days to give notice of termination. The termination provisions then apply.



C. With respect to the above required insurance, each insurance policy required by this Agreement must contain the following clauses if commercially available:

"No insurance or self-insurance provided by PowerFin can be canceled, limited in scope or coverage or non-renewed until after 30 days' prior written notice has been given to:

Office of Sustainability  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Douglas Melnick, Chief Sustainability Officer

"Any insurance or self-insurance provided by PowerFin is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of Antonio applies in excess of, not in contribution with, insurance provided by this policy."

D. Each insurance policy required by this Agreement, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, must contain the following clause:

"The City of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds."

E. PowerFin must deliver to the City, within 30 days after the Effective Date, endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. PowerFin must deliver to the City documentation acceptable to the City confirming the authority of those signing the endorsements

F. The Notices and Certificates of Insurance must be provided to the same address as for notices of cancellation.

18. NOTICES. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Each party shall deem a document faxed or sent via PDF as an original document. Notices to PowerFin shall be delivered to the following address:

PowerFin SolarMundo, LLC  
110 East Houston Street, 8<sup>th</sup> Floor  
San Antonio, Texas 78205

Unless changed, notice to the City goes to:

City Clerk

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

With a copy  
to

Chief Sustainability Officer,

Douglas Melnick

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

19. OWNERSHIP OF THE SYSTEM; TAX CREDITS AND REBATES. The City agrees that the System is not a fixture, but is PowerFin's personal property under the Uniform Commercial Code. As between the parties, in no event shall any portion of the System be deemed a fixture, nor shall the City have any rights in or to the System at any time, provided that, at the termination of this lease, PowerFin shall have 90 days to remove all personal property from the Property and any such personal property remaining on the Property after that 90-day period shall then belong to the City without payment of consideration. THE CITY UNDERSTANDS AND AGREES THAT ANY AND ALL TAX CREDITS, INCENTIVES, RENEWABLE ENERGY CREDITS, GREEN TAGS, CARBON OFFSET CREDITS OR UTILITY REBATES ARE THE PROPERTY OF AND FOR THE BENEFIT OF POWERFIN, USABLE AT ITS SOLE DISCRETION. POWERFIN SHALL HAVE THE EXCLUSIVE RIGHT TO ENJOY AND USE ALL SUCH BENEFITS, WHETHER SUCH BENEFITS EXIST NOW OR IN THE FUTURE. THE CITY AGREES TO REASONABLY COOPERATE WITH POWERFIN SO THAT POWERFIN MAY CLAIM ANY TAX CREDITS, RENEWABLE ENERGY CREDITS, REBATES, CARBON OFFSET CREDITS OR ANY OTHER BENEFITS FROM THE SYSTEM. THIS MAY INCLUDE, TO THE EXTENT ALLOWABLE BY LAW, ENTERING INTO NET METERING AGREEMENTS, INTERCONNECTION AGREEMENTS, AND FILING RENEWABLE ENERGY/CARBON OFFSET CREDIT REGISTRATIONS AND/OR APPLICATIONS FOR REBATES FROM THE FEDERAL, STATE OR LOCAL GOVERNMENT OR A LOCAL UTILITY AND ASSIGNING THESE TAX CREDITS, RENEWABLE ENERGY/CARBON CREDITS, REBATES OR OTHER BENEFITS TO POWERFIN.

20. LIMITATION OF LIABILITY. In no event will either party be liable to the other for consequential, incidental, punitive, exemplary, special or indirect damages.

21. DEFAULT. The City will be in default under this Agreement if any one of the following occurs: (a) the City fails to perform any material obligation that the City have undertaken in this Agreement (which includes doing something the City has agreed not to do, like alter the System) and such failure continues for a period of fourteen (14) days after written notice; (b) the City has provided any false or misleading financial or other information to obtain this Agreement; (c) any foreclosure notice is filed against the Property; or (d) the City makes an assignment for the benefit of creditors, admits in writing the City's insolvency, files or there is filed against the City a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent or undertakes or experiences any substantially similar activity. PowerFin will be in default under this Agreement if any one of the following occurs: (a) PowerFin fails to perform any material obligation that PowerFin has undertaken in this Agreement (which includes doing something PowerFin has agreed not to do) and such failure continues for a period of fourteen (14) days after written notice; (b) PowerFin has provided any false or misleading financial or other information to obtain this Agreement; or (c) PowerFin makes an assignment for the benefit of creditors, admits in writing PowerFin's insolvency, files or there is filed against PowerFin a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent or undertakes or experiences any substantially similar activity.

22. REMEDIES IN CASE OF DEFAULT. If this Agreement is in default, either Party may take any one or more of the following actions. The non-defaulting party will give the defaulting party written notice and wait any period of time required, but not less than 60 days, before taking any of these actions. The non-defaulting party may: (a) terminate this Agreement; (b) suspend its performance under this Agreement; (c) take any reasonable action to correct the default or to prevent a loss; (d) take actions to remove the System from the Property; and (e) use any other remedy available to it in this Agreement or by law. By choosing any one or more of these remedies, the non-defaulting party does not give up its right to use another remedy. By deciding not to use any remedy should this Agreement be in default, the non-defaulting party does not give up its right to use that remedy in case of a subsequent default.

