## AN ORDINANCE 2011-03-03-0179

#### AUTHORIZING THE OFFICE OF ENVIRONMENTAL POLICY TO ENTER INTO A LICENSE AGREEMENT WITH THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT TO INSTALL A SOLAR ARRAY AT THE MISSION VERDE CENTER, A PROJECT SUPPORTED BY AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDS THROUGH THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS.

\* \* \* \* \*

WHEREAS, Ordinance number 2009-12-10-1036 authorized an Interlocal Agreement for the establishment and operation of the Mission Verde Center, formerly the James Fenimore Cooper Middle School campus of the San Antonio Independent School District, which was entered into by the Texas Engineering Experiment Station, an agency of the State of Texas and a member of the Texas A&M University System, the San Antonio Independent School District and the City of San Antonio; and

WHEREAS, Ordinance 2010-03-18-0227 authorized the acceptance and appropriation of \$533,000.00, including \$433,000.00 in American Recovery and Reinvestment Act of 2009 (ARRA) grant funds from the Texas Comptroller of Public Accounts, to be used to install 48 kilowatts of solar power generation capacity at the Mission Verde Center; and

WHEREAS, Ordinance 2010-06-17-0561 selected the Texas Engineering Experiment Station to provide project management services to design, procure, and install the solar array system at the Mission Verde Center; and

WHEREAS, the San Antonio Independent School District will grant to the City of San Antonio a revocable license to use the Facility for completing the Mission Verde Center Solar Installation Project; all electric power generated from the Project shall be used to offset regular electricity usage at the Facility; the School District shall contribute to the City, on a monthly basis, one-half of the electric power financial savings realized at the Facility; and the contributions shall be used for future operations and maintenance costs of the Project; and

WHEREAS, this Ordinance authorizes the Office of Environmental Policy to enter into a License Agreement with the San Antonio Independent School District to install a solar array at the Mission Verde Center, a project supported by American Recovery and Reinvestment Act of 2009 grant funds through the Texas Comptroller of Public Accounts; NOW THEREFORE,

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

**SECTION 1.** The City Manager, or her designee, or the Director, Office of Environmental Policy, or his designee, is hereby authorized to take all actions necessary to negotiate and execute a License Agreement for the Mission Verde Center Solar Installation Project with the San Antonio Independent School District to install a solar array at the Mission Verde Center. A copy of the 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 30 days from the effective date.

**SECTION 2.** The City Manager, or her designee, or the Director of the Office of Environmental Policy or his designee, is hereby authorized to accept \$3,500.00 from the San Antonio Independent School District (SAISD) for the Solar Installation Project at the Mission Verde Center.

**SECTION 3.** Fund 2301455004 entitled "Distributed Renewable Energy Technology" and internal order 155000000059 are hereby designated for use in the accounting for the fiscal transaction in the acceptance of this grant. The budget, which is attached hereto and incorporated herein for all purposes as **Attachment II**, is approved and adopted for entry in the City books.

**SECTION 4.** The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** 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 3rd day of March, 2011.

Μ R 0 Julián Castro

ATTEST:

## **APPROVED AS TO FORM:**

Chris 4

Michael D. Bernard, City Attorney



# Agenda Voting Results - 32

Name:	32					····· · · · · · · · · · · · · · · · ·			
Date:	03/03/2011								
Time:	03:32:30 PM								
Vote Type:	Motion to A	Motion to Approve							
Description:	An Ordinance authorizing the Office of Environmental Policy to enter into a License Agreement with the San Antonio Independent School District (SAISD) to install a solar array at the Mission Verde Center, a project supported by American Recovery and Reinvestment Act funds through the Texas Comptroller of Public Accounts. [Edward Benavides, Chief of Staff, W. Laurence Doxsey, Director, Office of Environmental Policy]								
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second		
Julián Castro	Mayor		x						
Mary Alice P. Cisneros	District 1		x				x		
Ivy R. Taylor	District 2		x						
Jennifer V. Ramos	District 3	х							
Philip A. Cortez	District 4		x						
David Medina Jr.	District 5		x			x			
Ray Lopez	District 6		x						
Justin Rodriguez	District 7		x						
W. Reed Williams	District 8		x						
Elisa Chan	District 9		x						
John G. Clamp	District 10		x						

#### LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, AND THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT FOR THE MISSION VERDE CENTER SOLAR INSTALLATION PROJECT

