

THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.

AN ORDINANCE

AUTHORIZING A COMPETITIVE MATTER MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND CPS ENERGY RELATED TO THE PRIVATIZATION OF THE ELECTRIC AND GAS UTILITY DISTRIBUTION SYSTEMS AT THREE JOINT BASE SAN ANTONIO MILITARY INSTALLATIONS: LACKLAND AIR FORCE BASE, LACKLAND TRAINING ANNEX, AND RANDOLPH AIR FORCE BASE.

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WHEREAS, pursuant to Chapter 1502 of the Texas Government Code, the City Council, acting in its regulatory capacity, has original jurisdiction over the retail and wholesale rates of CPS Energy; and

WHEREAS, the City Charter created the position of Supervisor of Public Utilities authorized to oversee the activities of CPS Energy and to gather and analyze information necessary for the City Council to establish fair and reasonable rates; and

WHEREAS, CPS Energy operates a combined electric and gas utility system on behalf of the City of San Antonio through the CPS Energy Board of Trustees; and

WHEREAS, CPS Energy has successfully partnered with Joint Base San Antonio (“JBSA”) over the last 15 years in the privatization of the utility distribution systems of four local military bases, including acquisitions of the utility distribution facilities at Kelly Air Force Base, which has been transformed into Port San Antonio and privatized in January 2000; Brooks Air Force Base, which operates today as the Brooks Development Authority, privatized in July 2002; Fort San Houston, which continues to operate as a training base for the Army, privatized in December 2003; and Camp Bullis, which is also operated by the Army, privatized in April 2010; and

WHEREAS, in 2013, the United States Department of Defense (DoD) issued a Request for Proposal (RFP) seeking bids to enter into a 50-year contract for the electric and gas distribution systems at Lackland Air Force Base, Lackland Training Annex, and Randolph Air Force Base (the “JBSA Utility Assets”); and

WHEREAS, CPS Energy has submitted a bid in response to the DOD RFP to (1) acquire a qualified property interest in the JBSA Utility Assets during the contract term; (2) upgrade, operate and maintain the JBSA Utility Assets; and (3) be responsible for assuring electric and gas service to the JBSA Utility Assets during the contract term; and.

WHEREAS, CPS Energy has the opportunity to secure the JBSA Utility Assets through a 50-year qualified property interest and it would be in the best interest of the local community as it would result in substantial network upgrades to the JBSA Utility Assets; and

WHEREAS, as part of this effort, CPS Energy and the City propose to enter into a Competitive Matter Memorandum of Understanding (MOU) related to the financial treatment of certain elements of CPS Energy's proposed transaction to acquire the JBSA Utility Assets; and

WHEREAS, the Supervisor of Public Utilities concurs with CPS Energy's proposed MOU, which is attached under seal to this Ordinance as **Exhibit A**; and

WHEREAS, the MOU is a competitive matter subject to protection from public disclosure pursuant to Section 552.133 of the Texas Public Information Act (Chapter 552 of the Texas Government Code); and

WHEREAS, on May 11, 2016, the City Council met in executive session to discuss the proposed MOU after determining by a unanimous vote that the subject matter of the MOU is an appropriate competitive matter in accordance with Section 551.086 of the Texas Open Meetings Act (Chapter 551 of the Texas Government Code); and

WHEREAS, as a competitive matter, the MOU is competitively sensitive information; the disclosure of which would confer an unfair advantage upon actual and prospective competitors of CPS Energy in the DoD RFP bid process to enter into a 50-year contract for the JBSA Utility Assets; and

WHEREAS, this Ordinance shall remain on file for public access at the City Clerk's Office; however, the MOU shall not be attached to the Ordinance and shall remain confidential;
NOW THEREFORE,

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

SECTION 1. The Competitive Matter Memorandum of Understanding between the City and CPS Energy designed to support CPS Energy's bid to (1) acquire a qualified property interest in the JBSA Utility Assets during the contract term; (2) upgrade, operate and maintain the JBSA Utility Assets; and (3) be responsible for assuring electric and gas service to JBSA during the contract term is hereby approved. The City Manager or the Supervisor of Public Utilities is authorized to execute the Competitive Matter Memorandum of Understanding. The Competitive Matter Memorandum of Understanding shall be executed in triplicate originals and each original shall be clearly marked "Confidential – Competitively Sensitive Information" and maintained by the Supervisor of Public Utilities, CPS Energy, and in the City Clerk's executive session files.

SECTION 2. The Competitive Matter Memorandum of Understanding shall be attached to this Ordinance as **Exhibit A** and shall remain under seal with instructions to the City Clerk not to release the Competitive Matter Memorandum of Understanding to the public.

SECTION 3. This ordinance shall be effective immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective on the tenth (10th) day after passage hereof.

PASSED and APPROVED this ____ day of _____, **2016**.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Martha G. Sepeda, Acting City Attorney

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