23. APPLICABLE LAW. The construction of this Agreement and the rights, remedies, and obligations arising thereunder are governed by the laws of the State of Texas; provided, however, that the Texas conflicts of laws rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations of both parties are performable in San Antonio, Bexar County, Texas.

24. ASSIGNMENT, SALE OR TRANSFER. PowerFin works with banks, large companies and other significant financing parties to finance the System. As a result, PowerFin may assign this Agreement to one of its financing parties. PowerFin may assign, sell or transfer the System and this Agreement, or any part of this Agreement or the exhibits, only with the prior written consent and approval of the City, provided, however, that any assignment to a financing party shall not require the consent of the City. Other than with respect to an assignment to a financing party, PowerFin will not sell or transfer all or any portion of PowerFin's interest in the System unless the purchaser or transferee agrees in writing to assume all of PowerFin's obligations pursuant to this Agreement. In such event, PowerFin will provide the City with a copy of such written agreement at least fifteen (15) days in advance of the effective date of any such sale or transfer.

25. WAIVER. Any delay or failure of a Party to enforce any of the provisions of this Agreement, including but not limited to any remedies listed in this Agreement, or to require performance by the other Party of any of the provisions of this Agreement, shall not be construed to (i) be a waiver of such provisions or a Party's right to enforce that provision; or (ii) affect the validity of this Agreement.

26. ENTIRE AGREEMENT; CHANGES. This Agreement contains the Parties' entire agreement regarding the subject matter of this Agreement. There are no other agreements regarding this Agreement, either written or oral. Any change to this Agreement must be in writing and signed by both Parties. Only an authorized officer of PowerFin may execute any change to this Agreement on behalf of PowerFin.

27. CONDEMNATION. If the License Area is taken, in whole or in part, by eminent domain, the City may terminate this Agreement as of the date title to the taken land vests in the condemning authority and the City will have no further liability. PowerFin waives any claim to condemnation proceeds paid to the City. PowerFin may seek a separate condemnation award.

28. TAXES AND LICENSES. PowerFin must pay, on or before the due date all federal, state, and local taxes, license fees, permit fees, and similar charges now or hereafter levied on PowerFin or its property or on the License Area and arising from PowerFin's use thereof.

29. PROHIBITED INTERESTS IN CONTRACTS. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (a) a City officer or employee;
- (b) his parent, child or spouse;
- (c) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (d) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

PowerFin warrants and certifies as follows:

- (a) PowerFin and its officers, employees and agents are neither officers nor employees of the City.
- (b) PowerFin has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

PowerFin acknowledges that City's reliance on the above warranties and certifications is reasonable.

30. CONSENT/APPROVAL OF THE CITY. When the City's consent and approval is called for under this Agreement, the consent and approval may be granted or withheld on behalf of the City by the City Manager, or her designee, unless the City Charter requires Council action.

31. APPROPRIATIONS. The Parties acknowledge and agree that any monetary obligations of the City of San Antonio under this Agreement would be funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. The Parties acknowledge and agree that this Agreement does not require the City Council to appropriate money for this agreement in an annual City of San Antonio Budget.

32. MISCELLANEOUS PROVISIONS

- A. Relationship Limited. This instrument creates only the relationship of licensor and licensee. The parties are not principal and agent, partners, joint venturers, or participants in any other enterprise between them.
- B. Nondiscrimination. PowerFin must not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices or in the use of the License Area.

- C. Release From Liability. If the City transfers the License Area, the City will have no liability relating to the period after transfer. The City's transferee will succeed to all the City's rights hereunder.
- D. Yielding Up. PowerFin must, at termination, whether by expiration or otherwise, yield the License Area up peacefully.
- E. Authority to Execute. The individual or individuals executing this Agreement on behalf of PowerFin personally warrant that each of them has full authority to do so.
- F. Acknowledgment of Reading. The parties acknowledge reading this Agreement, including exhibits or attachments, and have received the advice and counsel necessary to form a complete understanding of their rights and obligations. Having so done, they execute this Agreement freely and voluntarily.
- G. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.
- H. Successors. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.
- I. Integration. This Agreement represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the Parties.
- J. Modification. This Agreement may not be changed orally but only by a written agreement, signed by both Parties. No modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.
- K. Third Party Beneficiaries. This License is intended for the benefit of the Parties hereto and permitted assigns only. There are no third party beneficiaries.
- L. Pronouns. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire License Agreement, not to any particular provision of it.
- M. Captions. Section and paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.
- N. Counterparts. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

O. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. But no such additional document(s) may alter the rights or obligations of the parties under this Agreement

P. Ambiguities Not to Be Construed Against Drafter. Ambiguities in this Agreement must be resolved without constructing against the drafter.

Q. Public Information. Licensee PowerFin acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

I have read this Agreement and the Exhibits in their entirety and I acknowledge that I have received a complete copy of this Agreement.