WHEREAS, an Interlocal Agreement (hereinafter "<u>Interlocal Agreement</u>") for the establishment and operation of the Mission Verde Center was entered into by and between the Texas Engineering Experiment Station, an agency of the State of Texas and a member of The Texas A&M University System (hereinafter "<u>TEES</u>"), the San Antonio Independent School District, by and through its Board of Trustees (hereinafter "<u>School District</u>"), and the City Of San Antonio, a Texas Municipal Corporation, as authorized in Ordinance No.2009-12-10-1036, passed and approved December 10, 2009, through its Office of Environmental Policy (hereinafter "<u>City</u>"), each of the aforementioned being referred to individually as a "Party" or collectively as the "Parties"; and

WHEREAS, as authorized by Ordinance 2010-06-17-0561, passed and approved June 17, 2010, in support of the Mission Verde Center and its objectives, the City wishes to pledge funding it has received under additional Grants from the State of Texas Comptroller of Public Accounts provided under the American Recovery and Reinvestment Act of 2009 (ARRA); and

WHEREAS, in support of the Mission Verde Center and its objectives, TEES has agreed to complete the projects anticipated by the Grant; and

WHEREAS, in support of the Project and its objectives, the School District has offered use of its facility located at Cooper Middle School, hereinafter the "Facility", for operation and use in a manner consistent with the ideas and objectives the Project; and

WHEREAS, the City has accepted and appropriated \$433,000.00 in ARRA funds from the Texas Comptroller of Public Accounts, and \$100,000.00 in financial rebate funds and \$20,000.00 of in-kind services from CPS Energy, to be used to install 48 kilowatts of solar power generation capacity at the "Mission Verde Center", formerly the James Fenimore Cooper Middle School campus;

**NOW THEREFORE,** in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the School District hereto agree to enter into this License Agreement (hereinafter "<u>License</u>") for the Mission Verde Center Solar Installation project as follows:

#### 1. Grant of License by School District

(a) Subject to the Interlocal Agreement and in accordance with the terms and conditions in this License, School District grants to City a revocable license to use the Facility for completing and carrying out the Statement of Work for the Mission Verde Center Solar Power System described in Attachment 1 (hereinafter the "Solar Installation Project").

(b) City may sub-license the rights provided under this License upon advance written consent from School District.

(c) If School District students are present at the Facility during the installation or operation of the Solar Installation Project, TEES and the City, and any of their sublicensees, shall comply with applicable School District policies regarding visitors entering School District campuses.

(d) School District agrees to release the CPS solar photovoltaic rebate to the City to apply to the cost of the Solar Installation Project and other Mission Verde Center projects. School District shall execute necessary documents to effectuate the Solar Installation Project, such as an interconnection agreement with CPS Energy and temporary easements, provided and to the extent any such execution does not require School District to incur any additional obligation or expense except as otherwise expressly set forth in this License.

(e) All electric power generated from the Solar Installation Project shall be used to offset regular electricity usage at the Facility. In consideration for providing this electric power to the Facility, the School District shall contribute to City on a monthly basis one-half of the electric power savings realized at the Facility. This savings shall be calculated using the regular rate of electricity charged to School District for the Facility by CPS Energy and the actual electric power generated by the Solar Installation Project, which City shall provide to School District, as evidenced by monthly meter readings from the solar panels. These contributions shall be maintained in a separate account by the City and used only for future operations and maintenance costs of the Solar Installation Project at the Facility.

## 2. City Participation

(a) Except as expressly provided in this License, the City shall not be obligated or liable under this License to any other party for payment of any monies, or the provision of any goods or services. The City or its licensees shall be responsible for any fees, costs and liability related to the electrical connection and metering with CPS Energy.

(b) The City, or its licensees, shall be responsible for the operations, maintenance and costs associated with the Solar Installation Project after said project is completed, installed and operational. City shall be responsible for the prompt repair or restoration of any portion of the Facilities caused or associated with the installation of the Solar Installation Project. City shall provide regular meter readings to School District to verify electricity generated at the Facility from the solar panels to enable School District to calculate their contribution under section 1(e) above. City shall maintain a separate account for receipt of the School District contribution for future operations and maintenance costs of the Solar Installation Project.

(c) Upon termination of this License, the City shall be responsible for promptly restoring the Facility to its condition before installation of the Solar Installation Project unless School District exercises its option under the Interlocal Agreement to accept the Solar Installation Project.

## 3. Term of License

(a) This License shall be effective immediately upon full execution (the "Effective Date") and shall remain in force until (1) the Interlocal Agreement is terminated or expires, or (2) any Party terminates the License pursuant to the terms hereunder, whichever occurs sooner.

(b) Any Party may terminate this License for convenience upon sixty (60) days written notice to the other Parties.

(c) This License may be terminated by School District upon ten (10) days' written notice should another Party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such ten-day period. The notice required hereunder shall specify the deficiency.

(d) The City and TEES reserve the right to withdraw from this License upon notice to School District. Withdrawal by both the City and TEES shall automatically terminate this License.

## 4. Intellectual Property

School District shall make no ownership or licensee claims with regard to any intellectual property first developed or reduced to practice during the performance of this License.

#### 5. Notices

To be effective, notices provided under this agreement must be in writing, and shall be deemed to have been received for all purposes upon the earlier to occur of (a) actual receipt, or (b) three (3) days after the same are mailed by U.S. certified or registered mail, return receipt requested, and addressed as follows:

If to the City:

City Clerk City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966

With copy to: Laurence Doxsey, Director Office of Environmental Policy City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966

If to the School District:

San Antonio Independent School District ATTN: Superintendent of Schools 141 Lavaca San Antonio, Texas 78210

With copy to:

SAISD Facilities Services Dept. ATTN: Kamal Elhabr 1702 N. Alamo San Antonio, Texas 78215

or addressed to such other address as is provided by written notice from one party to the other.

<u>6. Governing Law</u>. This License shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be fully performable and enforceable in Bexar County, Texas.

- 7. Miscellaneous Terms and Conditions
  - a. <u>Extent of Agreement/Amendment</u>. This License and its **Attachment 1** supersede all prior agreements, written or oral, between School District and City regarding the authority to use the Facilities to install and operate the Solar Installation Project and shall constitute the entire agreement and understanding between the Parties with respect to said project. In the event any provision in Attachment 1 conflicts with a provision in this License, this License shall prevail. This License and each of its provisions shall be binding upon the Parties and may not be waived, modified, amended or altered except by a subsequent writing signed by authorized representative for School District and City.
  - b. <u>No Waiver</u>. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this License shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
  - c. <u>Severability</u>. If any clause or provision of this License is illegal, invalid, or unenforceable under present or future laws effective during the term of this License, then and in that event, it is the intent of the Parties that the remainder of this License shall not be affected thereby, and it is also the intent of the Parties that, in lieu of each clause or provision of this License that is illegal, invalid, or unenforceable, there be added as a part of this License a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
  - d. <u>Attorneys' Fees</u>. In action in a court of law to enforce or construe this License, the prevailing Party(ies) shall be entitled to its reasonable and necessary attorneys' fees and costs of court.
  - e. <u>No Waiver of Immunities</u>. By entering this License and performing hereunder, School District and City do not intend, and this License shall not be construed, to (1) waive any immunities, defenses or limits of liability to which said party is entitled under law, and (2) establish a joint enterprise or venture for purposes of determining liability.

- f. <u>Assignment and Transfer</u>. This License, and its rights or obligations, shall not be subcontracted, sublicensed or assigned by City, unless express written authorization is first obtained from the School District.
- g. <u>No Covenants</u>. This License, any attachment hereto and the obligations contained herein, shall not be covenants running with the Facility or the land upon the Facility lies. No Party shall record this instrument with the real property records of Bexar County, Texas, and any such recordation (including recordation of this License as an exhibit or attachment to another document) shall automatically render this License and the rights of TEES and City hereunder null and void.
- h. <u>Captions</u>. The captions used in this License are solely for convenience and shall not be considered in resolving questions of interpretation or enforcement.

The Parties agree that all provisions of the Interlocal Agreement for the establishment and operation of the Mission Verde Center not in conflict with this License remains in full force and effect

IN WITNESS WHEREOF, the undersigned have executed this agreement by their duly authorized representatives.

CITY OF SAN ANTONIO

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

By

Robert J. Duron, Superintendent of Schools

Name

Date

Title

Date

APPROVED AS TO FORM Michael D. Bernard City Attorney

Dy
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Date\_\_\_\_\_

## ATTACHMENT 1.

## STATEMENT OF WORK

The Texas Center for Applied Technology, Texas Engineering Experiment Station (TEES), a part of the Texas A&M University System, will perform the following statement of work in support of the Mission Verde Center, specifically at the site of Cooper Middle School:

- Phase One (Engineering Analysis) see Deliverable 1
  - Complete an engineering analysis for 48 kW of solar Photo-Voltaic (PV) arrays (including modules, inverters and mounting structures) for the purpose of electricity generation at Mission Verde Center @ Cooper. The results of the engineering analysis will form the basis for the specifications of Phase Two. Specifically excluded from this analysis are structural assessments and/or designs of roofs and foundations, as well as site assessment for solar shading potential. These will be provided by the structural engineering subcontractor and/or the installer.
    - 1. This 48 kW will be composed of eight (8) individual 6 kW arrays installed in the following manner:
      - 6 kW array of amorphous Silicon (a-Si) modules on ground-mounted or rooftop-mounted rack(s).
      - 6 kW array of amorphous Silicon (a-Si) modules on carport-mounted racks(s).
      - 6 kW array of amorphous Silicon (a-Si) modules on single-axis tracker(s).
      - 6 kW array of amorphous Silicon (a-Si) modules on dual-axis tracker(s).
      - 6 kW array of Copper Indium Gallium (Di-)Selenide (CIGS) modules on ground-mounted or rooftop-mounted rack(s).
      - 6 kW array of Copper Indium Gallium (Di-)Selenide (CIGS) modules on carport-mounted rack(s).
      - 6 kW array of Copper Indium Gallium (Di-)Selenide (CIGS) modules on single-axis tracker(s).
      - 6 kW array of Copper Indium Gallium (Di-)Selenide (CIGS) modules on dual-axis tracker(s).
  - Identify a suitable site for each of the eight (8) arrays on the property of Mission Verde Center @ Cooper. Site identification will require:
    - 1. Compliance with City of San Antonio and State of Texas Historic Preservation Commission requirements.
    - 2. Acceptance by San Antonio Independent School District (SAISD) only a site selected for optimum insolation will give SAISD the maximum netmetering benefit, but other requirements may lead to selection of a suboptimal site.
    - 3. Avoidance of solar shading when and where possible, as determined by Solar Pathfinder, Wiley Electronics ASSET, Solmetric SunEye or other suitable tool. The installer will have such a tool and upon award of Request for Bid (RFB) will verify and adjust site selection by TEES, which will have been based upon visual inspection only.
- Phase Two (Project Management) see Deliverable 2
  - Develop and execute Request For Bids (RFBs), based on the engineering analysis performed in Phase One, for the following items. Note that the final configuration of

the arrays requires concurrence from the installer as they may have standards and practices that deviate from those deployed in Phase One. Furthermore, low-level component selection (beyond modules, inverters and trackers, i.e. rails, nuts, bolts, washers, cables, lugs, connectors, junction & disconnect boxes, etc.) will be the responsibility of the installer as well, as is customary, expedient and in accordance with accepted industry standards and practices.

- 1. 24 kW of amorphous Silicon (a-Si) modules (four 6 kW arrays).
- 2. 24 kW of Copper Indium Gallium (Di-)Selenide (CIGS) modules (four 6 kW arrays).
- 3. Required mounting structures and equipment for two 6 kW ground-mounted or rooftop-mounted arrays.
- 4. Required mounting infrastructure and equipment for two 6 kW carportmounted arrays.
- 5. Required mounting infrastructure and equipment for two 6 kW single-axis tracker arrays.
- 6. Required mounting infrastructure and equipment for two 6 kW dual-axis tracker arrays.
- 7. Equipment (inverters, interconnectors, etc.) necessary to connect power generated by solar photovoltaic panels into Mission Verde Center's electrical system as well as to CPS' grid.
- 8. Labor for the installation of all items listed above.
- Manage the installation
  - 1. Coordinate with structural engineering subcontractor on structural assessments and/or designs of roofs and foundations this may or may not be provided by the selected installer and thus may or may not need to be subcontracted separately.
  - 2. Coordinate permits with CoSA and rebates with CPS.
  - 3. Coordinate CPS' cost share contributions (meters, utility interconnection) with CPS.
  - 4. Provide engineering managerial oversight of (prime) contractors and subcontractors in their activities related to this grant.
  - 5. Identify, arrange for, and supervise qualified contractors to install solar photovoltaic panels and necessary verification and measurement protocol.
  - 6. Provide technical support for the continued development and vitality of Mission Verde Center @ Cooper.
- Phase Three (Measurement and Verification) see Deliverable 3
  - Establish Internet connectivity on site to enable local interconnectivity of select measuring devices as well as remote access to select measuring devices
  - Measure and verify results from PV generation installation as follows:
    - 1. Electricity generated (per array as measured by each inverter, and total as measured by CPS sub-meter).
    - 2. Electricity consumed by Mission Verde Center @ Cooper, as measured by CPS sub-meters in sub-circuits to be defined, and by CPS main meter.
    - 3. Electricity use reduction as simple difference between item 2 and item 1 it is extremely unlikely that the photovoltaic arrays will generate more power than consumed on site. Also, this is a Net-Metering and not a Feed-In-Tariff arrangement, so electricity generated can only be used to offset consumption or generate a consumption credit, but cannot be sold directly.
- Phase Four (Reporting and Outreach) see Deliverable 4

- Provide input into Monthly Progress Report in accordance with ATTACHMENT- L, ARRA Reporting Requirements as outlined in the Application.
- Develop and implement educational outreach and provide students at Mission Verde Center @ Cooper with the opportunity to participate in the maintenance and operations of the functioning solar PV arrays, provided this does not affect installer's or manufacturers' warranties. The selected installer will also be asked to allow observational access for teaching purposes to the construction site. However, such access will likely be limited by installer's insurance requirements, OSHA regulations and student's access to Personal Protection Equipment (PPE).
- Develop final report summarizing performance data of each individual array and identifying the array or arrays that deliver the best value when interconnected to the grid.

#### SCHEDULE

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1	Engineering study for the solar arrays	August 2010
2	Procurement and installation of eight (8) 6 kW solar PV arrays for installation at Mission Verde Center @ Cooper	August 2010 – February 2011
3	Procurement and installation of equipment necessary to connect power generated by solar PV arrays into CPS electric grid	August 2010 – February 2011
4	Monitoring and measurement of the amount of electricity generated by each of the eight individual arrays at any given time as well as historical production. Submission of report, verifying the functionality of all installed equipment	December 2010 – December 2011
5	<ul> <li>Reporting of:</li> <li>Electricity generated per array</li> <li>Electricity consumed by Mission Verde Center @ Cooper</li> <li>Electricity use reduction provided to CPS grid</li> </ul>	December 2010 – December 2011
6	Development of educational outreach	August 2010 – December 2011
7	Monthly Progress Report	On or by the last day of each month
8	Final Project Report	Draft due, November 1, 2011 Final due December 1, 2011

**Note:** The exact time line will depend on the availability of products. This is not expected to be an issue for most of the components, but due to the early commercialization stage of the HelioVolt CIGS panels, could cause a delay for the arrays based on this technology. Per communication with HelioVolt, modules will be fully available commercially in the October 2010/November 2010 timeframe. To mitigate the risk, a secondary supplier alternative for these modules will be investigated in Phase One.

## DELIVERABLES

- Deliverable 1: Engineering Study this will include array sizing and component selection information, as well as estimated performance of the arrays, pending final concurrence by the installer see Phase One
- Deliverable 2: Installation of 48 kW of solar photovoltaic arrays see Phase Two
- Deliverable 3: Energy consumption report this will be a simple listing of monthly energy generated by the PV arrays and monthly energy consumed by Mission Verde Center @ Cooper from December 2010 through December 2011 see Phase Three

- Deliverable 4: Educational outreach materials this will be a PowerPoint presentation on the design, operation and maintenance of the PV arrays, to be used in support of development of a curriculum, e.g. by educational institutions associated with Mission Verde Center @ Cooper see Phase Four
- Deliverable 5: Monthly Progress Reports this will include an update on the tasks in this Statement of Work, as well as on personnel resources used.
- Deliverable 6: Final Project Report this will include information on the design, operation and maintenance of the PV arrays, measurements taken, energy generation and consumption analysis, identification of the best array for usage in San Antonio, any reliability concerns, personnel resources used, educational & outreach activities performed (e.g. presentations, discussions, demonstrations, etc., as suitable), and other information as suitable

City of San Antonio - CPS Energy Distributed Renewable Energy Program Functional Area 550006000030003 Internal Order 155000000059 Budget for Period 03/11/2010 Thru 12/31/2011

REVENUES		BUDGET	+/-		<b>REVISED BUDGET</b>	
4501100	Grant Funds	\$ 433,000.00			\$	433,000.00
4501120	CPS Energy (cash)	\$ 100,000.00			\$	100,000.00
4501120	CPS Energy (inkind)	\$ 20,000.00			\$	20,000.00
4501120	SAISD Payments for Kwh generated	\$ -	\$	3,500.00	\$	3,500.00
	TOTAL REVENUES	\$ 553,000.00	\$	3,500.00	\$	556,500.00
APPROPR	IATIONS					
5201040	Fees to Professional Contractors	\$ 553,000.00			\$	553,000.00
5204080	Maintenance and Repair-Machinery and Equipm	\$ -	\$	3,500.00	\$	3,500.00
	TOTAL APPROPRIATIONS	\$ 553,000.00	\$	3,500.00	\$	556,500.00

## **ATTACHMENT 2**