CITY OF SAN ANTONIO,  
a Texas home rule municipality

\_\_\_\_\_  
Name: Roderick Sanchez, Assistant City Manager  
Date:

APPROVED AS TO FORM  
CITY ATTORNEY

\_\_\_\_\_  
Name:  
Date:

POWERFIN:

PowerFin SolarMundo, LLC  
a Texas limited liability company

By: \_\_\_\_\_  
Title: President  
Date: 6/6/17

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[The Legal Description will include plat or drawing of the Property, identify the "License Area" on the Property, and the area of the Property that will contain the System. ]



EXHIBIT "B"

DESCRIPTION OF SYSTEM

[The Description of System will include a layout of the System and components, details of the equipment and materials in the System, and a schematic of the System.]

EXHIBIT "C"

HOST CREDIT CONDITIONS

Dear Customer:

On August 12, 2015, CPS Energy ("CPS") and PowerFin SolarMundo, LLC ("PowerFin") entered in a Power Purchase Agreement (the "PPA") that provides for the purchase by CPS from PowerFin of the electrical output from solar power generation systems to be installed and operated by PowerFin on the rooftops of CPS customers (such customers referred to herein as "Hosts").

Subject to the terms of the PPA and PowerFin's performance under the PPA, CPS has agreed to provide a credit on the monthly bill of each Host in an amount equal to the product of \$0.03 *times* the total kilowatt hours (kWh) of the Net Electricity (as defined in the PPA) received by CPS during the immediately preceding month from the solar power generation system located on the Host's rooftop.

By entering into a Solar License Agreement with PowerFin, you will become eligible for receipt of the Host Credit once the System is installed and operational, pursuant to such Solar License Agreement and so long as PowerFin is not in default under the terms and conditions of the PPA. CPS will not, however, be required to provide you with the Host Credit if PowerFin defaults under its obligations under the PPA, or if the PPA is terminated or expires for any reason whatsoever.

Sincerely,

CPS Energy

EXHIBIT "D"

HOST CREDIT ACCOUNT

I, the City of San Antonio, as the owner of the premise described legally in Exhibit "A" with an address of \_\_\_\_\_, pursuant to the conditions in this document elect to receive the Host Credit in the CPS Energy account associated with this premise and elect to assign the Host Credit to the following CPS Energy account number \_\_\_\_\_, with the name of such account holder as \_\_\_\_\_.

This Exhibit "D" may be updated and amended from time to time as the account associated with the premise changes.

HOST:

CPS ENERGY ACCOUNT HOLDER

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**EXHIBIT "E"**

**MEMORANDUM OF SOLAR LICENSE AGREEMENT**

**THIS MEMORANDUM OF SOLAR LICENSE AGREEMENT (this "Memorandum")** is made and entered into as of \_\_\_\_\_, 2017, by and between the City of San Antonio ("Licensor"), and PowerFin SolarMundo, LLC, a Texas limited liability company ("Licensee") (City and PowerFin are referred to collectively herein as the "Parties".)

**WITNESSETH:**

A. On the date hereof, the Parties have entered into a Solar License Agreement (the "**Agreement**") pursuant to which Licensor grants to Licensee a license, revocable only in accordance with the terms of this Agreement, for the installation, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, on such portions of the Property described on Exhibit A attached hereto and incorporated herein by reference where such systems and appurtenances thereto are located, together with the right of ingress and egress to and from the License Area described in the Agreement.

B. The term of the Agreement commences on the date hereof, and will continue in full force and effect until the 20<sup>th</sup> anniversary of such date, with two (2) five-year renewal options, if exercised by the Parties.

C. The Parties desire to execute this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Licensee and of the existence of the Agreement.

**NOW, THEREFORE**, all of the terms, conditions, provisions and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail.

*[signature page follows]*

**IN WITNESS WHEREOF**, Licensor and Licensee have executed this Memorandum as of the day and year first above written

LICENSOR:

By: \_\_\_\_\_  
Printed Name:

By: \_\_\_\_\_  
Printed Name:

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

Before me, (insert the name and character of the officer), on this day personally appeared \_\_\_\_\_, known to me by \_\_\_\_\_ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
\_\_\_\_\_  
Notary's printed name  
My Commission Expires: \_\_\_\_\_

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

Before me, (insert the name and character of the officer), on this day personally appeared \_\_\_\_\_, known to me by \_\_\_\_\_ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
\_\_\_\_\_  
Notary's printed name  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, Licensor and Licensee have executed this Memorandum as of the day and year first above written

LICENSEE:

PowerFin SolarMundo, LLC  
a Texas limited liability company

By: \_\_\_\_\_  
Its: President

THE STATE OF TEXAS §  
  §  
COUNTY OF BEXAR §

This instrument was acknowledged before me on JUNE 6, 2017, by TUAN PHAM, the PRESIDENT of PowerFin Partners, LLC, a Texas limited liability company, on behalf of said limited liability company.

Christopher S. Payne  
\_\_\_\_\_  
Notary Public, State of TEXAS  
CHRISTOPHER S. PAYNE  
Notary's printed name  
My Commission Expires:

