

**EMPLOYMENT AGREEMENT  
FOR CHIEF EXECUTIVE OFFICER**

**THIS EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered on July 23, 2019 by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (hereinafter referred "JEA" or "Employer"), and Aaron F. Zahn, an individual currently residing in Florida, hereinafter referred to as Employee.

**WHEREAS**, JEA is a community-owned, not-for-profit utility providing electricity to more than 485,000 customers in Jacksonville and the surrounding areas in northeastern Florida;

**WHEREAS**, JEA, founded in 1968, manages an electric system that dates back to 1895, and now owns and operates an electric system with five generating plants, transmission and distribution facilities, including 745 miles of transmission lines and 6,625 miles of distribution lines; is part owner and full operator of a sixth generating plant; produces energy from two methane-fueled generating facilities and owns a 12.6-megawatt solar project, placing JEA's total generating capacity at approximately 3,757 megawatts;

**WHEREAS**, JEA also provides water and wastewater services to approximately 352,000 water customers, 12,600 reuse water customers and 275,000 wastewater customers;

**WHEREAS**, JEA's water system consists of 136 artesian wells tapping the Floridian aquifer, distributing water through 37 water treatment plants and 4,352 miles of water lines and with a sewer system of more than 3,760 miles of collection lines and seven regional and seven non-regional sewer treatment plants;

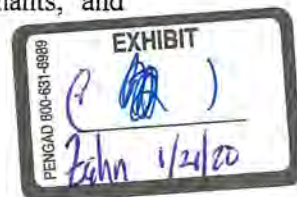
**WHEREAS**, JEA owns and operates the District Energy System, a separate utility system that provides chilled water to 13 locations in Jacksonville;

**WHEREAS**, the JEA governing body is made up of a seven-member Board of Directors ("Board") appointed by the Mayor and confirmed by the City Council;

**WHEREAS**, the Board is tasked with appointing a Managing Director & Chief Executive Officer to operate the eighth largest community-owned electric utility company in the United States and the largest in Florida, with total assets of \$8.4 billion (2018), total equity of \$2.8 billion (2018), and approximately 2,000 employees (2018); and

**WHEREAS**, JEA is desirous of continuing to employ Employee as Chief Executive Officer pursuant to the terms and conditions and for the consideration set forth in this Agreement, and Employee is desirous of entering into this Agreement pursuant to such terms and conditions.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and obligations contained herein, JEA and Employee agree as follows:



## SECTION I – EMPLOYMENT AND DUTIES:

- 1.1 **Engagement.** JEA agrees to continue to employ Employee and Employee agrees to continue to be employed by JEA, for a time period beginning on November 27, 2018 (the “Effective Date”), and continuing until the employment relationship is terminated in accordance with the terms and conditions of this Agreement (the “Term”).
- 1.2 **Terms and Duties.** Employee shall be employed as Managing Director and Chief Executive Officer of JEA (hereinafter collectively “CEO”). Employee agrees to serve in this position and to perform diligently Employee’s duties and services with the dedication and in manner of similarly situated executives and as reasonably directed by the Board.
- 1.3 **Compliance with Policies and Procedures.** Employee shall at all times comply with and be subject to such policies and procedures as the Board may establish.
- 1.4 **Diligence to Position.** Employee shall devote full business time, energy, and best efforts to the business of Employer with the dedication and in the manner of similarly situated executives; provided, however, that it is agreed that this obligation shall not preclude Employee from engaging in appropriate civic, charitable or religious activities or from serving on the boards of directors of companies that are not competitors to JEA, as long as the activities do not materially interfere or conflict with Employee’s responsibilities to JEA or Employee’s ability to perform Employee’s duties of employment at JEA, within the sole discretion of the Board. Subject to the foregoing, Employee may not engage, directly or indirectly, in any other business, investment, or activity that interferes with Employee’s performance of his duties, is directly contrary to JEA’s interests, or requires any significant portion of Employee’s business time; provided, however, that Employee may own less than two percent (2%) of the voting stock of a corporation listed for trading or traded over the counter on a recognized stock exchange in the United States. Employee’s responsibilities and duties are generally described in the Position Profile for the CEO, which may be amended from time to time and which is attached hereto as Exhibit A and by reference made a part hereof.
- 1.5 **Fiduciary Obligations.** Employee acknowledges and agrees that, during the Term, Employee owes a fiduciary duty of loyalty toward JEA, and will not intentionally injure the direct or indirect interests of JEA, or benefit from any outside activities which Employee knows conflict with interests of JEA or, upon discovery of any such conflict, allow such a conflict to continue. Moreover, Employee agrees to disclose to JEA any facts which involve a conflict of interest during the Term.

## SECTION II – COMPENSATION AND BENEFITS:

- 2.1 **Annual Compensation.** Employee shall be paid an annual salary of \$520,392.00 (the “Annual Base Salary”), which shall be paid in equal installments in accordance with JEA’s standard payroll practice, including deductions for all legally applicable taxes and withholdings. Once every twelve (12) months (measured from, and contemporaneous with, the completion of JEA’s annual audit), JEA shall conduct a performance review of Employee, including a review of the market pricing peer group assessment of Employee’s Annual Base Salary by a nationally

recognized compensation consultant and shall discuss the results of such review with Employee. The Board shall make modifications to Employee's Annual Base Salary as deemed to be appropriate based upon this annual review of Employee's performance.

- 2.2 **Pay for Performance Program.** The Board has established a Pay for Performance Program for fiscal year 2018/2019, and anticipates continuing the Program or a similar program in future years (all such programs are referred to in this Agreement as the "Program"). During the Term, Employee shall be eligible to participate in the Program, or any other incentive compensation program established by the Board in accordance with the terms of any such program.
- 2.3 **Vehicle.** Employee will have the use of an appropriately equipped JEA vehicle at the expense of JEA to supplement Employee's personal vehicle. In lieu of having use of a JEA vehicle, at Employee's option, JEA shall pay to Employee a monthly automobile allowance of \$850.00, to be paid on or before the first regular payday of each month following the Effective Date, subject to withholding. It is specifically intended and understood that this allowance shall be provided as compensation for unreimbursed expenses incurred by Employee within the territorial limits of the JEA service territory and receipt of this allowance shall not prevent Employee from claiming and being reimbursed for travel expenses resulting from travel by Employee outside the JEA service territory in the manner provided by the Ordinance Code of the City of Jacksonville. JEA and Employee understand and agree that \$850.00 is an estimate of the total cost Employee would incur if not provided with a JEA vehicle, including vehicle wear and tear and other costs that cannot be measured with precision, and that the full \$850.00 shall be paid without any obligation on the part of Employee to provide proof of actual expenses.
- 2.4 **Business Allowance.** JEA shall pay to Employee a monthly allowance in the amount of \$2,200.00 for general business expenses incurred in Employee's efforts to promote and represent JEA beyond those identified in JEA employee policies. The business allowance shall be paid on or before the first regular payday of each month following the Effective Date, subject to withholding. Employee may expend the monthly allowance in such a manner as Employee determines, in Employee's sole discretion, in support of Employee's performance of Employee's duties under this Agreement.
- 2.5 **Parking Allowance.** On or before the first regular payday of each month following the Effective Date, Employee will be provided a monthly allowance in the amount of \$50.00 for parking (subject to withholding).
- 2.6 **Expenses.** Notwithstanding anything herein to the contrary, and in addition to other payments provided for in this Agreement, JEA shall reimburse Employee for telephone, travel, continuing education, and general business expenses incurred by Employee in accordance with JEA policies and procedures.
- 2.7 **Annual Leave.** Employee will be provided annual Paid Time Off ("PTO") in accordance with JEA's existing policies and procedures in effect from time to time. Without limiting the generality of the foregoing, Employee shall be entitled to a minimum of two hundred and eighty (280) hours of PTO during each year of employment commencing on the Effective Date. In addition, JEA shall observe eleven (11) paid holidays and one floating holiday each year.

- 2.8 **Fringe Benefits.** Employee shall be allowed to participate, on the same basis generally as other employees of JEA, in all general employee benefit plans and programs, including improvements or modifications of same, which on the Effective Date or thereafter are made available by JEA to all or substantially all of JEA's executive employees, or to JEA's employees generally, including any amendments thereto. Such benefits, plans, and programs may include, without limitation, medical, health, and dental care, life insurance, disability protection, and flexible spending accounts. Except as specifically provided herein, nothing in this Agreement is to be construed or interpreted to provide greater or lesser rights, participation, coverage, or benefits under the benefit plans or programs than provided to executive employees pursuant to the terms and conditions of such benefit plans and programs. JEA shall not by reason of this Agreement be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any incentive compensation or employee benefit program or plan, so long as such actions are similarly applicable to covered employees generally. Notwithstanding anything to the contrary in this Agreement, for so long as Employee's employment with JEA continues, JEA shall pay the premiums required to maintain a life insurance policy, with \$500,000.00 in coverage, payable to one or more beneficiaries to be designated by Employee, and with a conversion provision that will allow Employee to continue coverage upon and after termination of employment.
- 2.9 **Pension Benefits.** Employee shall be allowed to participate in the General Employees Pension Plan, the JEA 401(a) Defined Contribution Plan, and in any other pension or retirement plan made available by JEA to all or substantially all of JEA's executive employees or to JEA's employees generally, including any amendments thereto. Any amounts which the Company would contribute to any Section 401(a) defined contribution plan but for the Section 401(a) limit under the Internal Revenue Code of 1986, as amended (the "Code"), shall be paid to Employee as taxable compensation on a current basis.

### SECTION III – TERMINATION OF EMPLOYMENT:

- 3.1 **Termination.** Subject to the terms of Subsections 3.1.4, 3.1.5 and 3.1.6 of this Agreement, Employee's employment with JEA may be terminated (i) by JEA immediately for "Cause" (as defined in, and subject to the notice and cure provisions of, Subsection 3.1.1 of this Agreement); (ii) by Employee for "Good Reason" (as defined in, and subject to the notice and cure provisions of, Subsection 3.1.2 of this Agreement); (iii) upon Employee's death or upon Employee's "Disability" (as defined in Subsection 3.1.3 of this Agreement); or (iv) by either party, without Cause or Good Reason, upon thirty (30) days' advance notice to the other party.
- 3.1.1 For purposes of this Agreement, "Cause" for termination of employment means: (i) a willful breach by Employee of material duties, obligations and policies of JEA which Employee fails to cure within ten (10) days after written notice from JEA specifically identifying such breach; (ii) Employee's gross negligence or gross neglect of duties and obligations required in performance of Employee's duties, or willful misconduct; (iii) Employee's continued violation of written rules and policies of the Board after written notice of same and reasonable opportunity to cure; (iv) conviction of Employee for any criminal act which is a felony; (v) commission by Employee in a public or private capacity of theft, fraud, or misappropriation or embezzlement of funds; or (vi) misconduct

as defined in Florida Statutes § 443.036(29). For purposes of this Agreement, termination of employment “without Cause” means any termination of employment by JEA for any reason not explicitly defined by this Subsection 3.1.1 as Cause for termination.

- 3.1.2 For purposes of this Agreement, “Good Reason” shall mean the occurrence of any of the following: (a) a material diminution in Employee’s role, responsibilities, compensation, benefits and/or title without Employee’s consent; (b) a directive by the Board to Employee to take any action or to refrain from action when implementing said directive would constitute a violation of applicable law; or (c) a material breach of this Agreement by JEA. Without in any way limiting the foregoing, a reduction in Employee’s Base Salary to a level of 95% or less of the Base Salary stated in this Agreement shall be conclusively presumed to be a material diminution in Employee’s compensation. Notwithstanding anything to the contrary in this Subsection 3.1.2 or in this Agreement, Employee may terminate Employee’s employment for Good Reason only under the following terms and conditions. A termination of employment by Employee for Good Reason shall be effectuated by giving JEA written notice of the termination (the “Notice of Termination for Good Reason”) within thirty (30) days after the event constituting Good Reason, setting forth in reasonable detail the specific conduct that constitutes Good Reason and the specific provisions of this Agreement on which Employee relies in support of the assertion of Good Reason. JEA shall have thirty (30) days from the receipt of the Notice of Termination for Good Reason within which to (i) deny that an event of Good Reason has occurred, or (ii) correct, rescind or otherwise substantially reverse the occurrence supporting termination for Good Reason as identified by Employee. If JEA does not deny that an event of Good Reason has occurred or if such event has not been cured within thirty (30) days after JEA received the Notice of Termination for Good Reason, then the termination of employment by Employee for Good Reason shall be effective upon expiration of said thirty (30)-day period after JEA received the Notice of Termination for Good Reason. If the event of Good Reason is cured within such thirty (30)-day period, the Notice of Termination for Good Reason shall have no effect. If JEA disputes that Good Reason exists, and does not within thirty (30) days cure the event cited by Employee as Good Reason, and if Employee then elects to terminate employment, the parties agree to arbitrate the dispute pursuant to Subsection 4.19. Any disputes between the parties regarding this Subsection 3.1.2, including with respect to whether circumstances giving rise to Good Reason exist, shall be resolved pursuant to the arbitration procedure set forth in Subsection 4.19.
- 3.1.3 For purposes of this Agreement, the term “Disability” shall mean: if JEA provides long-term disability insurance to its employees generally, and if JEA’s long-term disability plan defines the term “Disability,” then that term shall have the same meaning in this Agreement as in JEA’s long-term disability plan; otherwise, the term “Disability” means a physical or mental incapacity as a result of which Employee becomes unable to continue to perform Employee’s essential job functions, with or without reasonable accommodation, for four consecutive months.

- 3.1.4 If Employee's employment is terminated by JEA for Cause, by Employee without Good Reason, or as a result of Employee's death or Disability, then (a) Employee shall be paid all amounts and shall receive all benefits earned through the date of termination of employment, and (b) all future compensation to which Employee would otherwise be entitled and all future benefits for which Employee would otherwise be eligible shall cease and terminate as of the date of termination, except that (c) Employee shall be entitled to all vested benefits, to the right to continuation of benefits to the extent provided by applicable benefits plans, COBRA, and other applicable law, and to all other rights provided by applicable law.
- 3.1.5 If Employee's employment is terminated by JEA without Cause or by Employee for "Good Reason" then, subject to Employee's compliance with the covenants set forth in this Agreement and Employee's execution and non-revocation of the release of claims substantially in the form of Exhibit B attached hereto, (a) Employee shall be paid all amounts and shall receive all benefits earned through the date of termination of employment, (b) JEA shall pay Employee a lump sum payment equal to twenty (20) weeks of the current Annual Base Salary, less applicable taxes and deductions (such payment will be made within thirty (30) days of the date Employee's termination occurs), (c) Employee shall become fully vested in any unvested amounts contributed on his behalf to any available retirement plan that may then be in effect to the extent allowable under the terms of the applicable plan and applicable law, (d) if Employee makes a timely and effective election to continue health insurance coverage under COBRA, then JEA shall pay directly to its COBRA provider the COBRA premiums necessary to continue Employee's coverage (and coverage for Employee's covered dependents) under COBRA for a period of twenty (20) weeks following the end of the month in which the termination occurs, (e) Subsection 3.1.6 shall become operative, and JEA and Employee shall comply with Subsection 3.1.6, and (f) Employee shall be entitled to all other vested benefits, to all additional rights to continuation of benefits to the extent provided by applicable benefits plans, COBRA, and other applicable law, and to all other rights provided by applicable law.
- 3.1.6 JEA and Employee further agree that if, during the first six (6) years following the Effective Date, Employee's employment is terminated by JEA without Cause, or by Employee for "Good Reason" then, beginning on the first Monday after the effective date of termination of Employee's employment with JEA, Employee shall serve as a consultant to JEA for a period of twelve (12) months in accordance with the terms of the Separation and Transition Agreement substantially in the form of Exhibit B attached hereto.

#### SECTION IV – MISCELLANEOUS:

- 4.1 **Eligibility to Work in the United States.** Employee has provided previously to JEA the appropriate documentation to verify Employee's authorization to work in the United States.
- 4.2 **Governing Law; Binding Effect; Amendment.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida, and shall be binding on JEA's

successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Agreement shall mean and include any such successor or assign. This Agreement shall not be assignable or transferable by Employee or his beneficiaries or legal representatives. Notwithstanding the foregoing, in the event of the death of Employee, payments that otherwise would have been made to Employee shall instead be provided to Employee's estate. No amendment or modification shall be effective unless in writing by the parties, including the approval by the Board.

- 4.3 **Savings Clause.** Employee's present benefits and rights are preserved, including but not limited to accrued service credits, accrued leave, and accrued incentive compensation carried forward in accordance with existing policies and procedures.
- 4.4 **Public Records and Open Meetings (Sunshine) Requirements.** Employee will become familiar, with the assistance of JEA's staff and JEA's legal counsel, with the unique obligations and parameters of the State of Florida's public records and sunshine act laws, in order that JEA maintain its record of compliance with such laws.
- 4.5 **Legal Counsel.** Employee shall be entitled to legal counsel from or approved by the Office of General Counsel, paid for by JEA in a prompt and current manner as provided in Section 111.07, Florida Statutes, as necessary if Employee is a defendant participant in a lawsuit against JEA for actions that occurred during period of employment with JEA, excepting where a court has adjudicated Employee as having committed intentional tort or torts.
- 4.6 **Indemnification.** Pursuant to Section 768.28(9)(a), Florida Statutes, Employee is not personally liable in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. JEA hereby agrees to indemnify, defend and hold Employee harmless from any and all claims, to the fullest extent permitted by Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes, and other applicable law. Without limiting the scope of this Subsection 4.6, which the parties agree shall be construed as broadly as permitted by applicable law, JEA's agreement to indemnify, defend and hold employee harmless includes claims arising out of the exercise of (or failure to exercise) Employee's duties and responsibilities to JEA, and to all other acts entitled to indemnification pursuant to Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes. If Employee's claim for indemnification is one for which indemnification is provided by Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes, or by other applicable law, then Employee shall be entitled to the benefits and protections of this Subsection 4.6 notwithstanding (i) any provision in this Agreement to the contrary, (ii) termination of Employee's employment, regardless of the reason for or circumstances surrounding said termination, or (iii) the termination of this Agreement.
- 4.7 **Confidentiality.** Employee agrees and acknowledges that, in the course of Employee's employment with JEA, Employee may learn trade secrets and other proprietary information of JEA. For purposes of this Agreement, "trade secrets" means any information protected by Florida's Trade Secrets Act, and "proprietary information" means any information obtained during the course of Employee's employment with JEA the disclosure of which would reasonably be expected to create a material risk of harm to JEA's legitimate business interests. JEA agrees and acknowledges that, in the course of Employee's employment with JEA, JEA may learn

confidential information about Employee's finances and other personal matters. Accordingly, Employee agrees that Employee will not, during or after Employee's employment with JEA, disclose any of JEA's trade secrets or other proprietary information, except in performance of Employee's duties as an Employee of JEA, and JEA agrees that it will not, during or after Employee's employment with JEA, disclose any confidential information about Employee. However, nothing in this Agreement or in this Subsection 4.7 shall impose or be construed to impose any limitation that is contrary to applicable law or applicable court order, or to limit the parties' opportunity to agree in the future to permit disclosures of information otherwise made confidential by this Subsection 4.7.

- 4.8 **Non-disparagement.** Employee agrees not to disparage JEA, its officers or its Board members, and JEA agrees not to disparage Employee, except that nothing in this Agreement or in this Subsection 4.8 shall preclude either Employee or JEA from making truthful statements in legal proceedings, to preclude Employee from providing information to or initiating or participating in a proceeding before any federal, state or local administrative agency, or to impose any limitation that is contrary to applicable law or applicable court order.
- 4.9 **Authority.** The person executing and delivering this Agreement on behalf of JEA is an authorized officer, director or agent of JEA with full power and authority to bind JEA. Upon execution and delivery of this Agreement by JEA, this Agreement shall constitute the legal, valid and binding obligation of JEA.
- 4.10 **Execution.** This Agreement shall not become a binding and enforceable contract until signed by Employee, the Chair of JEA's Board of Directors, JEA's Chief Financial Officer and JEA's Chief Legal Officer. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original, and which together, when signed by Employee, the Chair, the Chief Financial Officer and the Chief Legal Officer, shall constitute a single, legally binding contract.
- 4.11 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.
- 4.12 **Compliance with Sections 409A / 457.** JEA intends that all payments provided under this Agreement be exempt from, or comply with, the requirements of Sections 409A and 457 of the Code and any guidance promulgated under Sections 409A / 457 of the Code (collectively, "Sections 409A / 457") so that none of the payments or benefits will be subject to the additional tax imposed under Sections 409A / 457, and any ambiguities in this Agreement will be interpreted in accordance with this intent. No payment or benefits to be paid to Employee, if any, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Sections 409A / 457 will be paid or otherwise provided until Employee has a separation from service within the meaning of Sections 409A / 457. Each severance payment, installment, and benefit payable under Section 3 of this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2).



All expenses or other reimbursements under this Agreement that would constitute nonqualified deferred compensation subject to Sections 409A / 457, (i) shall be paid on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Employee, (ii) no such reimbursement or expenses eligible for reimbursement in any taxable year shall in any way affect Employee's right to reimbursement of any other expenses eligible for reimbursement in any other taxable year, and (iii) Employee's right to reimbursement shall not be subject to liquidation in exchange for any other benefit.

4.13 **Confidential Disclosure in Reporting Violations of Law or in Court Filings.** Employee acknowledges and JEA agrees that Employee may disclose confidential information in confidence directly or indirectly to federal, state, or local government officials, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. Employee may also disclose confidential information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of confidential information that are expressly allowed by 18 U.S.C. § 1833(b).

4.14 **Notices.** For purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when received if delivered in person, the next business day if delivered by overnight commercial courier (e.g., Federal Express), or the third business day if mailed by United States certified mail, return receipt requested, postage prepaid, to the following addresses:

If to JEA, to:

JEA  
21 West Church Street  
Jacksonville, FL 32202

If to Employee, to:

Aaron F. Zahn  
at the address on file with JEA

Either party may change its address for notices in accordance with this Subsection 4.14 by providing written notice of such change to the other party.

4.15 **Survival.** The provisions of this Agreement that are intended to survive this Agreement and Employee's termination of employment shall survive in accordance with their terms.

4.16 **Severability.** If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its


coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement (as applicable) shall continue in full force and effect.

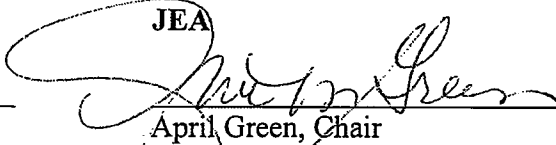
- 4.17 **Waiver.** Any failure of Employee to comply with any of his obligations under this Agreement may be waived only in writing signed by JEA. Any failure of JEA to comply with any of its obligations under this Agreement may be waived only in writing signed by Employee. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.
- 4.18 **Compliance with Applicable Laws.** No provision of this Agreement shall be deemed to violate applicable law and this Agreement shall be interpreted in accordance with this intent.
- 4.19 **Arbitration.** Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by applicable law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County in the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to applicable law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.]

*[Signature Page Follows]*

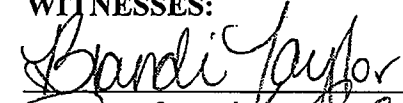
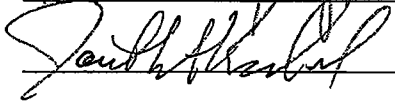
IN WITNESS WHEREOF, the parties hereto have duly executed this Employment Agreement on the day and year above first written.

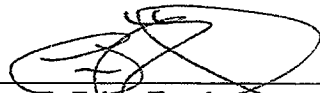
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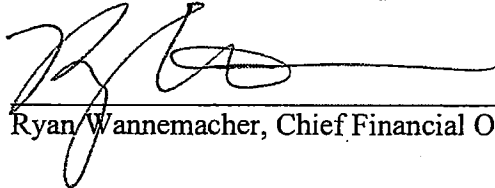
JEA  
  
\_\_\_\_\_  
April Green, Chair  
Date: 7/23/2019

WITNESSES:

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
Aaron F. Zahn, Employee  
Date: 7/23/2019

I hereby certify that the expenditure contemplated by the foregoing Agreement has been duly authorized, and provision has been made for the payment of the moneys provided therein to be paid in respect of Fiscal Year 2019/2020.

  
\_\_\_\_\_  
Ryan Wannemacher, Chief Financial Officer

Approved:

  
\_\_\_\_\_  
Lynne Rhode, Chief Legal Officer

## EXHIBIT A

### Position Profile

<b>Position Title</b>	Managing Director & Chief Executive Officer (CEO)
<b>Location</b>	Jacksonville, Florida
<b>Reports To</b>	This position reports directly to the JEA Board of Directors (the “Board”), comprised of seven members appointed by the Jacksonville Mayor, confirmed by City Council, who serve staggered terms.
<b>Reporting Structure</b>	<i>Current Reporting Structure under the CEO:</i> <ul style="list-style-type: none"><li>• President &amp; Chief Operating Officer</li><li>• Chief Financial Officer</li><li>• Chief Public &amp; Shareholders Affairs Officer</li><li>• Chief Administrative Officer</li><li>• Chief Innovations and Transformation Officer</li><li>• Chief Information Officer</li></ul>
<b>Position Summary</b>	<p>This individual will be a forward-thinking, innovative leader capable of conducting a strategic review of JEA and the industry landscape to establish the long-term plans and objectives ensuring JEA will be relevant and agile to adapt and thrive for decades to come. The Managing Director &amp; Chief Executive Officer (“CEO” henceforth) will be responsible for establishing the overall direction of JEA, leading the business and overall activities of the organization, and ensuring near and long-term financial success and sustainability. The CEO will be tasked with identifying new lines of business and revenue sources for JEA as well as establishing a culture of continuous improvement and commercial success, always seeking ways to improve efficiency and profitability.</p> <p>The CEO will design the appropriate organizational structure to support this strategy and is responsible for ensuring that the organization attracts and retains a diverse mix of talent with the leadership, operational, and commercial skills to drive a culture of internal and external innovation, process excellence, and risk management.</p> <p>In addition to working closely with the Board and his Executive Management Team, the CEO will also work with public officials, customers, industry leaders, suppliers, the financial community, and environmental groups to ensure JEA continues to meet or exceed its objectives in the safest, most reliable and cost effective manner.</p>
<b>Responsibilities</b>	<ul style="list-style-type: none"><li>• Provide strategic leadership for the organization by developing and</li></ul>

implementing the strategic vision that outlines the long-term role of JEA in the Jacksonville metro, the State of Florida, and the utility industry as a whole. Working across the stakeholder community, the CEO will conduct a detailed assessment of business including its current objectives, market opportunities for business line expansion and revenue growth, operational delivery capabilities, and customer service to develop the near and long-term goals of JEA.

Pivotal to the strategic plan developed will be the identification of potential additional revenue streams including competitive and retail offerings such as retail solar, energy efficiency services and equipment sales and/or leasing, leveraging JEA's Dark Fiber and other infrastructure assets, electrification of Jacksonville's transportation fleet, gas to electric energy conversions, etc.

- In support of the business strategy developed, design and implement the appropriate organizational structure to support a nimble, collaborative, and innovative culture and enhanced delivery capabilities. Utilize new-to-JEA collaboration and workflow initiatives (idea generation forums, customer feedback reviews, internal/external think tanks, etc.) to create a consistent internal engine idea generation for growth and improvement.
- Establish the appropriate policies to support the business strategy that enable creativity, diversity, and commercial growth while also protecting the assets, people, and information of JEA and those it serves.
- Facilitate stakeholder communication of strategy to gain buy-in; clearly and continuously articulate the business strategy/direction to the Board of Directors, regulators, senior management team and all employees.
- Effectively communicate risk and opportunity to facilitate decision-making, prioritization and measurement of operating performance against plan.
- Represent JEA with its major customers, the financial community, the public, and other stakeholders including local, state, and national forums.
- Manage company operations to ensure operational efficiency, safety, quality service and cost-effective use of resources. Identify and implement ongoing financial and operational improvements.
- Define and execute a workforce development plan to attract and engage a high performing team with the skills and competencies

necessary to accomplish the goals of JEA today and in the future. Identify and mentor future leaders for the organization, creating a workplace of safe, reliable, cost-effective service with excellent customer experience.

- Enhance and maintain relationships with key constituents across the region and the industry including elected officials, industry leaders, suppliers, environmental groups and customers. Communicate effectively to stakeholder groups with messaging appropriate for the audience.
- Define and oversee JEA's Disaster Preparedness Plan and ensure the appropriate training, logistics plan, and communication equipment are in place to respond to emergency/disaster situations.
- Lead public policy and public affairs activity, serving as the primary spokesperson for the agency locally, regionally and nationally.
- Increase understanding of the role of JEA in economic development efforts across the region. Participate actively in legislative and regulatory initiatives regionally and nationally.
- Promote strong fiscal accountability and responsibility.
- Develop a culture of productivity, diversity, efficiency, flexibility, and accountability to customers. Help JEA continue to evolve its internal development capabilities and be a top employer of choice with a diverse employment base with varying backgrounds.

**EXHIBIT B**

**Separation and Transition Agreement**



## FORM OF SEPARATION AND TRANSITION AGREEMENT

**THIS SEPARATION AND TRANSITION AGREEMENT** (this “Agreement”) is made and entered into on [DATE] by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (hereinafter referred to as “JEA”), and Aaron F. Zahn, an individual currently residing in Florida, hereinafter referred to as Service Provider. Capitalized terms used herein but not defined shall have the meanings in the Employment Agreement for Managing Director and Chief Executive Officer, dated as of July 23, 2019 (the “Employment Agreement”), between JEA and Service Provider.

**WHEREAS**, Service Provider is employed by JEA as its [TITLE] pursuant to the Employment Agreement;

**WHEREAS**, Service Provider’s employment with JEA shall be terminated; and

**WHEREAS**, in connection with Service Provider’s separation from service with JEA, JEA and Service Provider desire to commence the transition of the [TITLE] position and Service Provider agrees to make himself or herself available to provide services to JEA on the terms and conditions set forth herein.

Now therefore JEA and Service Provider agree as follows:

### SECTION 1 – SEPARATION:

- 1.1 **Removal from Positions.** The Service Provider’s last day of employment with JEA is [DATE] (such date, the “Separation Date”). In that regard, as of the Separation Date, (a) Service Provider’s position as [TITLE] of JEA and (b) all other officer positions, directorships and other positions that Service Provider holds with JEA shall terminate.
- 1.2 **Release Agreement.** Service Provider’s receipt of any payments and benefits pursuant to this Agreement (other than the payments and benefits pursuant to Sections 3.1.5(a) and (f) of the Employment Agreement (the “Accrued Obligations”)) is subject to Service Provider’s signing and not revoking the Release Agreement substantially in the form attached hereto as Exhibit A (the “Release Agreement”); provided that the Release Agreement is effective within thirty (30)<sup>1</sup> days following the Separation Date. No payments or benefits under this Agreement (other than the Accrued Obligations) shall be paid or provided to Service Provider until the Release Agreement becomes effective in accordance with the deadline specified in the preceding sentence.

### SECTION II – TRANSITION:

- 2.1 **Consulting Period and Services.** Commencing on the Separation Date and ending on the twelve (12)-month anniversary thereof (the “Consulting Period”), Service Provider

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<sup>1</sup> Note to Draft: To be increased to 60 days for group terminations.



shall make himself or herself available to consult with JEA as reasonably requested by JEA from time to time (the “Services”).

- 2.2 **Consulting Fee.** In exchange for the Services, commencing on the Separation Date, JEA agrees to pay Service Provider a monthly fee of \$[AMOUNT] (the “Monthly Fee”) for a total fee of \$[AMOUNT].<sup>2</sup> Except as to the Monthly Fee, no other payment or benefits shall be due or payable to Service Provider for the Services. JEA may terminate Service Provider’s service for Cause prior to the expiration of the Consulting Period and, in such event, Service Provider shall forfeit his or her right to receive the Monthly Fee for the remainder of the Consulting Period.
- 2.3 **Status as an Independent Contractor.** In all matters relating to the Services, nothing under this Agreement shall be construed as creating any partnership, joint venture or agency between JEA and Service Provider or to constitute Service Provider as an agent, employee or representative of JEA. Service Provider shall act solely as an independent contractor and, as such, is not authorized to bind any member of JEA to third parties. Consequently, Service Provider shall not be entitled to participate during the Consulting Period in any of the employee benefit plans, programs or arrangements of JEA in his capacity as a consultant. Service Provider shall be responsible for and pay all taxes related to the receipt of compensation in connection with the provision of the Services. Service Provider shall not make any public statements concerning the Services that purport to be on behalf of JEA, in each case without prior written consent from JEA. Notwithstanding Service Provider’s status as an independent contractor in providing the Services, to the fullest extent permitted by applicable law and JEA’s constituent documents applicable to officers and directors of JEA, (a) Service Provider shall continue to be entitled to indemnification for any loss, damage, or claim incurred by, imposed or asserted against Service Provider in connection with the Services provided to JEA, and (b) JEA shall pay the expenses incurred by Service Provider in defending any claim, demand, action, suit or proceeding related thereto as such expenses are incurred by Service Provider and in advance of the final disposition of such matter; provided that Service Provider shall be entitled to the coverage under clauses (a) and (b) on the same terms and conditions as were in effect prior to the Separation Date as reflected in Section 3.2.
- 2.4 **Legal Counsel.** The Service Provider shall be entitled to legal counsel, paid for by JEA, as necessary if Service Provider is a defendant participant in a lawsuit against JEA for actions that occurred during his period of employment and the Consulting Period with JEA, excepting intentional torts.

### SECTION III – SEVERANCE BENEFITS:

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<sup>2</sup> **Note to Draft:** To be calculated based on an annualized amount equal to the combined total of all items reflected on Service Provider’s total compensation statement provided to Service Provide for the most recent 12-month period.

- 3.1 **Compliance with Employment Agreement.** JEA shall comply with any and all of its payment and benefit obligations of the Employment Agreement.
- 3.2 **Indemnification.** Pursuant to Section 768.28(9)(a), Florida Statutes, Service Provider is not personally liable in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. JEA hereby agrees to indemnify, defend and hold Service Provider harmless from any and all claims, to the fullest extent permitted by Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes, and other applicable law. Without limiting the scope of this Section 3.2, which the parties agree shall be construed as broadly as permitted by applicable law, JEA's agreement to indemnify, defend and hold Service Provider harmless includes claims arising out of the exercise of (or failure to exercise) Service Provider's duties and responsibilities to JEA, and to all other acts entitled to indemnification pursuant to Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes. If Service Provider's claim for indemnification is one for which indemnification is provided by Sections 111.07, 111.071 and 768.28(9)(a), Florida Statutes, or by other applicable law, then Service Provider shall be entitled to the benefits and protections of this Section 3.2 notwithstanding (i) any provision in this Agreement or the Employment Agreement to the contrary, (ii) termination of Service Provider's employment, regardless of the reason for or circumstances surrounding said termination, or (iii) the termination of this Agreement.
- 3.3 **No Other Compensation or Benefits.** Except as otherwise specifically provided herein or as required by the terms of any employee benefit plan, program or arrangement of JEA, the Consolidated Omnibus Reconciliation Act or other applicable law, Service Provider shall not be entitled to any compensation or benefits or to participate in any past, present or future employee benefit plans, programs or arrangements of JEA on or after the Separation Date.

#### SECTION IV – COVENANTS AND AGREEMENTS:

- 4.1 **Incorporation by Reference.** The covenants and agreements set forth in Sections 4.7, 4.8 and Section 4.13 of the Employment Agreement (the "Restrictive Covenants") are incorporated herein by reference as if such provisions were set forth herein in full.
- 4.2. **Return of Property.** All files, records, documents, manuals, books, forms, reports, memoranda, studies, data, calculations, recordings, or correspondence, whether visually perceptible, machine-readable or otherwise, in whatever form they may exist, and all copies, abstracts and summaries of the foregoing, and all physical items related to the business of JEA, whether of a public nature or not, and whether prepared by Service Provider or not, are and shall remain the exclusive property of JEA, and shall not be removed from its premises, except as required in the course of Service Provider's employment by JEA, without the prior written consent of JEA. No later than the Separation Date, such items, including any copies or other reproductions thereof, shall be promptly returned by Service Provider to JEA (or, if requested by JEA, destroyed by Service Provider).

## SECTION V – MISCELLANEOUS:

- 5.1 **Governing Law; Binding Effect; Amendment.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida, and shall be binding on JEA's successors and assigns. This Agreement shall not be assignable or transferable by Service Provider or his or her beneficiaries or legal representatives. Notwithstanding the foregoing, in the event of the death of Service Provider, payments that otherwise would have been made to Service Provider shall instead be provided to Service Provider's estate. No amendment or modification shall be effective unless in writing by the parties, including the approval by the Board.
- 5.2 **Authority.** The person executing and delivering this Agreement on behalf of JEA is an authorized officer, director or agent of JEA with full power and authority to bind JEA. Upon execution and delivery of this Agreement by JEA, this Agreement shall constitute the legal, valid and binding obligation of JEA.
- 5.3 **Execution.** This Agreement shall not become a binding and enforceable contract until signed by Service Provider, the Chair of JEA's Board of Directors, JEA's Chief Financial Officer and JEA's Chief Legal Officer. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original, and which together, when signed by Service Provider, the Chair, the Chief Financial Officer and the Chief Legal Officer, shall constitute a single, legally binding contract.
- 5.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement (including, without limitation, the Employment Agreement (other than to the extent set forth herein and the Restrictive Covenants, which shall remain in full force and effect)).
- 5.5 **Compliance with Sections 409A / 457.** JEA intends that all payments provided under this Agreement be exempt from, or comply with, the requirements of Sections 409A and 457 of the Code and any guidance promulgated under Sections 409A / 457 of the Code (collectively, "Sections 409A / 457") so that none of the payments or benefits shall be subject to the additional tax imposed under Sections 409A / 457, and any ambiguities in this Agreement shall be interpreted in accordance with this intent. No payment or benefits to be paid to Service Provider, if any, under this Agreement or otherwise, when considered together with any other severance payments or separation benefits that are considered deferred compensation under Sections 409A / 457 shall be paid or otherwise provided until Service Provider has a separation from service within the meaning of Sections 409A / 457. Each severance payment, installment, and benefit payable under Section 3 of this Agreement is intended to constitute a separate payment for purposes of U.S. Treasury Regulation Section 1.409A-2(b)(2).

All expenses or other reimbursements under this Agreement that would constitute nonqualified deferred compensation subject to Sections 409A / 457, (i) shall be paid on

or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Service Provider, (ii) no such reimbursement or expenses eligible for reimbursement in any taxable year shall in any way affect Service Provider's right to reimbursement of any other expenses eligible for reimbursement in any other taxable year, and (iii) Service Provider's right to reimbursement shall not be subject to liquidation in exchange for any other benefit.

- 5.6 **Notices.** For purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when received if delivered in person, the next business day if delivered by overnight commercial courier (e.g., Federal Express), or the third business day if mailed by United States certified mail, return receipt requested, postage prepaid, to the following addresses:

If to JEA, to:

JEA  
21 West Church Street  
Jacksonville, FL 32202

If to Service Provider, to:

Aaron F. Zahn  
at the address on file with JEA

Either party may change its address for notices in accordance with this Subsection 5.6 by providing written notice of such change to the other party.

- 5.7 **Survival.** The provisions of this Agreement that are intended to survive this Agreement and Service Provider's termination of employment shall survive in accordance with their terms.
- 5.8 **Severability.** If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement (as applicable) shall continue in full force and effect.
- 5.9 **Waiver.** Any failure of Service Provider to comply with any of his or her obligations under this Agreement may be waived only in writing signed by JEA. Any failure of JEA to comply with any of its obligations under this Agreement may be waived only in writing signed by Service Provider. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing

waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

- 5.10 **Arbitration.** Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by applicable law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County in the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to applicable law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Separation and Transition Agreement on the day and year above first written.

**ATTEST:**

\_\_\_\_\_

**JEA**

\_\_\_\_\_  
[NAME], Chair

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

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_  
Aaron F. Zahn, Service Provider

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

I hereby certify that the expenditure contemplated by the foregoing Agreement has been duly authorized, and provision has been made for the payment of the moneys provided therein to be paid in respect of Fiscal Year 20[ ]/20[ ].

Approved:

\_\_\_\_\_  
[NAME], Chief Financial Officer

\_\_\_\_\_  
[NAME], Chief Legal Officer

## EXHIBIT A

### MUTUAL RELEASE AGREEMENT

**THIS MUTUAL RELEASE AGREEMENT** (this “Agreement”) is made and entered into on [DATE] by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (hereinafter referred to as “JEA”), and Aaron F. Zahn, an individual currently residing in Florida, hereinafter referred to as Service Provider. Capitalized terms used herein but not defined shall have the meanings set forth in the Separation and Transition Agreement, dated as of [DATE] (the “Separation Agreement”), by and between JEA and Service Provider.

**WHEREAS**, the Separation Agreement sets forth the terms and conditions of Service Provider’s separation from service with JEA effective as [DATE]; and

**WHEREAS**, the Separation Agreement provides that, in consideration for certain payments and benefits payable to Service Provider in connection with his or her separation from service, Service Provider shall fully and finally release JEA from all claims relating to Service Provider’s employment relationship with JEA and the termination of such relationship.

Accordingly, the parties hereto agree as follows:

#### SECTION I – RELEASE:

- 1.1 **General Release by Service Provider.** In consideration of JEA’s obligations under the Separation Agreement and for other valuable consideration, Service Provider hereby releases and forever discharges JEA and each of its respective officers, employees, directors and agents from any and all claims, actions and causes of action (collectively, “Claims”), including, without limitation, any Claims arising under (a) the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514; Sections 748(h)(i), 922(h)(i) and 1057 of the Dodd-Frank Wall Street and Consumer Protection Act (the “Dodd Frank Act”), 7 U.S.C. § 26(h), 15 U.S.C. § 78u-6(h)(i) and 12 U.S.C. § 5567(a) but excluding from this release any right Service Provider may have to receive a monetary award from the Securities and Exchange Commission as an SEC Whistleblower, pursuant to the bounty provision under Section 922(a)-(g) of the Dodd Frank Act, 7 U.S.C. Sec. 26(a)-(g), or directly from any other federal or state agency pursuant to a similar program, or (b) any applicable federal, state, local or foreign law, including, but not limited to, claims under Chapter 112 or Chapter 760, Florida Statutes, that Service Provider may have, or in the future may possess arising out of (x) Service Provider’s employment relationship with and service as a director, employee, officer or manager of JEA, and the termination of such relationship or service, or (y) any event, condition, circumstance or obligation that occurred, existed or arose on or prior to the date hereof; provided, however, that the release set forth in this Section 1.1 shall not apply to (i) the obligations of JEA under the Separation Agreement, (ii) the obligations of JEA to continue to provide indemnification to Service Provider as provided under applicable law or in the Separation Agreement and (iii) any Claims which cannot be released under applicable law. Service Provider further agrees that the payments and benefits described in the Separation Agreement shall be in full satisfaction

of any and all claims for payments or benefits, whether express or implied, that Service Provider may have against JEA arising out of Service Provider's employment relationship, Service Provider's service as a director, employee, officer or manager of JEA and the termination thereof. The provision of the payments and benefits described in the Separation Agreement shall not be deemed an admission of liability or wrongdoing by JEA. This Section 1.1 does not apply to any Claims that Service Provider may have as of the date Service Provider signs this Agreement arising under the federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA"). Claims arising under ADEA are addressed in Section 1.2 of this Agreement.

- 1.2 **Specific Release of ADEA Claims by Service Provider.** In consideration of the payments and benefits provided to Service Provider under the Separation Agreement, Service Provider hereby releases and forever discharges JEA and each of their respective officers, employees, directors and agents from any and all Claims that Service Provider may have as of the date Service Provider signs this Agreement arising under ADEA. By signing this Agreement, Service Provider hereby acknowledges and confirms the following: (a) Service Provider was advised by JEA in connection with Service Provider's termination to consult with an attorney of Service Provider's choice prior to signing this Agreement and to have such attorney explain to Service Provider the terms of this Agreement, including, without limitation, the terms relating to Service Provider's release of claims arising under ADEA; (b) Service Provider has been given a period of not fewer than twenty-one (21)<sup>3</sup> days to consider the terms of this Agreement and to consult with an attorney of Service Provider's choosing with respect thereto; and (c) Service Provider is providing the release and discharge set forth in this Section 1.2 only in exchange for consideration in addition to anything of value to which Service Provider is already entitled.
- 1.3 **General Release by JEA.** JEA hereby releases and forever discharges Service Provider and each of his or her agents, representatives, attorneys, successors, assigns, heirs, executors and administrators from any Claims that JEA may have, or in the future may possess, arising out of (x) Service Provider's employment relationship with and service as a director, employee, officer or manager of JEA, and the termination of such relationship or service, or (y) any event, condition, circumstance or obligation that occurred, existed or arose on or prior to the date hereof; provided, however, that the release set forth in this Section 1.3 shall not apply to any Claims which cannot be released under applicable law.
- 1.4 **Representation.** Service Provider hereby represents that Service Provider has not instituted, assisted or otherwise participated in connection with, any action, complaint, claim, charge, grievance, arbitration, lawsuit or administrative agency proceeding, or

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<sup>3</sup> Note to Draft: To insert for employees who are age 40 years or older and to be increased to 45 days for a group termination.



action at law or otherwise against any member of JEA or any of their respective officers, employees, directors, shareholders or agents.

## **SECTION II – CESSATION OF PAYMENTS:**

In the event that Service Provider (a) files any charge, claim, demand, action or arbitration with regard to Service Provider's employment, compensation or termination of employment under any federal, state or local law, or an arbitration under any industry regulatory entity, except in either case for a claim for breach of the Separation Agreement or failure to honor the obligations set forth therein or (b) breaches any of the covenants or obligations contained in or incorporated into the Separation Agreement, JEA shall be entitled to cease making any payments due pursuant to Section 3 of the Separation Agreement (other than the Accrued Obligations).

## **SECTION III – VOLUNTARY ASSENT:**

Service Provider affirms that Service Provider has read this Agreement, and understands all of its terms, including the full and final release of claims set forth in Section 1. Service Provider further acknowledges that (a) Service Provider has voluntarily entered into this Agreement; (b) Service Provider has not relied upon any representation or statement, written or oral, not set forth in this Agreement; (c) the only consideration for signing this Agreement is as set forth in the Separation Agreement; and (d) this document gives Service Provider the opportunity and encourages Service Provider to have this Agreement reviewed by Service Provider's attorney and/or tax advisor.

## **SECTION IV – REVOCATION:<sup>4</sup>**

This Agreement may be revoked by Service Provider within the seven (7)-day period commencing on the date Service Provider signs this Agreement (the "Revocation Period"). In the event of any such revocation by Service Provider, all obligations of JEA under the Separation Agreement shall terminate and be of no further force and effect as of the date of such revocation. No such revocation by Service Provider shall be effective unless it is in writing and signed by Service Provider and received by JEA prior to the expiration of the Revocation Period.

## **SECTION V – MISCELLANEOUS:**

5.1 **Governing Law; Binding Effect; Amendment.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida, and shall be binding on JEA's successors and assigns. This Agreement shall not be assignable or transferable by Service Provider or his or her beneficiaries or legal representatives. No amendment or modification shall be effective unless in writing by the parties, including the approval by the Board.

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<sup>4</sup> Note to Draft: To insert for employees who are age 40 years or older.

- 5.2 **Authority.** The person executing and delivering this Agreement on behalf of JEA is an authorized officer, director or agent of JEA with full power and authority to bind JEA. Upon execution and delivery of this Agreement by JEA, this Agreement shall constitute the legal, valid and binding obligation of JEA.
- 5.3 **Execution.** This Agreement shall not become a binding and enforceable contract until signed by Service Provider, the Chair of JEA's Board of Directors, JEA's Chief Financial Officer and JEA's Chief Legal Officer. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original, and which together, when signed by Service Provider, the Chair, the Chief Financial Officer and the Chief Legal Officer, shall constitute a single, legally binding contract.
- 5.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.
- 5.5 **Notices.** For purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when received if delivered in person, the next business day if delivered by overnight commercial courier (e.g., Federal Express), or the third business day if mailed by United States certified mail, return receipt requested, postage prepaid, to the following addresses:

If to JEA, to:

JEA  
21 West Church Street  
Jacksonville, FL 32202

If to Service Provider, to:

Aaron F. Zahn  
at the address on file with JEA

Either party may change its address for notices in accordance with this Subsection 5.5 by providing written notice of such change to the other party.

- 5.6 **Survival.** The provisions of this Agreement that are intended to survive this Agreement and Service Provider's termination of employment shall survive in accordance with their terms.
- 5.7 **Severability.** If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to applicable law so as to be valid and enforceable or, if such

provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement (as applicable) shall continue in full force and effect.

- 5.8 **Waiver.** Any failure of Service Provider to comply with any of his or her obligations under this Agreement may be waived only in writing signed by JEA. Any failure of JEA to comply with any of its obligations under this Agreement may be waived only in writing signed by Service Provider. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.
- 5.9 **Arbitration.** Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by applicable law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County in the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to applicable law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Release Agreement on the day and year above first written.

ATTEST:

JEA

\_\_\_\_\_

\_\_\_\_\_  
[NAME], Chair

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

I hereby certify that the expenditure contemplated by the foregoing Agreement has been duly authorized, and provision has been made for the payment of the moneys provided therein to be paid in respect of Fiscal Year 2019/2020.

\_\_\_\_\_  
[NAME], Chief Financial Officer

Approved:

\_\_\_\_\_  
[NAME], Chief Legal Officer

**SERVICE PROVIDER HEREBY ACKNOWLEDGES THAT SERVICE PROVIDER HAS READ THIS AGREEMENT, THAT SERVICE PROVIDER FULLY KNOWS, UNDERSTANDS AND APPRECIATES ITS CONTENTS, AND THAT SERVICE PROVIDER HEREBY ENTERS INTO THIS AGREEMENT VOLUNTARILY AND OF SERVICE PROVIDER'S OWN FREE WILL.**

\_\_\_\_\_  
**Aaron F. Zahn**

**From:** [Zahn, Aaron F. - Managing Director/CEO](#)  
**To:** [Jessica Lutrin](#)  
**Subject:** Fwd: McElroy Contract  
**Date:** Tuesday, July 09, 2019 11:45:27 AM  
**Attachments:** [Paul McElroy Transition Services Agreement FINAL - FULLY EXECUTED.pdf](#)  
[ATT00001.htm](#)

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FYI. Here it is. Looks like we will need to add some additional provisions.

Aaron F. Zahn  
JEA  
Managing Director & Chief Executive Officer  
[zahnaf@jea.com](mailto:zahnaf@jea.com)  
(312) 286-1040

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - Interim VP & HR Officer"  
<[kendja@jea.com](mailto:kendja@jea.com)>  
**Date:** July 9, 2019 at 11:23:30 AM EDT  
**To:** "Zahn, Aaron F. - Managing Director/CEO" <[zahnaf@jea.com](mailto:zahnaf@jea.com)>  
**Subject: RE: McElroy Contract**

Aaron,

This is Paul's Transition Services Agreement. There is no separation agreement, just this "restatement of his contract." The applicable sections seems to be 1.a: "Commencing on April 6, 2018, Employee's duties shall solely consist of providing assistance as required by JEA regarding the transition of the Chief Executive Officer/Managing Director position."

I'll hang out at the office for a bit in case you need anything else.

Thanks.

Jon

**From:** Zahn, Aaron F. - Managing Director/CEO <[zahnaf@jea.com](mailto:zahnaf@jea.com)>  
**Sent:** Tuesday, July 9, 2019 9:57 AM  
**To:** Kendrick, Jonathan A. - Interim VP & HR Officer <[kendja@jea.com](mailto:kendja@jea.com)>  
**Subject:** Re: McElroy Contract

Yes. There was a separate agreement done at his resignation.

Aaron F. Zahn  
JEA  
Managing Director & Chief Executive Officer



[zahnaf@jea.com](mailto:zahnaf@jea.com)

(312) 286-1040

On Jul 9, 2019, at 9:28 AM, Kendrick, Jonathan A. - Interim VP & HR Officer  
<[kendja@jea.com](mailto:kendja@jea.com)> wrote:

Aaron,

I don't see a cooperation clause her. I believe Angie left a separation document in her files. I'll head to the office and look and get that to go if I can find it. Lynne May have a copy of it , too, if she has any of Jody's files.

Jon

Get [Outlook for iOS](#)

----- Forwarded message -----

From: "**Strackbine, Scott I. - Compensation Specialist**" <[strasi@jea.com](mailto:strasi@jea.com)>

Date: Tue, Jul 9, 2019 at 9:15 AM -0400

Subject: McElroy Contract

To: "Kendrick, Jonathan A. - Interim VP & HR Officer" <[kendja@jea.com](mailto:kendja@jea.com)>

Cc: "Maillis, Patricia L. - Director, Employee Services" <[mailpl@jea.com](mailto:mailpl@jea.com)>

Hi Jon,

Attached is the most recent contract for Paul McElroy. I was not able to find any separation agreement in the G drive or Oracle.

Thanks,

**Scott Strackbine**

Compensation Specialist

Direct: (904) 665-7471

[<image011.jpg><image012.jpg><image013.jpg><image014.jpg>](#)

[<image015.jpg>](#)

<CEO Contract 2015-2018\_McElroy.pdf>

## PAUL McELROY TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT, ("this Agreement") is made and entered into as of this 6<sup>th</sup> day of April, 2018 by and between the JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville, hereinafter referred to as JEA or Employer, and Paul E. McElroy, an individual currently residing in Jacksonville, Florida, hereinafter referred to as Employee or Chief Executive Officer/Managing Director.

**WHEREAS**, Employee has determined that he will not seek an extension of his employment as CEO past 9/30/2018; and

**WHEREAS**, Employer and Employee desire to commence the transition of the Chief Executive Officer/Managing Director position.

Now therefore JEA and Employee agree as follows:

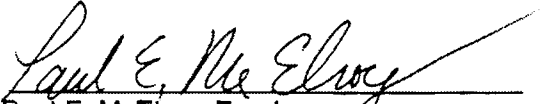
1. The Employment Agreement for Chief Executive Officer/Managing Director ("Employment Agreement"), dated August 21, 2015, shall remain in full force and effect except as expressly modified herein.
  - a. Section 1.2 is hereby amended by deleting the first and last sentences of such section in their entirety and adding the following new sentence as the first sentence of such section: "Commencing on April 6, 2018, Employee's duties shall solely consist of providing assistance as required by JEA regarding the transition of the Chief Executive Officer/Managing Director position."
  - b. Section 1.4 is hereby amended by deleting the last sentence of such section in its entirety.
  - c. Section 3.1.1 is hereby amended by deleting the phrase "equal to one year" in its entirety and replacing it with the phrase "equal to 20 weeks."
  - d. The last WHEREAS clause on page 2 is hereby deleted in its entirety.
2. By September 1, 2018, JEA shall have made all reasonable efforts to complete all actuarial and tax calculations necessary for the City of Jacksonville General Employees Pension Plan and the JEA Pension Restoration/Supplemental Plan.
3. In accordance with Paragraph 2.2 of the Employment Agreement, Employee retains his eligibility to receive annual Performance Compensation as expressly detailed therein and based on the fiscal year 2017/2018 bonus criteria established by JEA, pro-rated through April 6, 2018, if a bonus is awarded for the 2017/2018 fiscal year after JEA completes its evaluation in respect of such fiscal year.

4. The Employee shall be entitled to continue to be included within the scope of the engagement letter dated March 27, 2018 regarding testimony to City Council and committees thereof, regarding the potential sale of JEA.

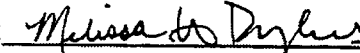
5. The Employee shall be entitled to legal counsel, paid for by JEA, as necessary if Employee is a defendant participant in a lawsuit against the JEA for actions that occurred during his period of employment with JEA, excepting intentional torts.


IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the day and year above first written.

Executed at Jacksonville, Florida as of this 6th day of April, 2018.

  
Paul E. McElroy, Employee

JEA

By:   
Melissa Dykes [Printed Name]  
Interim CEO & CFO [Title]

Approved:   
K. White  
Office of General Counsel

#53754389\_v1  
GC-#1200754-v5-4\_2\_18\_McElroy\_Transition\_Services\_Agreement.docx



**JEA  
JACKSONVILLE, FLORIDA**

4/9/2019

303421

PAY EXACTLY 4,316 DOLLARS AND 4 CENTS

**\$4,316.04**

PAY TO THE ORDER OF

Zahn, Aaron F

**NON-NEGOTIABLE**

\*2599475\*

**JEA  
DEPARTMENT OF FINANCE**

INVOICE NUMBER	DATE	VOUCHER NUMBER	GROSS AMOUNT	DISCOUNT	RETAINAGE WITHHELD	TAXES WITHHELD	NET AMOUNT
040519-922622	4/5/2019	1146159	\$4,316.04	\$0.00	\$0.00	\$0.00	\$4,316.04
DISP. NO	VENDOR NO	CHECK DATE	<b>\$4,316.04</b>				<b>\$4,316.04</b>
303421	922622	Apr 9, 2019					





# PAYMENT REQUEST



Date: 4/5/2019

Posting Period: 04/2019  
(MM/YYYY)

From: Managing Director / CEO  
(JEA Organization Name And Location)

To: Accounts Payable Department, Customer Center 6<sup>th</sup> Floor

**Please Issue Payment In Favor Of:**

if new

Payee Name: Aaron Zahn  
(As Shown On Payment Supporting Documentation)

Vendor Number: 922622  
(As shown in Oracle, if known)

Address: \_\_\_\_\_  
House number, street name, PO Box, etc.

Site Name: Office  
(As shown in Oracle, if known)

040519-922622

Invoice Number: 922622-040419

\_\_\_\_\_  
City, State, Zip Code

Project #	Task #	Expenditure Type (Name)	Expenditure Organization	Amount
021.50000.00000000.00 .923101.2017.0000		Training and Other Meeting Expense	Managing Director-CEO	4,316.04
Description: Expenses related to team building for new executive team				
Description:				
Description:				
Description:				
Description:				
Description:				
Description:				

Total: \$ **4,316.04**

Note: In accordance with the JEA Procurement Code (P-Code,) purchases in excess of \$5,000 must be accompanied by a valid JEA-issued purchase order unless exempted by the P-Code through Exemption or Directive.

**Payment Method**

- Check
- ACH – EFT
- Wire

**Authorization**

(Appointed Supervising Employee Signature)

**Ryan Wannemacher**

(Appointed Supervising Employee Printed Name)

(For ACH and Wire:)

Bank Name:
Bank City & State:
Routing / ABA:
Account #:

Special Handling Instructions:  Ok to pay per Naline Thompson 04/08/19
--

Preparer Name:	Lynette Ivy
Preparer Signature:	

Pay Alone: <input type="checkbox"/>
Due Date: (Net 30 from rec'd if blank):

  
 BELMOND  
**CHARLESTON PLACE**  
 CHARLESTON

MD

**Mr Aaron Zahn**  
**Po Box 50806**  
**Jacksonville Beach FL 32240**  
**United States**

Room No. : 622  
 Arrival : 03/29/19  
 Departure : 03/31/19  
 Page No. : 1 of 1  
 Folio No. :  
 Conf. No. : 2473586  
 Invoice No. :  
 Date : 03/31/19  
 User ID : CEDWARDS@CPH,

**INFORMATION INVOICE**

A/R Number :  
 Group Code :  
 Company Name :

Date	Text	Charges USD	Credits USD
03/29/19	Room Charge	629.00	
03/29/19	City Destination Fee	2.00	
03/29/19	Room Taxes	88.34	
03/30/19	Room Charge	629.00	
03/30/19	City Destination Fee	2.00	
03/30/19	Room Taxes	88.34	
03/31/19	American Express Card		1,438.68
	XXXXXXXXXXXX5003 XX/XX		
<b>Total</b>		<b>1,438.68</b>	<b>1,438.68</b>
<b>Balance</b>		<b>0.00 USD</b>	

TERMS: DUE AND PAYABLE UPON PRESENTATION. I AGREE THAT MY LIABILITY FOR THIS BILL IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON, COMPANY, OR ASSOCIATION FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF THESE CHARGES.

  
 BELMOND  
**CHARLESTON PLACE**  
 CHARLESTON



Mr Aaron Zahn  
 Po Box 50806  
 Jacksonville Beach FL 32240  
 United States

Room No. : 543  
 Arrival : 03/29/19  
 Departure : 03/31/19  
 Page No. : 1 of 1  
 Folio No. : 425602  
 Conf. No. : 2473589  
 Invoice No. :  
 Date : 03/31/19  
 User ID : CEDWARDS@CPH,

**INFORMATION INVOICE**

A/R Number :  
 Group Code :  
 Company Name :

Date	Text	Charges USD	Credits USD
03/29/19	Room Charge	629.00	
03/29/19	City Destination Fee	2.00	
03/29/19	Room Taxes	88.34	
03/30/19	Room Charge	629.00	
03/30/19	City Destination Fee	2.00	
03/30/19	Room Taxes	88.34	
03/31/19	American Express Card XXXXXXXXXXXX5003 XX/XX		1,438.68
<b>Total</b>		<b>1,438.68</b>	<b>1,438.68</b>
<b>Balance</b>		<b>0.00 USD</b>	

TERMS: DUE AND PAYABLE UPON PRESENTATION. I AGREE THAT MY LIABILITY FOR THS BILL IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON, COMPANY, OR ASSOCIATION FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF THESE CHARGES.

*RWJ*

**Mr Aaron Zahn**  
**Po Box 50806**  
**Jacksonville Beach FL 32240**  
**United States**

Room No. : 608  
 Arrival : 03/29/19  
 Departure : 03/31/19  
 Page No. : 1 of 1  
 Folio No. : 425620  
 Conf. No. : 2473587  
 Invoice No. :  
 Date : 03/31/19  
 User ID : CEDWARDS@CPH,

**INFORMATION INVOICE**

A/R Number :  
 Group Code :  
 Company Name :

Date	Text	Charges USD	Credits USD
03/29/19	Room Charge	629.00	
03/29/19	City Destination Fee	2.00	
03/29/19	Room Taxes	88.34	
03/30/19	Room Charge	629.00	
03/30/19	City Destination Fee	2.00	
03/30/19	Room Taxes	88.34	
03/31/19	American Express Card		1,438.68
	XXXXXXXXXXXX5003 XX/XX		
<b>Total</b>		<b>1,438.68</b>	<b>1,438.68</b>
<b>Balance</b>		<b>0.00 USD</b>	

TERMS: DUE AND PAYABLE UPON PRESENTATION. I AGREE THAT MY LIABILITY FOR THIS BILL IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON, COMPANY, OR ASSOCIATION FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF THESE CHARGES.

## **Ivy, M. Lynette - Executive Assistant**

---

**From:** Orfano, Joseph E. - Treasurer  
**Sent:** Friday, April 5, 2019 1:31 PM  
**To:** Ivy, M. Lynette - Executive Assistant  
**Cc:** Quarterman, Kristina M - Manager Operating Budgets; Nealy, Stephanie M. - Financial Analyst Specialist  
**Subject:** FW: Code

Lynette:

Forwarding the account code information from Kristina Quarterman. Could you please provide the amount of the expenses to Kristina/Stephanie so that they can transfer funds sufficient to cover the expenses?

Thanks,

**Joe Orfano**

Treasurer

Direct: (904) 665-4541

Mobile: (904) 677-1873

Fax: (904) 665-8334



**From:** Quarterman, Kristina M - Manager Operating Budgets <quarkm@jea.com>  
**Sent:** Friday, April 5, 2019 1:27 PM  
**To:** Orfano, Joseph E. - Treasurer <orfaje@jea.com>; Nealy, Stephanie M. - Financial Analyst Specialist <medlsm@jea.com>  
**Subject:** Code

Joe,

Please code to:

021.50000.00000000.00.923101.2017.0000

I'm assuming we will need to do a budget transfer for this. We will happy to transfer when provided the amount.

Thanks,  
KQ

**From:** Ivy, M. Lynette - Executive Assistant  
**To:** Cason, Arhonda D. (Randstad)  
**Subject:** RE: Check Request for Aaron Zahn  
**Date:** Tuesday, April 9, 2019 2:03:56 PM  
**Attachments:** scan\_ivyml\_2019-04-08-08-17-03.pdf

---

Hi Arhonda,

Sorry I meant to circle back to you yesterday. We actually only have the Board approve Aaron's travel expenses, while office expenses (which is what this one is being coded as) are approved by Ryan (as is attached). I spoke to Joe about it yesterday afternoon and he concurred. Did he happen to speak with you or, if not, would you be able to check with him?

Thanks,  
Lynette

---

**From:** Cason, Arhonda D. (Randstad) <casoad@jea.com>  
**Sent:** Monday, April 8, 2019 2:05 PM  
**To:** Ivy, M. Lynette - Executive Assistant <ivym@jea.com>  
**Subject:** FW: Check Request for Aaron Zahn  
**Importance:** High

Hi Lynette

The attached payment request will need to be signed and approved by the board (Alan Howard).

Once you have the signature approval please return for further processing.

Thanks

*Arhonda Cason, Travel Administrator*

**Travel & Tuition Services**



21 W. Church St. 11-6  
Jacksonville, FL 32202  
Email: [casoad@jea.com](mailto:casoad@jea.com)  
904-665-8170

---

**From:** Accounts Payable Customer Service <[acctpaycustsrv@jea.com](mailto:acctpaycustsrv@jea.com)>  
**Sent:** Monday, April 8, 2019 9:42 AM  
**To:** Cason, Arhonda D. (Randstad) <[casoad@jea.com](mailto:casoad@jea.com)>  
**Subject:** FW: Check Request for Aaron Zahn

Arhonda,

Please review attached PR.

Thank you.

**Jen Lea**

Accounts Clerk Senior

Direct: (904) 665-7122

---

**From:** Ivy, M. Lynette - Executive Assistant <[ivyml@jea.com](mailto:ivyml@jea.com)>

**Sent:** Monday, April 8, 2019 9:10 AM

**To:** Accounts Payable Customer Service <[acctpaycustsrv@jea.com](mailto:acctpaycustsrv@jea.com)>

**Subject:** Check Request for Aaron Zahn

Hello,

Please see attached, approved check request for Aaron Zahn.

Please let me know if you have any questions.

Thanks,

Lynette

**Lynette Ivy**

Executive Assistant to the Executive Team and JEA Board of Directors

Direct: (904) 665-4567

Mobile: (904) 703-1874

[ivyml@jea.com](mailto:ivyml@jea.com)



**JEA BOARD MINUTES**  
**May 28, 2019**

The JEA Board met in regular session on Tuesday, May 28, 2019, on the 19<sup>th</sup> Floor, 21 W. Church Street, Jacksonville, Florida. Present were April Green, Camille Lee-Johnson, Alan Howard, and Kelly Flanagan. Reverend Fredrick Newbill joined telephonically. John Campion was absent and excused.

**Agenda Item I – Welcome**

- A. The meeting was **called to order** at 9:00 AM by former Chair Howard who announced he was officially passing the gavel to now Chair Green.
- B. A **Moment of Reflection** was observed by all.
- C. The **Pledge of Allegiance** was led by Chair Green.
- D. **Adoption of Agenda** – The agenda was approved on **motion** by Ms. Flanagan and second by Mr. Howard.
- E. The **Safety Briefing** was given by Aaron Zahn, Managing Director/Chief Executive Officer.
- F. **Sunshine Law/Public Records Statement** – Lawsikia Hodges, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

**Agenda Item II – Comments / Presentations**

- A. **Comments from the Public**–  
Judy Franklin – address on file – spoke to the Board regarding the Bartram Springs project. Chair Green offered to provide the Bartram Springs community with another public meeting to ensure all of their concerns were addressed. Mr. Zahn also informed Ms. Franklin that Kerri Stewart, VP/ Chief Customer Officer was in the back of the room and was willing to address any concerns at this time.
- B. **Council Liaison's Comments** – No comments
- C. **JEA Linemen Rodeo Presentation** – Angel Vilchez, Manager Energy Distribution Service Operations and Mike Hightower, Chief Public & Shareholder Affairs Officer presented to the Board the winners of the FMEA and APPA Rodeos.
- D. **Kiss of Life Hall of Fame Inductee, J.D. Thompson & Museum Presentation** – Mike Hightower, Chief Public & Shareholder Affairs Officer introduced J.D. Thompson subject of the iconic "Kiss of Life" photo who was recently inducted into the International Museum of Linemen Hall of Fame. Mr. Hightower also introduced Mr. Andy Price who is the founder and curator of the International Museum of Linemen Hall of Fame in Shelby, NC who presented the Board with a Hall of Fame trophy.

*As an addition to the Board agenda, former Vice Chair of the Board, Husein Cumber was recognized for his service.*

- E. **FWEA/FBC Benchmarking Award** – Aaron Zahn, Managing Director/CEO presented to the Board the FWEA/FBC Benchmarking Award for the work the Water group has completed relative to water performance.



**Agenda Item III – Operations (Discussion/Action)**

- A. **Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On **motion** by Secretary Lee Johnson and second by Mr. Howard, Appendix A, B and C were unanimously approved.
- Appendix A: Board Meeting Minutes March 26, 2019** – approved
- Appendix B: Board Meeting Minutes April 2, 2019** – approved
- Appendix C: FY2018 Annual Disclosure Reports** – approved
- B. **Monthly Reports and Updates** – The following monthly reports and updates are submitted to the Board as information only. These items require no explanation, discussion, presentation or action.
- Appendix A: Monthly Financial Statements** – received for information
- Appendix B: Monthly Financial and Operations Detail** – received for information
- Appendix C: Monthly FY19 Communications & Engagement Calendar and Plan Update** – received for information
- Appendix D: Sole Source & Emergency Procurement/Procurement Appeals Board Report** – received for information
- C. **Monthly Financials and Operations Dashboard** – Melissa Dykes, President/COO, presented the Q2 Financial Update Video to demonstrate how employees receive this information and fielded questions from the Board.
- D. **JEA’s Procurement and Jacksonville Small and Emerging Business (JSEB) Program Report** – John McCarthy, VP & Chief Supply Chain Officer provided the JSEB Program report for Q2.
- E. **Hurricane Readiness Readout** – Kerri Stewart, VP & Chief Customer Officer gave a brief overview of JEA’s Hurricane Readiness. Ms. Stewart advised of the lessons learned from the last two storms and presented a video of this year’s hurricane exercise, which was conducted in JEA’s new Emergency Operations Center and the secondary site at the Cologix location. Ms. Stewart advised that this year’s exercise also consists of a Business Continuity piece.
- F. **Quarterly Report** – information for the Quarterly report was presented with III. C.

**Agenda Item IV – Strategy (Discussion Only)**

- A. **JEA’s Last 10 Years & Status Quo Baseline** – Melissa Dykes, President/COO and Ryan Wannemacher, CFO presented information on strategic planning and a report that provided information to the Board on the last 10 years of JEA’s sales and revenue and forecasts related to continuing to do business as it is today. Ms. Dykes also presented the Integrated Water Resource Plan (IWRP) and provided information on JEA’s investment in Water Evolution. Mr. Wannemacher presented information on technology disruption to the industry that JEA is currently experiencing. The Board held discussions on these topics following the presentation.

*Board Chair Green requested a motion that management come back with strategic plans and options. Upon motion by Secretary Lee Johnson and second by Ms. Flanagan the motion carried. Due to this item not being on the approved Board agenda, legal advised that public comments had to be reopened. There were no public comments related to this item.*

**Agenda Item V – Subject Matter Exploration (Opportunities & Risks – Presentations)**

A. N/A

**Agenda Item VI – Committee Report**

- A. **Finance and Audit Committee** – Committee Chair Flanagan presented the committee report to the Board. Mr. Howard added that through the efforts of Mr. Hightower's group legislation was passed to allow shade meetings to discuss cyber security.
1. **Agenda – May 20, 2019** – received for information
  2. **Draft Minutes – March 18, 2019** – received for information
  3. **FY2020 Budget Presentations** – received for information
  4. **Quarterly Audit Services Update** – received for information
  5. **Ethics Officer Quarterly Report** – received for information
  6. **Electric System and Water and Sewer System Reserve Fund Quarterly Report** – received for information
  7. **JEA Energy Market Risk Policy Report** – received for information
  8. **Next Meeting, August 19, 2019, 8:00 AM – 10:00 AM** – received for information
  9. **Committee Discussions** – received for information
    - a. **Ernst & Young Engagement – Ted Hobson**
    - b. **Ernst & Young – John DiSanto**
    - c. **Director, Audit Services – Steve Tuten**
    - d. **Council Auditor's Office – Jeff Rodda**
- B. **Nominating Committee**
1. **Resolution 2019 – 04 Amendment to Board Appointments** – Chair Green advised a correction was necessary to reflect the correct Board Appointments. A **motion** was made to reflect April Green as Board Chair, Reverend Frederick Newbill as Vice Chair and Camille Lee Johnson as Secretary by Mr. Howard and a second by Secretary Lee Johnson which passed unanimously.

**Agenda Item VII – Other Business**

- A. **Old Business** – Chair Green requested a monthly headquarters update.
- B. **Other New Business** – None
- C. **Open Discussion** – None
- D. **Managing Director/CEO's Report** – Mr. Zahn recognized the management team for having two bills passed through Florida legislation including one for cyber security and one for protecting public utility's customer data.
- E. **Chair's Report** – Chair Green recognized the Senior Leadership team for their efforts so far and challenged them and all JEA employees to continue current efforts and provide ideas for future growth.

*Public Comments were reopened and Ms. Judy Franklin addressed the Board regarding transparency.*

**Agenda Item VIII – Closing Considerations**

- A. **Announcements** – Next Board Meeting – June 25, 2019
- B. **Adjournment**

*With no further business claiming the attention of the Board, Chair Green adjourned the meeting at 11:07 AM.*

\_\_\_\_\_  
SECRETARY  
DATE: \_\_\_\_\_

Board Meeting recorded by:

\_\_\_\_\_  
Brandi N. Taylor, Executive Assistant

**JEA**  
**BOARD MINUTES**  
May 15, 2018

The JEA Board met in regular session on Tuesday, May 15, 2018, on the 19<sup>th</sup> Floor, 21 W. Church Street, Jacksonville, Florida. Present were Alan Howard, Husein Cumber, Kelly Flanagan and April Green. Frederick Newbill attended telephonically.

**Agenda Item I – Welcome**

- A. The meeting was **called to order** at 12:02 PM by Chair Howard.
- B. A **Moment of Reflection** was observed by all.
- C. The **Pledge of Allegiance** was led by Chair Howard.
- D. **Adoption of Agenda** – The agenda was approved on **motion** by Ms. Flanagan and second by Ms. Green.
- E. The **Safety Briefing** was given by Aaron Zahn, Interim Managing Director/Chief Executive Officer.
- F. **Sunshine Law/Public Records Statement** – Jody Brooks, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

**Agenda Item II – Presentations and Comments**

- A. **Comments from the Public** – None
- B. **Council Liaison's Comments** – The Honorable Matt Schellenberg had no comments.
- C. **Office of the Mayor Liaison's Comment** – Dr. Johnny Gaffney was not in attendance.
- D. **Introduction to Board Agenda** – Mr. Zahn, Interim Managing Director/CEO highlighted the new agenda format, which was created to provide a more concise, open and transparent format for the Board and Senior Leadership Team to communicate with each other, as well as with the public. Mr. Zahn noted this format includes three distinct sections: Operations, Strategy and Subject Matter Exploration. This presentation was received for information.

**Agenda Item III – Operations (Discussion / Action)**

- A. **Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On **motion** by Vice Chair Cumber and second by Ms. Flanagan, Appendix A and B on the Consent Agenda were unanimously approved.

Appendix A: Special Board Meeting Minutes April 6, 2018 – approved

Appendix B: Board Meeting Minutes April 17, 2018 – approved

- B. **JEA FY2017 Annual Disclosure Reports** – Ryan Wannemacher, Interim Chief Financial Officer, advised the Board that based on feedback from the March 20 and April 17, 2018 Board Meetings, May 7, 2018 Finance and Audit Committee and individual Board Member comments, amended draft Annual Disclosure reports are available for Board Member's review and comment. Mr. Wannemacher stated updates include senior management changes, updated organizational structure, updated



management team biographies, language on the subject of privatization and Plant Vogtle material. Members of the Senior Leadership Team, as well as Office of General Counsel have previously reviewed and approved the previous drafts and current changes. On **motion** by Ms. Flanagan and second by Vice Chair Cumber, the Board unanimously approved and authorized the Annual Disclosure Reports for the systems in substantially the forms distributed on March 20, 2018, as amended through May 9, 2018, with additional changes as approved by the Interim Managing Director and Chief Executive Officer of JEA and authorized the filing and use of the Annual Disclosure Reports.

- C. Compensation Committee Recommendation – Executive Contracts** – Compensation Committee Chair Flanagan stated the Committee met on May 14, 2018 for the purposes of reviewing employment agreements for Aaron Zahn, Interim Managing Director/Chief Executive Officer and Melissa Dykes, President/Chief Operating Officer. Committee Chair Flanagan stated since the distribution of the contracts, the Committee recommended to revise the effective date to May 15, 2018 on both agreements, as well as remove the clause in section 2.5 providing 280 hours of leave during each year of employment. The remainder of the contract remains intact as negotiated by the Board Chair. The Committee also recommended an addendum adding a position description to the agreement of Ms. Dykes. The Committee felt it was important to provide additional time to Mr. Zahn to outline the roles and responsibilities of Ms. Dykes, while providing the delegation of authority to the Compensation Committee Chair to review upon completion. Ms. Brooks noted an error related to the effective date definition in the first paragraph of Ms. Dykes' agreement. On **motion** by Vice Chair Cumber and second by Secretary Newbill, the Board unanimously approved the employment agreements as recommended by the Compensation Committee, including the scrivener error, as well as providing delegated authority to the Compensation Committee to work with Ms. Dykes and Mr. Zahn on finalizing the position description for Ms. Dykes.

#### **Agenda Item IV – Strategy (Discussion Only)**

*Agenda items were presented out of order; however, the minutes reflect the original order of the agenda.*

- A. Reorganization/Transition Steps** – Mr. Zahn stated that customers, employees, and shareholders are JEA's top priority. Mr. Zahn noted that he has worked with Mayor Curry, City Council Members, and JEA's Senior Leadership Team and has completed a reorganization. Mr. Zahn stated he has merged into step two by engaging council members and listening to their perspective and focusing on a united community. Step three will be focused on creating a successful shareholder framework. Chair Howard stated he appreciated the work and effort of the Senior Leadership Team serving our customers. This presentation was received for information.
- B. CEO Search Update** – Compensation Committee Chair Flanagan stated the Committee met on May 14, 2018 and reviewed the selection of an executive search firm for the recruitment of the permanent Managing Director/CEO position. Ms. Flanagan thanked Angie Hiers, Vice President and Chief Human Resources Officer and John McCarthy, Vice President and Chief Supply Chain Officer for their work. Committee Chair Flanagan reviewed the process to date starting with the direction of the Board at the April 17, 2018 meeting for Committee Chair Flanagan to begin the request for proposal process to select a firm. Upon receipt of the proposals, Committee Chair Flanagan

narrowed the list down and conducted interviews with Heidrick & Struggles, Russell Reynolds, and ZRG. Committee Chair Flanagan identified two important criteria including the firm's benchmarking and success statistics of hiring at the President/CEO, Board of Directors, and senior management level, with the second criteria being fee structure. Committee Chair Flanagan stated that based on their experience at hiring at the President/CEO level, she recommends Heidrick & Struggles to conduct the search for the permanent position of the Managing Director/CEO. In transparency, Committee Chair Flanagan noted Heidrick & Struggles has the highest fee structure of the three firms with 33% of the total compensation, Russell Reynolds at 30% with \$120K minimum, and ZRG at 29% with an \$89K maximum. Based on this structure, and for the purposes of understanding the materiality of the contract, Heidrick & Struggles could cost \$132K based on a \$400K salary for the Managing Director/CEO. Committee Chair Flanagan noted that Heidrick & Struggles' experience outweighs the cost differential and noted Heidrick & Struggles is the recommendation as approved by the Compensation Committee at the May 14, 2018 meeting. Committee Chair Flanagan shared with the Board the final scoring for each firm: Heidrick & Struggles – 72 points, Russell Reynolds – 62 points, and ZRG – 65 points. Board Chair Howard called for a Board Workshop prior to the June Board Meeting to develop a process and timeline for the permanent CEO position. Board Members held discussions regarding the selection of the CEO search firm. Ms. Green discussed the need for the entire Board of Directors to meet and interview all three search firms. The basis for her request is transparency and for the entire Board of Directors to understand the strengths of the firm. Chair Howard called upon Ms. Hiers to provide additional information. Upon **motion** by Ms. Green to allow an opportunity for all three of the top search firms to provide a presentation to the Board, and with a second by Secretary Newbill, the Chair requested a roll call vote: Cumber – No, Flanagan – No, Green – Yes, Newbill – Yes, Chair Howard – No and the vote failed. Upon **motion** by Committee Chair Flanagan and second by Mr. Cumber, to engage Heidrick & Struggles as the executive search firm, the Chair requested a roll call vote: Cumber – Yes, Flanagan – Yes, Green – No, Newbill – Yes and Chair Howard – Yes. The motion passed and direction was provided to Ms. Hiers to begin working with Heidrick & Struggles to provide a contract to Ms. Brooks.

*Chair Howard noted that he agrees with Ms. Green that the Board needs to be deliberate regarding the selection of the permanent CEO and the process will be thorough and transparent.*

#### **Agenda Item V – Subject Matter Exploration (Opportunities & Risks – Presentation)**

- A. Introduction to Subject Matter Exploration Concept** – No comments were provided.

#### **Agenda Item VI – Committee Reports**

- A. Finance & Audit Committee Report** – Kelly Flanagan, Committee Chair reviewed the Finance and Audit Committee meeting held on May 7, 2018, bringing items to the Board for information.

1. Approval of Minutes – March 12, 2018 – received for information
2. FY2019 Budget Presentation – received for information
3. Quarterly Audit Services Update – received for information
4. Ethics Officer Quarterly Report – received for information

5. JEA Energy Market Risk Management Policy Report – received for information
  6. Annual Disclosure Report – Open Discussion – received for information
  7. Announcements
    - a. Next Meeting August 13, 2018, 8:00 – 10:00 am
  8. Committee Discussion Sessions
    - a. Ernest & Young
    - b. Director, Audit Services
    - c. Council Auditor's Office
- B. Compensation Committee Report** – Kelly Flanagan, Committee Chair, reviewed the Compensation Committee meeting held on May 14, 2018, bringing items to the Board for information.
1. Approval of Minutes – November 27, 2017 – received for information
  2. Executive Contracts – received for information
  3. Executive Search Firm Selection – received for information

#### **Agenda Item VII – Other Business**

**A. Old Business –**

1. **Dark Fiber Utility Services for the 21<sup>st</sup> Century Digital Utility** – Paul Cosgrave, Vice President and Chief Information Officer, presented the Board previously approved Resolution 2018-01 authorizing JEA to invest in expansion and enhancement of the existing fiber optic network with the intention to lease dark fiber. Staff stated they believed a broader opportunity to create value for JEA existed through partnership models. After further review and discussion, staff is requesting the Board rescind the previously approved resolution. On **motion** by Vice Chair Cumber and second by Ms. Green, Mr. Cumber made a statement that, as a Board, the Board should consider bringing new revenue opportunities as a holistic package. Chair Howard echoed Vice Chair Cumber's statement, and posed questions to think through and suggested before bringing dark fiber back for staff to take into consideration other opportunities to present to City Council. The Board unanimously approved to rescind Resolution #2018-01 and come back to the board with a more robust plan.

**B. Other New Business – None**

- C. Open Discussion** – Ms. Green provided clarification regarding statements previously made regarding the transparency of the CEO search process.

Chair Howard informed the Board of his receipt of a letter from Council President Brosche on May 10, 2018 and his intention to respond to her in writing. A copy of the letter from Council President Brosche has been provided to Board Members by staff, and a copy of Chair Howard's response will be provided to Board Members, as well.

Board Members discussed the need for JEA to be supportive of the JCC study and other similar 3<sup>rd</sup> party studies surrounding JEA in our community.

Board Members held discussions regarding indemnification for their role as Board Members.



Board Members requested information regarding Plant Vogtle and the statutes related to a shade meeting.

Mr. Cumber reminded the Board at a previous Finance & Audit Committee a request was made to have discussions related to rate restructuring.

Board Members held discussions regarding privatization. On **motion** by Vice Chair Cumber and second by Secretary Newbill, the Board unanimously approved, absent a future Board decision, any activities tied to a privatization effort would be put on hold.

- D. Interim Managing Director/CEO's Report** – Mr. Zahn announced the opening of the Northwest Regional Water Treatment Plant, a \$10M project. It increases capacity and reliability of public water supply for the northern edge of Duval County. Mr. Zahn commended Hai Vu, Manager Water Plants E&C and staff under the leadership of Brian Roche for completing the project on time and budget. Mr. Roche also acknowledged the soon to be completed Blacksford Wastewater Reclamation Facility, a \$65M project that will increase the capacity of the plant from 2 to 6 million gallons per day. Mr. Zahn commended Raynetta Marshall, Director Water/Wastewater Project Engineering & Construction. Mr. Zahn presented the Septic Tank Phase Out program, a \$38M partnership funded by JEA and the City of Jacksonville. There are three specific projects, which have been funded based on Health Department, and other community priorities, approved by City Council, and include Biltmore, Beverly Hills and Christobel. The Project Outreach team has acquired the 70% ownership participation threshold for two of the projects to move forward. The project will then move to the design/engineering, bid and construction phase. Mr. Zahn thanked Greg Corcoran and team for their work.
- E. Chair's Report** – Chair Howard thanked Board Members for their discussions. Chair Howard noted the Jacksonville Civic Council (JCC) is engaged in their own review of JEA as part of their Comparative Public Finance project. Staff continues to provide information to them to assist. A presentation was provided by Michael Ward, Jacksonville Civic Council Committee Chair to City Council on May 10, 2018. Chair Howard requested Aaron Zahn, and Melissa Charleroy, Executive Assistant to schedule a Board Workshop for the month of June and invited a representative from Heidrick & Struggles. The purpose of the workshop will be to formulate a process and timeline for the permanent Managing Director/CEO position.

**Agenda Item VIII – Closing Considerations**

- A. Announcements** – Next Board Meeting – June 19, 2018
- B. Adjournment**

*With no further business claiming the attention of the Board, Chair Howard adjourned the meeting at 1:29 PM.*

APPROVED BY:

\_\_\_\_\_  
SECRETARY

DATE: \_\_\_\_\_

Board Meeting recorded by:

\_\_\_\_\_  
Melissa M. Charleroy  
Executive Assistant

**Exhibit 7**  
**Zahn**  
**1/21/20**

**JEA**

**RESPONSE TO REQUEST FOR  
DOCUMENTS FROM  
COUNCIL MEMBER RORY DIAMOND  
DATED DECEMBER 5, 2019**



## Executive Summary

The Performance Unit Plan (“PUP”) is the product of discussions the JEA Board Compensation Committee began on January 15, 2019. The Compensation Committee desired to utilize “employee incentives [that] drive value and teamwork”.<sup>1</sup> JEA reviewed available options over the course of the following months and engaged Willis Towers Watson (“WTW”), a noted consulting firm specializing in benchmarking compensation and benefits. WTW provided JEA information about developing a Long-Term Incentive Plan and proposed a “multi-pronged LTI [Long-Term Incentive] design which included, among other things, performance units.”<sup>2</sup> In June, 2019, the JEA Compensation Committee authorized JEA to “start the process of finalizing a long term compensation framework.”<sup>3</sup>

In June, 2019, the Office of General Counsel (“OGC”) affirmed the authority of the JEA Board to create or establish a long-term employee incentive plan.<sup>4</sup> On July 22, 2019 (prior to the JEA Board meeting on the 23<sup>rd</sup>), OGC confirmed its review of Resolution 2019-10 (which authorizes the PUP) and the authority of the JEA Board to consider, approve or deny the resolution.<sup>5</sup> The JEA Board approved Resolution 2019-10 on July 23, 2019, which resolution “APPROVED LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION.”<sup>6</sup>

Based on JEA Board approval, the JEA leadership team worked extensively with the OGC, outside counsel retained by OGC (Pillsbury Winthrop and Foley & Lardner) and the Council Auditor in developing and reviewing the PUP. JEA’s CFO provided draft PUP plan documents to the Office of Council Auditor as early as August 9, 2019 who, in turn, asked a series of questions.<sup>7</sup> The Council Auditor again met personally with JEA senior representatives on October 31, 2019.<sup>8</sup>

In August, September and October, JEA continued to work with specialized counsel retained by OGC and JEA employee services representatives to review and refine the PUP Plan and to prepare an Employee Brochure to explain the PUP and the option to participate or decline.<sup>9</sup>

Simultaneous with the above, JEA, OGC and specialized counsel retained by OGC continued their legal review and analysis. This review began in July, 2019 and continued consistently until the decision to discontinue consideration of PUP in November, 2019. The review included additional legal research, the development of legal memoranda<sup>10</sup> addressing questions raised by the OGC, and meetings between outside counsel, JEA representatives and OGC in September, October and November, 2019. Some, but not all, of the issues included compliance with state laws related to compensation, various Florida ethics laws, whether the PUP could allow JEA employees to benefit

<sup>1</sup> Minutes of Compensation Committee dated January 15, 2019 (Tab 1).

<sup>2</sup> Tab 4. See specifically pages 26-28 of WTW report.

<sup>3</sup> Minutes of Compensation Committee dated June 18, 2019 (Tab 4).

<sup>4</sup> Memorandum to Lynne Rhode dated June 17, 2019 (Tab 3).

<sup>5</sup> Memorandum to File from Lawsikia Hodges, Lynne Rhode and Jason Gabriel dated July 22, 2019 (Tab 5).

<sup>6</sup> JEA Board Minutes of July 23, 2019 (Tab 6).

<sup>7</sup> Email from Jeffrey Rodda to Juli Crawford et. al. dated August 9, 2019 (Tab 2).

<sup>8</sup> Email from Heather Reber to Ryan Wannamaker et. Al. dated October 31, 2019 (Tab 2)

<sup>9</sup> Tabs 2, 8, 9, 11, and 14.

<sup>10</sup> Tab 10.



from growth in the net position value of JEA and what involvement, if any, by City Council was required.

In addition to the above review, and though not required to do so, on October 1, 2019, JEA sought an advisory opinion from the Florida Attorney General.<sup>11</sup> The request stated, “while it appears clear based on our research that the PUP is permissible under Florida law, given the potential significance of the Plan to both JEA and its approximately 2000 employees, we seek guidance from your Office to confirm that the PUP is lawful.” Further, JEA had prepared an inquiry to the Florida Ethics Commission which it intended to send after a determination from the Florida Attorney General.<sup>12</sup>

Based on further consultation with OGC, JEA decided to suspend consideration and implementation of the PUP.<sup>13</sup> In accordance with Resolution 2019-863, JEA senior leadership has requested the JEA Board at its December 17, 2019, to rescind any further consideration or implementation of the PUP.

In deciding there were outstanding legal issues preventing adoption of the PUP as then written, the OGC did not find that the JEA Board acted outside of its authority to propose the PUP. Specifically, the General Counsel confirmed this in an email to JEA Board Chair April Green:<sup>14</sup>

Per our conversation earlier this morning, it has come to my attention that a certain implication has been made that JEA did something legally wrong with regard to the preliminary adoption of the Performance Unit Plan (PUP) at the July 23, 2019 meeting. I write to address this unfortunate suggestion.

Following the Board meeting, JEA gave OGC requisite time to research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. In preliminarily approving the PUP, the JEA Board did not act outside of their legal authority.

OGC ultimately concluded that the PUP had outstanding legal issues and JEA ultimately concluded that they would no longer pursue the plan. At the next JEA Board meeting, the Board will have the opportunity to vote and formally withdraw the plan. I anticipate the Board will take appropriate action at that time.

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<sup>11</sup> Tab 13.

<sup>12</sup> Tab 12.

<sup>13</sup> Tabs 15, 16, and 17.

<sup>14</sup> Tab 2.





**RESPONSE TO REQUEST FOR DOCUMENTS FROM  
COUNCIL MEMBER RORY DIAMOND DATED DECEMBER 5, 2019**

**TAB**

Compensation Committee Minutes 1/15/19 .....	1
Emails .....	2
OGC Memo 6/17/19 .....	3
Compensation Committee Minutes 6/18/19 .....	4
OGC Memo 7/22/19 .....	5
JEA Board of Director Minutes 7/23/19.....	6
JEA Resolution 2019-10.....	7
Performance Unit Agreement .....	8
Long Term Performance Unit Agreement .....	9
Foley Memoranda 9/25/19 and 10/21/19.....	10
Employee Brochure .....	11
Draft Ethics Commission Request for Advisory Opinion .....	12
Request to Attorney General for Advisory Opinion.....	13
Pillsbury Memo 11/4/19 .....	14
Performance Unit Plan Letter to OGC 11/12/19 .....	15
OGC Memo 11/12/19 .....	16
Performance Unit Plan Letter to JEA 1/12/19.....	17

\*This production is as of December 11, 2019. JEA is continuing its review and will supplement its production with additional documents responsive to the request.



JEA COMPENSATION COMMITTEE MINUTES  
January 15, 2019

The Compensation Committee of JEA met on Tuesday, January 15, 2019, in the 8<sup>th</sup> Floor Conference Room, JEA Plaza Tower, 21 W. Church Street, Jacksonville, Florida.

**Agenda Item I – Opening Considerations**

- A. Call to Order – Interim Committee Chair Johnson called the meeting to order at 9:00 AM with Committee Member April Green in attendance, as well as Board Chair Alan Howard in observance. Also present were Aaron Zahn, Melissa Dykes, Angie Hiers, Jody Brooks, Mike Hightower, Gerri Boyce, Gina Kyle and David Bauerlein, Florida Times-Union.
- B. Adoption of Agenda – The Agenda was adopted on **motion** by Ms. Green and second by Board Chair Howard.
- C. Approval of Minutes – The May 14, 2018 minutes were approved on **motion** by Ms. Green and second by Board Chair Howard.

**Agenda Item II – New Business**

- A. Introduction – Aaron Zahn, Managing Director/CEO introduced the subjects that would be discussed during the meeting.
- B. JEA Total Compensation Philosophy – Aaron Zahn, Managing Director/CEO reviewed the Total Market Compensation Strategy, which demonstrates a commitment to results and the values of JEA. Mr. Zahn spoke of the process of alignment of stakeholders to JEA’s corporate initiatives and the path taken to gain consensus of all stakeholders to the Guiding Principles and Corporate Measures. He spoke of the need to elevate the entire team and ensure that employee incentives drive value and teamwork. Mr. Zahn then provided the definition of total compensation and short term/long term incentives and provided a recommendation for a change in the JEA Board Policy Manual to incorporate these changes. This item was presented for information to the committee.
- C. 5-to-5 Innovation Program – Melissa Dykes, President/Chief Operating Officer and Angie Hiers, VP & Chief Human Resources Officer presented the 5-to-5 Innovation Program, which is JEA’s new ideas program. With this program, employees are encouraged to present ideas and are rewarded for developing and submitting innovative ideas that benefit JEA and the community. Employees who submit an idea that is implemented will be eligible for incentives ranging from \$500 to \$5,000 depending on the scope, cost savings and/or revenue generation associated with the idea and corresponding results. This item was presented for information to the committee.
- D. Executive Contract – Aaron Zahn, Managing Director/CEO and Interim Committee Chair Johnson discussed the executive contract and discussed extending the current contract until July 31, 2019, to allow time for the total compensation plan to be worked out prior to finalizing the contract for the Managing Director/CEO. Contract discussions were deferred.
- E. Other New Business
- F. Announcements
  - 1. Schedule Next Meeting as Appropriate
- G. Adjournment

APPROVED BY:

\_\_\_\_\_  
Camille Johnson, Interim Committee Chair

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

Submitted by:

\_\_\_\_\_  
Cheryl Mock  
Executive Assistant

**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Granat, Sean <SGranat@coj.net>  
**Sent:** Monday, June 17, 2019 3:41 PM  
**To:** Rhode, Lynne C. (City of Jacksonville); Phillips, Jon  
**Cc:** Register, Carolina; McDonald, Nancy M - Executive Assistant  
**Subject:** RE: JEA Comp memo  
**Attachments:** GC-#1288527-v1-JEA\_Comp\_Memo\_Granat\_Edits.docx

[External Email] - Exercise caution; DO NOT open attachments or click links from unknown senders or unexpected email ]

Memo is attached.

Sean

**Sean Granat, Esq.**  
Deputy General Counsel  
City of Jacksonville, Office of General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, FL 32202

(904)255-5061 – Direct  
(904)255-5100 – Main  
(904)630-1316 – fax

**From:** Rhode, Lynne C. (City of Jacksonville) [mailto:rhodlc@jea.com]  
**Sent:** Monday, June 17, 2019 12:56 PM  
**To:** Granat, Sean; Phillips, Jon  
**Cc:** Register, Carolina; McDonald, Nancy M - Executive Assistant  
**Subject:** JEA Comp memo

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hi Sean and Jon,  
I hope you both had a nice weekend! Wanted to let you know that I am in consecutive meetings from 1pm – 4:30pm this afternoon. But if any urgent questions come up while you are finalizing the memo, please feel free to text me on my cell phone at 804-212-7943 and I will step out and call you back ASAP. My EA Nancy McDonald, copied here, also can find me if need be.

Best,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202

Office: (904) 665-4115

Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

From: "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>  
Sent: Wednesday, August 14, 2019, 5:19 PM  
To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>; "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>; "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>; "Dykes, Melissa H. - President/COO" <dykemh@jea.com>  
Subject: FW: Performance Unit Plan (PUP) Questions  
Attachments: scan\_rhodlc\_2019-08-14-13-24-00.pdf; scan\_rhodlc\_2019-08-14-13-21-11.pdf

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FYI...

**From:** Wannemacher, Ryan F. - Chief Financial Officer  
**Sent:** Wednesday, August 14, 2019 5:19 PM  
**To:** 'Rodda, Jeffrey' <JRodda@coj.net>; Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
**Cc:** Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>  
**Subject:** RE: Performance Unit Plan (PUP) Questions

Jeff,

Attached are the latest drafts of the plan documents and award agreement that was approved by the board. This will answer many of these questions.

As we are still working on a number of other pressing items, can we circle up in a few weeks on any additional questions you may have after reviewing these documents?

I appreciate it.

Thank you,  
Ryan

**From:** Rodda, Jeffrey <JRodda@coj.net>  
**Sent:** Friday, August 9, 2019 12:38 PM  
**To:** Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
**Cc:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>  
**Subject:** Performance Unit Plan (PUP) Questions

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Juli,

JEA0008



I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor  
Office of the Council Auditor  
117 West Duval Street  
Suite 200

**JEA0009**

Jacksonville, Florida 32202  
Office: 904-255-5477  
Direct: 904-255-5487  
Fax: 904-255-5478  
E-Mail: [jrodda@coj.net](mailto:jrodda@coj.net)



## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier of the third anniversary of the Purchase Date or Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

### SECTION 3 ADMINISTRATION; CERTIFICATION

- (a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants.

The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

#### **SECTION 4 EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.



**SECTION 5**  
**VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to termination for Cause or resignation shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

**SECTION 6**  
**PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To receive a Purchase Price under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

**SECTION 7**  
**CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

**SECTION 8**  
**AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no

such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## SECTION 9 MISCELLANEOUS

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining: Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

*[Remainder of Page Intentionally Left Blank]*

**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.



**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_\_] day of [\_\_\_\_], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_\_] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant's pay-for-performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that Participant defers hereunder are unfunded and [ID NUMBER]



unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to Participant the aggregate Purchase Price of such Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) Confidentiality.

(i) Protection of Information. The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has

expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0026**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]  
Participant First Name: [•]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [•]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_

Equal installments from pay to be paid over the next [TWO] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

From: "Lutrin, Jessica" <jessica.lutrin@pillsburylaw.com>

Sent: Thursday, August 22, 2019, 7:47 PM

To: "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>; "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>; "KHyde@foley.com" <KHyde@foley.com>; "MKirwan@foley.com" <MKirwan@foley.com>

Cc: "Amdur, Stephen B." <stephen.amdur@pillsburylaw.com>; "Powers, Ted" <ted.powers@pillsburylaw.com>; "Bradley, Danielle" <danielle.bradley@pillsburylaw.com>

Subject: Revised PUP Documents

Attachments: JEA - Form of Long-Term Performance Unit Agreement 4812-4130-8572 v.9.docx; JEA - Long-Term Performance Unit Plan 4819-6312-2076 v.8.docx; Redline Pages - JEA - Long-Term Performance Unit Plan.pdf; Redline Pages - JEA - Form of Long-Term Performance Unit Agreement.pdf

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[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi All,

Attached please find revised drafts of the PUP and form of award agreement (clean and redlines of the changed pages). In addition to the revised successor language that I discussed with Kevin and Michael today, I made a couple of minor clean-up changes.

Please let me know if you have any questions.

Best,  
Jessica

**Jessica Lutrin | Partner**

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AUSTIN BEIJING HONG KONG HOUSTON LONDON LOS ANGELES MIAMI  
NASHVILLE **NEW YORK** NORTHERN VIRGINIA PALM BEACH SACRAMENTO  
SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO SHANGHAI  
SILICON VALLEY TAIPEI TOKYO WASHINGTON, DC

**JEA0028**



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**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [ ] day of [ ], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [ ] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant's pay-for-performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that Participant defers hereunder are unfunded and

[ID NUMBER]



unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to Participant the aggregate Purchase Price of such Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group.

(b) Confidentiality.

(i) Protection of Information. The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has

expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the

parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0034**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [ ]

Participant First Name: [ ]

No. of Performance Units Available for Purchase (the "Available Performance Units"): [ ]

Purchase Price per Performance Unit: \$10.00

No. of Performance Units Participant Purchases: (capped at the number of Available Performance Units): \_\_\_\_\_

Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_

Equal installments from pay to be paid over the next [TWO] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME SIGNATURE DATE

## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees’ proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this “Plan”) is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.



- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier of the third anniversary of the Purchase Date or Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

### **SECTION 3 ADMINISTRATION; CERTIFICATION**

- (a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants.

The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

#### **SECTION 4**

##### **EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

**SECTION 5**  
**VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

**SECTION 6**  
**PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To receive a Purchase Price under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

**SECTION 7**  
**CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

**SECTION 8**  
**AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no

such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## SECTION 9 MISCELLANEOUS

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns. This Plan and any Agreement shall be assigned to and assumed by any successor of JEA (including any organization that succeeds to substantially all of the assets and business of JEA). Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any Agreement shall become the rights and obligations of such successor. Further, JEA shall require any successor (including any organization that succeeds to substantially all of the assets and business of JEA) to assume expressly and agree to perform this Plan and any Agreement in the same manner and to the same extent that JEA would be required to perform this Plan and any Agreement if no such succession had taken place. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution.

Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties.

Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

*[Remainder of Page Intentionally Left Blank]*

**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

- (a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>
- (b) “Challenge Value Target” means [PERCENT].<sup>2</sup>
- (c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.
- (d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.
- (e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

---

<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.





- (a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").
- (b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## SECTION 5 VESTING; REDEMPTION PRICE

- (a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.
- (b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.
- (c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.
- (d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.
- (e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.
- (f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The

or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

## SECTION 8 AMENDMENT AND TERMINATION OF PLAN

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## SECTION 9 MISCELLANEOUS

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns.

This Plan and any Agreement shall be assigned to and assumed by any successor of JEA (including any organization that succeeds to substantially all of the assets and business of JEA). Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any Agreement shall become the rights and obligations of such successor. Further, JEA shall require any successor (including any organization that succeeds to substantially all of the assets and business of JEA) to assume expressly and agree to perform this Plan and any Agreement in the same manner and to the same extent that JEA would be required to perform this Plan and any Agreement if no such succession had taken place. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum



unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to Participant the aggregate Purchase Price of such Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group.

(b) Confidentiality.

(i) Protection of Information. The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has



**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Friday, August 23, 2019 10:11 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville); KHyde@foley.com; MKirwan@foley.com  
**Subject:** PUP

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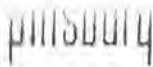
Hi Ryan,

I hope you are well.

I just spoke with Michael Kirwan at Foley and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us? It would be helpful to see your calculations (even if rough) so that we can reconcile the calculations to the formula and adjust the formula in the PUP, if necessary.

)  
Thank you,  
Jessica

Jessica Lutrin | Partner  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1090  
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**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** MKirwan@foley.com  
**Sent:** Friday, August 23, 2019 2:54 PM  
**To:** Lutrin, Jessica; Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville); KHyde@foley.com  
**Subject:** RE: PUP

[External Email] - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.

Thanks Jessica. I would think the carve out for debt should be a bit broader. Perhaps the following: "and (y) the assumption or payment of any principal and interest, as well as payment of any prepayment fees or penalties and other defeasance costs on JEA's bonds and borrowings)..."

I think we should delete the audit requirement since there would likely not be an audit after a sale of the entire utility.

Foley & Lardner LLP  
One Independent Drive | Suite 1300  
Jacksonville, FL 32202-5017  
P 904.633.8913

[foley.com]  
[foley.com]



**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Friday, August 23, 2019 11:21 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>; Hyde, Kevin E. <KHyde@foley.com>; Kirwan, Michael B. <MKirwan@foley.com>  
**Subject:** RE: PUP

\*\* EXTERNAL EMAIL MESSAGE \*\*

As discussed with Ryan and Michael, below are the proposed edits to the definition of "Current Year Value". Any thoughts are welcome.

"Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA's Net Position as shown on JEA's [audited] financial statements immediately following the Closing

Date), (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding (x) any public service taxes or franchise fees and (y) the payment of any principal and interest on JEA's bonds and borrowings) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

**From:** Wannemacher, Ryan F. - Chief Financial Officer <[wannrf@jea.com](mailto:wannrf@jea.com)>  
**Sent:** Friday, August 23, 2019 10:37 AM  
**To:** Lutrín, Jessica <[jessica.lutrín@pillsburylaw.com](mailto:jessica.lutrín@pillsburylaw.com)>  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer <[vinyht@jea.com](mailto:vinyht@jea.com)>; Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>; [khyde@foley.com](mailto:khyde@foley.com); [mkirwan@foley.com](mailto:mkirwan@foley.com)  
**Subject:** Re: PUP

Jessica,

Thanks for following up. I agree that it makes sense to clarify that the contribution to the city should not include the debt pay off. It should be any amounts after the payment of debt.

Thanks  
Ryan

Get [Outlook for iOS](#)

On Fri, Aug 23, 2019 at 10:11 AM -0400, "Lutrín, Jessica" <[jessica.lutrín@pillsburylaw.com](mailto:jessica.lutrín@pillsburylaw.com)> wrote:



Hi Ryan,

I hope you are well.

I just spoke with Michael Kirwan at Foley and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us? It would be helpful to see your calculations (even if rough) so that we can reconcile the calculations to the formula and adjust the formula in the PUP, if necessary.

Thank you,  
Jessica

  
Pillsbury Winthrop Shaw Pittman LLP

31 West 52nd Street | New York, NY 10019-6131  
| +1.212.858.1090  
jessica.lutrin@pillsburylaw.com | website bio [pillsburylaw.com]



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sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Saturday, August 24, 2019 6:45 AM  
**To:** Rhode, Lynne C. (City of Jacksonville); KHyde@foley.com  
**Cc:** Amdur, Stephen B.; Powers, Ted  
**Subject:** Assignment and Assumption Language

[External Email - Exercise Caution. Do NOT Open attachments or click links from unknown senders or unexpected email.]

Hi Lynne and Kevin,

Below is a draft of the revised assignment and assumption language to address the issues that we discussed yesterday. The language reflects Steve's input. You'll see that we broke out the language into two sub-sections to make it easier to read.

Please let us know if you have any questions.

Best,  
Jessica

\*\*

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to ~~substantially~~ all or a majority of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to ~~substantially~~ all or a majority of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor ~~(including any organization that succeeds to all of the assets and business of JEA)~~ to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).\*\*

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a

Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

\*\* Section 8(a) provides as follows: "This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent."

Jessica Lutrin | Partner  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
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**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Friday, August 30, 2019 6:00 PM  
**To:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** PUP

[External Email - Exercise caution, DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Lynne,

Here are drafts of the language we discussed yesterday:

To be added as a new Section 5(g) –

*“Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and the last day of the Performance Period, such Employee’s designation changes from [management] to [civil service] (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been [civil service] on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been [civil service] on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants.”*

To be added as a new Section 9(o) –

*“The aggregate Purchase Price paid by the Participants in respect to the Performance Units shall be deposited into a FDIC-insured savings account with a financial institution. JEA shall be entitled to any interest on the amount deposited into the savings account.”*

Please let me know if you have any questions. Have a nice holiday weekend!

Best,  
Jessica

Jessica Lutrin | Partner  
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**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Tuesday, September 10, 2019 11:17 AM  
**To:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** PUP  
**Attachments:** JEA - Long-Term Performance Unit Plan - Invitation Booklet 4816-7518-1216 v.7.docx; JEA - Long-Term Performance Unit Plan 4819-6312-2076 v.11.docx; JEA - Form of Long-Term Performance Unit Agreement 4812-4130-8572 v.10.docx; Redline - JEA - Long-Term Performance Unit Plan.pdf; Redline - JEA - Form of Long-Term Performance Unit Agreement.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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Hi Lynne,

As requested, I reviewed the PUP plan document and form of agreement and attached are revised drafts (clean and redlines) reflecting my comments. I've also attached a draft of the invitation booklet we discussed yesterday. You'll see that I've flagged a couple of items for your consideration in the footnotes to the booklet.

Please let me know if you have any questions.

Best,  
Jessica

Jessica Lutrin | Partner  
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**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, September 12, 2019 2:36 PM  
**To:** Rhode, Lynne C. (City of Jacksonville)  
**Cc:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer  
**Subject:** Confidential - Feedback on PUPs Plan Docs

Hi Lynne,

I reviewed the PUP docs from the v9/10. From an employee and benefits perspective, here are some concerns:

- 1) The documents read very legalize. Typically there is a Plan document that is very legal and formal in nature (which is appropriate), however, the employee letter and an exhibit(s) would be highlights of interest with references to see the Plan doc. The exhibit should include an example of the how the benefit is calculated: metrics, calculation and potential results. Referencing the Financial Statements is not appropriate.
- 2) The Plan does not provide clear calculation of how monies will grow.
- 3) The goals for the Plan as a Retention Tool don't align with a tool where an employee is investing their dollars. There is no Company investment. Usually when there is an investment from the employee it is to ensure success and ownership in the company. The Plan appears to hold employees captive. Understand there are Plans that have provisions to vest, but this is typically where there is an investment made by the company, not the employee. While there are typically penalties associated with certain investments for early withdrawal, e.g., timeframes to retain the investment, I do believe that most investments tools have forfeiture rules, whereby a person may receive a refund, but not a return of your money at \$0 (unless it is a stock and it crashes). Employees who separate from the company whether for cause or voluntarily should have the right to a refund of their money or if the value is less than their purchase, the decreased value. Increased value can have the caveat of vesting or retention.

Example: If an employee voluntarily or involuntarily terminates, they will be refunded 100% of the value of the units at the purchase price. They will not be eligible for any increase in the value. If the value has decreased, the person may only receive the value of the units as of the termination date.

- 4) Does this Plan comply with all applicable non-qualified IRS rules for government Deferred Compensation plans.

Pat Maillis  
Director, Employee Services  
Direct (904-665-4132)  
Cell (904-703-3453)





From: "Hodges, Lawsikia" <LHodges@coj.net>

Sent: Monday, November 4, 2019, 11:07 AM

To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Subject: FW: docs needed for tomorrow's meeting

Attachments: JEA - Form of Employee Protection and Retention Program Agreement.docx; JEA - Form of Long-Term Performance Unit Agreement.docx

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Lynne, I do not believe I ever received the final PUP from you; can you please send me this document.

---

**From:** Rhode, Lynne C. (City of Jacksonville) [mailto:rhodlc@jea.com]

**Sent:** Friday, September 13, 2019 8:30 AM

**To:** Hodges, Lawsikia

**Subject:** RE: docs needed for tomorrow's meeting

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



Building Community

**From:** Hodges, Lawsikia <LHodges@coj.net>

**Sent:** Thursday, September 12, 2019 10:47 PM

**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>

JEA0063

**Subject:** docs needed for tomorrow's meeting

**Importance:** High

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne, can you send me the final documents (with exhibit attachments) for the following:

- Long-term Performance Unit Plan
- Long-term Performance Unit Agreement

The most recent drafts in our system of these documents do not include final revisions or the exhibit attachments to the agreement. These documents would be helpful in reviewing your opinion so that we have a full understand of the PUP.

Thank you!

Lawsikia J. Hodges  
Deputy Government Operations  
Board Certified City, County and Local Government Lawyer  
(904) 255-5059

Disclaimer regarding Uniform Electronic Transactions Act (UETA) (Florida Statutes Section 668.50): If this communication concerns negotiation of a contract or agreement, UETA does not apply to this communication; contract formation in this matter shall occur only with manually-affixed original signatures on original documents.

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

**JEA0064**

**THIS EMPLOYEE PROTECTION AND RETENTION PROGRAM AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_\_] day of [\_\_\_\_], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_\_] (the "Employee").

**RECITALS:**

WHEREAS, all JEA employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, the Board approves of JEA exploring strategic options to ensure that it continues to serve its customers and citizens in a cost-effective and reliable way;

WHEREAS, JEA desires to recognize the past and continued service of its employees;

WHEREAS, in recognition of the Employee obtaining performance standards that shall be individually determined and evaluated based on the Employee's proportionate contribution to JEA, JEA desires to award the Employee a retention payment subject to, and conditioned upon, the occurrence of a Recapitalization Event on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Chair of the Compensation Committee of the Board, all full-time employees who are actively employed with JEA on July 23, 2019 are eligible to receive a retention payment.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Employee agree as follows:

**1. Certain Definitions.** As used in this Agreement, the following terms shall have the meanings given to them in this Section 1. Certain other terms are defined elsewhere in this Agreement.

(a) "Applicable Law" means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(b) "Board" means the Board of Directors of JEA.

[ID NUMBER]



(c) “Cause” means (x) in the case where the Employee has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of grant of the Retention Payment that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where the Employee does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of grant of the Retention Payment or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Employee has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Employee has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Employee willfully fails to perform the Employee’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Employee materially breaches any term of any contract to which the Employee and any member of the JEA Group is a party; or

(v) the Employee materially breaches any term of this Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Employee of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination of the Employee’s employment for “Cause” with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of “Cause” is inconsistent with an applicable definition of “cause” (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the “Civil Service Rules”), the definition of “cause” (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(d) “Closing Date” means the date on which the Recapitalization Event occurs.

(e) “Code” means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(f) “Confidential Information” means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas,

techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, JEA recognizes the applicability of Chapter 119, Florida Statutes.

(g) “Disability” means (i) if JEA provides long-term disability insurance to its employees generally and if JEA’s long-term disability plan defines the term “disability,” then the same meaning as in JEA’s long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders the Employee unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA’s absence management vendor; provided, however, that JEA’s absence management vendor has no obligation to investigate whether Disability exists unless the Employee or representative thereof puts JEA on notice within ninety (90) days after the Employee’s termination of employment.

(h) “Involuntary Termination” means, with respect to the Employee, a termination of the Employee’s employment by any member of the JEA Group without Cause or due to such Employee’s death or Disability.

(i) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.

(j) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.

(k) “Retention Period” means, respectively, a two (2)-year period following the Recapitalization Event as follows: (i) with respect to the first Payment Installment, the period from July 23, 2019 through the Closing Date; (ii) with respect to the second Payment Installment, the period from the Closing Date through the first anniversary of the Closing Date; and (iii) with respect to the third Payment Installment, the period from the first anniversary of the Closing Date through the second anniversary of the Closing Date.

**2. Agreement to Provide Retention Payment.** Subject to the terms of this Agreement (including the conditions set forth below), the Employee shall be entitled to receive a payment in the aggregate amount of \$[\_\_\_\_\_] (the “Retention Payment”). The Retention Payment shall vest in three (3) equal installments (each, a “Payment Installment”) on the Closing Date, the first anniversary of the Closing Date and the second anniversary of the Closing Date (each such date, a “Vesting Date”). The Payment Installments shall be paid to the Employee as soon as reasonably practicable after each applicable Vesting Date, but in any event no later than thirty

(30) days after the applicable Vesting Date. For the avoidance of doubt, in no event shall the Employee be entitled to receive any amounts in excess of the Retention Payment under this Agreement.

**3. Conditions to Receipt of the Retention Payment.** The Employee's right to receive the Retention Payment is conditioned on his or her execution of this Agreement and all of the following: (a) the Recapitalization Event occurring no later than December 31, 2021; (b) the Employee's continuous employment with any member of the JEA Group during the Retention Period (except as set forth herein); (c) the Employee's execution and non-revocation of a release of claims in favor of the JEA Group and the City of Jacksonville ("Release") in a form reasonably satisfactory to JEA; (d) the Employee's compliance with the covenants set forth in Section 5; and (e) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. If the Employee breaches or threatens to breach any of the covenants in Section 5, JEA shall not pay the Employee the Retention Payment (to the extent unpaid) and/or the Employee shall be required to promptly repay all or any portion of the Retention Payment previously paid to the Employee, as applicable. Within sixty (60) days prior to the anticipated Closing Date, JEA shall deliver the Release to the Employee and, to the extent required by Applicable Law, the Employee shall have twenty-one (21) or forty-five (45) days from the date the Release is delivered to the Employee to review the Release and an additional seven (7) days to revoke the Release. The Employee must have executed an irrevocable Release prior to the Closing Date to receive any portion of the Retention Payment.

**4. Involuntary Termination.** Notwithstanding the provisions of Section 3(b), if the Employee ceases to be employed with any member of the JEA Group during a Retention Period due to an Involuntary Termination, the Employee shall be eligible to receive the entire amount of the Retention Payment (to the extent unpaid) and the Payment Installments shall vest on the applicable Vesting Dates. Any amount payable pursuant to this Section 4 shall be paid to the Employee at the same time as the Payment Installments (to the extent unpaid) would have been paid had there been no termination of employment.

**5. Covenants.** The Employee shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE EMPLOYEE'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Employee shall (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Employee, (ii) provide full support and cooperation in the best interests of the JEA Group up to and including the Closing Date, (iii) throughout the course of the Employee's employment with the JEA Group and following the Closing Date and/or the Employee's separation of service with the JEA Group, if applicable, take no action that would be

considered contrary to the best interests of the JEA Group, and (iv) devote best efforts to assist the JEA Group in maximizing its performance and finalizing the Recapitalization Event and any transition related thereto.

(b) Confidentiality.

(i) *Protection of Information.* The Employee acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, its ability to diligently serve its customers, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Employee shall keep confidential this Agreement and its terms; provided that the Employee may provide this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Employee's relationship with the JEA Group and thereafter, the Employee agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Employee's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Employee's or of others who were under confidentiality obligations as to the item or items involved. The Employee further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Employee acknowledges and JEA agrees that the Employee may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Employee may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

(c) No Public Statements. Subject to the limitations of Applicable Law, until the Closing Date, the Employee agrees to make no unauthorized social media posts, press releases, statements to journalists, employees or prospective employers, interviews, editorials, commentaries, speeches, or other public statements about the JEA Group, the City of Jacksonville or any government official of the City of Jacksonville, including about the JEA Group's business and the respective directors, officers, employees, parents, subsidiaries, partners, affiliates, operating divisions, representatives and agents of any member of the JEA Group and the City of Jacksonville, this Agreement (or the subject matter hereof) or the

Recapitalization Event.

**6. Tax Withholding.** The JEA Group shall be entitled to make deductions from the Retention Payment in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

**7. Sections 409A and 457(f).** This Agreement is intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Agreement shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause this Agreement or any payment hereunder not to be in compliance with Code Sections 409A and 457(f).

**8. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Agreement shall mean and include any such successors or assigns. Neither this Agreement nor any right or interest hereunder shall be assignable or transferable by the Employee or his or her beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of the Employee, payments that otherwise would have been made to the Employee shall instead be made to the Employee's estate.

**9. Governing Law.** All questions concerning the construction, validity and interpretation of this Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

**10. Arbitration.** Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by Applicable Law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County in the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive,

unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

**11. Entire Agreement; Modification.** This Agreement contains the entire understanding and agreement between the parties relating to the Retention Payment and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 11, may be modified only by agreement in writing signed by both JEA and the Employee.

**12. Counterparts.** This Agreement may be executed in two (2) or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**13. Waiver.** Any failure of the Employee to comply with any of his or her obligations under this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under this Agreement may be waived only in writing signed by the Employee. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**14. Survival.** The provisions of this Agreement that are intended to survive this Agreement and to survive the Employee's termination of employment shall survive in accordance with their terms.

**15. Severability.** If any provision of this Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement shall continue in full force and effect.

**16. Collective Bargaining; Civil Service Rules.** If or as required, JEA shall collectively bargain this Agreement with unions representing covered bargaining unit employees of JEA. This Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

**17. Penalties.** In the event that any payments under this Agreement to the Employee are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to the Employee an amount equal to the full amount of the Penalties. Such payment is intended to place the Employee in the same economic position the Employee would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make the Employee economically whole for Penalties caused by, relating to or arising from the

Employee's breach of this Agreement or the Employee's failure to comply with his or her obligations under Applicable Law.

**18. Compliance with Applicable Law.** No provision of this Agreement shall be deemed to violate Applicable Law and this Agreement shall be interpreted in accordance with this intent.

**19. Right to Seek Legal Counsel.** The Employee acknowledges that the Employee has the right to review this Agreement with legal counsel of the Employee's choosing before signing it and that he or she was encouraged and advised to consult with an attorney prior to signing it.

**20. Non-Appropriation.** The Employee acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**21. Determinations.** All determinations regarding the Retention Payment, including the amount, if any, of any Payment Installment payable to the Employee, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Agreement, and shall be final, conclusive and binding on all parties.

**22. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**EMPLOYEE**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Employee Protection and Retention Program Agreement]*

[ID NUMBER]

**JEA0073**





**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_\_] day of [\_\_\_\_\_] , 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_\_] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant's pay-for-performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that Participant defers hereunder are unfunded and

[ID NUMBER]

unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (including the Purchase Price in respect of such Performance Units), JEA shall not pay the Participant any payment in respect of his or her Performance Units (to the extent unpaid) and/or and the Participant shall be required to promptly repay any amounts previously paid to the Participant in respect of his or her Performance Units, as applicable.

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) **Cooperation.** The Participant shall (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group up to and including the Closing Date, (iii) throughout the course of the Participant's employment with the JEA Group and following the Closing Date and/or the Participant's separation of service with the JEA Group, if applicable, take no action that would be considered contrary to the best interests of the JEA Group, and (iv) devote best efforts to

assist the JEA Group in maximizing its performance and finalizing the Recapitalization Event and any transition related thereto.

(b) Confidentiality.

(i) *Protection of Information.* The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also

disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

(c) **No Public Statements.** Subject to the limitations of Applicable Law, until the Closing Date, the Participant agrees to make no unauthorized social media posts, press releases, statements to journalists, employees or prospective employers, interviews, editorials, commentaries, speeches, or other public statements about the JEA Group, the City of Jacksonville or any government official of the City of Jacksonville, including about the JEA Group's business and the respective directors, officers, employees, parents, subsidiaries, partners, affiliates, operating divisions, representatives and agents of any member of the JEA Group and the City of Jacksonville, this Agreement (or the subject matter hereof) or the Recapitalization Event.

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Legal Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal counsel of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with an attorney prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0079**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [●]  
Participant First Name: [●]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [●]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_

Equal installments from pay to be paid over the next [TWO] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME SIGNATURE DATE

[ID NUMBER]





From: "Lutrin, Jessica" <jessica.lutrin@pillsburylaw.com>

Sent: Thursday, September 26, 2019, 3:33 PM

To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>; "khyde@foley.com" <khyde@foley.com>

Subject: RE: Edits

Attachments: JEA - Long-Term Performance Unit Plan - Invitation Booklet 4816-7518-1216 v.8.docx; Redline - JEA - Long-Term Performance Unit Plan - Invitation Booklet.pdf

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[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Lynne,

Apologies, I was traveling for meetings, so I only sent Kevin the revised invitation booklet today. Attached for your reference is the revised booklet (clean and a redline). There were a couple of open items in the hand edits that you sent me, which I've flagged in the footnotes. In the interest of time, it may make sense for the two of us to work through those open items while Kevin reviews the booklet.

I'm available tomorrow from 11am – 12pm and 12.30pm – 2pm and on Tuesday from 10am – 1pm, 1.30pm – 3pm and 4pm – 5.30pm. I'm not available on Monday.

Best,  
Jessica

**Jessica Lutrin | Partner**  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1090  
jessica.lutrin@pillsburylaw.com | website bio [pillsburylaw.com]

**From:** Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>  
**Sent:** Thursday, September 26, 2019 3:11 PM  
**To:** khyde@foley.com; Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Subject:** RE: Edits

**\* EXTERNAL EMAIL \***

**JEA0081**

Hi Kevin and Jessica,  
Just circling back on this. When do you anticipate having a revised PUP booklet for Melissa's review? Also, could we please schedule a call to discuss processes, including the appropriate process for reallocation of any PUPs not purchased in the first round? I am relatively available tomorrow after 11am as well as Monday afternoon and much of Tuesday next week.  
Thank you,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, September 16, 2019 5:26 PM  
**To:** [khyde@foley.com](mailto:khyde@foley.com)  
**Subject:** FW: Edits

FYI – Per our conversation today, I asked Jessica to get you a redline for your review. Thanks Kevin!

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, September 16, 2019 4:01 PM  
**To:** 'Lutrin, Jessica' <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)>  
**Subject:** Edits

Hi Jessica,

I hope you had a nice weekend! Please see attached comments/edits to the booklet. Could you please review, edit and respond as needed and send a redline to Kevin for his input as well then circle back up with me?

Thank you,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.



[INSERT JEA LOGO]

## INVITATION TO PARTICIPATE IN THE JEA LONG-TERM PERFORMANCE UNIT PLAN

Dear [NAME],

As a new benefit to JEA employees, we are delighted to let you know that you are eligible to participate in the JEA Long-Term Performance Unit Plan (the “Plan”). The Plan was approved by JEA’s Board of Directors as part of the long-term compensation framework and is available starting in 2020.

### *How the Plan Works*

The Plan allows you to purchase performance units from JEA referred to as “PUPs.” The purchase price of each PUP is \$10.00 and is paid by deferring a portion of your pay earned in 2020 equal to the aggregate purchase price of the PUPs you wish to purchase. The number of PUPs available to you to purchase is set forth in the cover letter to the Plan and your Long-Term Performance Unit Agreement provided to you.<sup>1</sup> For example, if JEA allocates you five PUPs and you wish to purchase all five PUPs, the aggregate purchase price to be deferred from your pay earned would be equal to \$50.00 (\$10.00 x five PUPs). When the PUPs vest, subject to the satisfaction of certain conditions, you are eligible to receive a cash payment in consideration for the PUPs you purchased. The amount of the cash payment is calculated based on the attainment of specified corporate performance metrics and includes the aggregate purchase price you paid for your PUPs. For additional information on how the Plan works, please refer to the frequently asked questions on Tab A of this invitation booklet.

### *Risks Associated with Participating in the Plan*

As described above, in order to purchase PUPs under the Plan, you must pay a purchase price of \$10.00 per PUP. As it is possible that you may forfeit the entire amount of the purchase price under certain circumstances (for example, if your employment with JEA is terminated for cause), you should carefully consider whether to purchase the PUPs. In considering whether to purchase the PUPs, you should review the risks described on Tab B of this invitation booklet and the financial information contained in Tab C of this invitation booklet.

### *Instructions and Additional Information*

If you wish to participate in the Plan and purchase the PUPs, please review this invitation booklet carefully and follow the instructions set forth on Tab D of this invitation booklet. All required forms and materials must be postmarked by no later than [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase PUPs and participate in the Plan.<sup>2</sup>

---

<sup>1</sup> JEA to confirm whether there will be a separate cover letter to the Plan and Long-Term Performance Unit Agreement.

<sup>2</sup> JEA to provide the postmark date.

For further information concerning the Plan, please contact [NAME], [TITLE] at JEA, via email at [EMAIL ADDRESS].<sup>3</sup>

This is an exciting time for JEA!

Sincerely,

Aaron Zahn  
Managing Director & Chief Executive Officer

---

<sup>3</sup> JEA to provide the name, title and email address of the JEA representative.

## TABLE OF CONTENTS

	<b>Page</b>
Questions and Answers About the JEA Long-Term Performance Unit Plan.....	A-1
Risk Factors To Be Considered Before Purchasing the Performance Units Under the JEA Long-Term Performance Unit Plan .....	B-1
Financial Statements .....	C-1
Instructions for Participating in the Plan .....	D-1
JEA Long-Term Performance Unit Plan .....	E-1
JEA Long-Term Performance Unit Agreement.....	E-1



## TAB A

### QUESTIONS AND ANSWERS ABOUT THE JEA LONG-TERM PERFORMANCE UNIT PLAN

#### INTRODUCTION<sup>4</sup>

Below are a number of frequently asked questions (“FAQs”) regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

Where the context so requires, references to “JEA” refer to JEA, its affiliates, assigns, subsidiaries and successors.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR PARTICIPATION IN THE PLAN.**

#### GENERAL PLAN PROVISIONS

---

Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA and share in the financial [health]<sup>5</sup> of JEA.

---

Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA (including any full-time OGC attorney) who has been employed by JEA for at least three months prior to the Purchase Date (as described in Q&A 3) is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

Any exceptions to the above eligibility requirements must be recommended by JEA’s Chief Executive Officer (the “CEO”) and approved by the Chair of the Compensation Committee (the “Committee Chair”) of the Board of Directors of JEA (the “Board”).

---

<sup>4</sup> JEA to confirm whether all the references to “performance units” should be changed to “PUPs.” This was not reflected in the hand mark-up received from JEA.

<sup>5</sup> JEA to confirm whether this should instead refer to “success.”

---

Q3: How does the Plan work?

A3: Each eligible employee may purchase a specified number of performance units (the “**Performance Units**”) as set forth in the employee’s Long-Term Performance Unit Agreement from JEA on January 15 of each year (the “**Purchase Date**”) <sup>6</sup> by electing to defer a portion of the employee’s pay equal to the aggregate purchase price (the “**Purchase Price**”) for the Performance Units that the employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

---

Q4: Who administers the Plan?

A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions the Committee Chair deems necessary or advisable for the administration of the Plan. All decisions, interpretations, and other actions of the Committee Chair will be final and binding.

---

Q5: How many Performance Units are reserved under the Plan?

A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan. However, only 30,000 Performance Units will be available for purchase by eligible employees on the Purchase Date.

#### **ALLOCATION OF PERFORMANCE UNITS**

---

Q6: What is a Performance Unit?

A6: Each Performance Unit represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

---

Q7: How are Performance Units allocated under the Plan?

A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement.

The Committee Chair may delegate the Committee Chair’s authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees

---

<sup>6</sup> To discuss the Purchase Date with JEA, including whether the Purchase Date should occur over multiple pay periods. Section 2(q) of the Plan specifies that the first Purchase Date will occur January 15, 2020.

(other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

---

Q8: How many Performance Units must I purchase to participate in the Plan?

A8: You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated.

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

---

Q9: How is the Purchase Price determined?

A9: Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

---

Q10: Will I be required to pay the Purchase Price for my Performance Units?

A10: Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Agreement will be equal to \$40.00 (\$10.00 x four Performance Units).

---

Q11: How do I pay the Purchase Price for my Performance Units?

A11: To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you.

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019. If you do not make this election by December 31, 2019, you will not be eligible to purchase Performance Units on January 15, 2020.

---

Q12: Under what circumstances will I forfeit the Purchase Price that I pay for my Performance Units?

A12: If prior to the Vesting Date (as described in Q&A 13) your employment with JEA is terminated for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, you will forfeit the entire amount of the Purchase

Price that you paid for the Performance Units that have not vested as of the date of your termination or voluntary termination, as applicable, of employment.

---

Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the “**Vesting Date**”). Except as otherwise described in Q&A 18, you must be employed with JEA on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price for vested Performance Units.

JEA will pay the Redemption Price to you for your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

---

Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the “**Performance Period**”).

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the “**2020/2023 Performance Period**”), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each “Value Change Percentage” increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the “**Redemption Price**”).

- For the 2020/2023 Performance Period, the “Challenge Value Target” will be 110% and the “Threshold Value Target” will be 90%.
- The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”
- “Current Year Value” means, with respect to the Performance Period, the sum of (a) JEA’s Net Position, as shown on JEA’s audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the closing date

of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA's customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) – (c).

- For the 2020/2023 Performance Period, “Base Year Value” is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA’s audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>7</sup>

**Example:** [To come]<sup>8</sup>

---

Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

---

Q16: Who will calculate the Redemption Price?

A16: JEA’s Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA’s audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

---

Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions include as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D;

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<sup>7</sup> To discuss with JEA whether the Purchase Price will be refunded to a participant even if the performance metrics are not attained. There is a substantial risk of forfeiture on a termination for cause or a voluntary termination of employment.

<sup>8</sup> JEA to provide.

- (b) except as described in Q&A 18, you must be continuously employed with JEA;
- (c) you must execute and not revoke a release of claims in favor of JEA and the City of Jacksonville (JEA will notify you when it is time for you to execute the release); and
- (d) you must comply with the covenants set forth in your Long-Term Performance Unit Agreement (the “**Agreement**”).

---

Q18: What happens to my Performance Units and the Purchase Price that I paid upon an involuntary termination of employment with JEA?

A18: If you experience an involuntary termination of employment prior to the applicable Vesting Date for your Performance Units, you will still be paid the Redemption Price for all of your Performance Units. Any Redemption Price payable to you as a terminated employee for your Performance Units will be paid to you at the same time as the amounts would have been paid had you not experienced an involuntary termination of employment.

An involuntary termination of employment means a termination of employment by JEA without cause (as described in Q&A 20) or due to your death or disability (as defined in the Plan).<sup>9</sup>

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Q19: What happens to my Performance Units and the Purchase Price that I paid upon a termination of employment with JEA for cause or a voluntary termination of employment?

A19: If you experience a termination of employment for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, in each case, prior to the applicable Vesting Date for your Performance Units, you will forfeit both the Performance Units to the extent unvested and the Purchase Price that you paid for such unvested Performance Units.

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Q20: What is a termination of employment for “cause”?

A20: Under the Plan, “cause” generally means:

- (a) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement, or
- (b) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import): (i) you have been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, any felony under applicable law or any crime involving dishonesty or moral

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<sup>9</sup> JEA to clarify what is meant by the request to include a “geographic trigger.”

turpitude; (ii) you have engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence that would reasonably be expected to result in a material injury to JEA; (iii) you willfully fail to perform your duties to JEA and/or willfully fail to comply with lawful directives of the Board; (iv) you materially breach any term of any contract to which you and JEA is a party; or (v) you materially breach any term of the Plan and/or your Long-Term Performance Unit Agreement.

With respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of “cause” is curable, JEA will provide written notice to you of the event within 30 days of JEA learning of the occurrence of such event, and such cause event must remain uncured 15 days after JEA has provided such written notice and any termination of your employment for “cause” with respect to clause (iii), (iv) or (v) must occur no later than 30 days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of “cause” is inconsistent with a definition of “cause” (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the “**Civil Service Rules**”), the definition of “cause” (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, will control.

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Q21: What happens if I am retirement eligible and retire before the applicable Vesting Date?

A21: If you become a retirement eligible employee (as described below) and retire, in each case, prior to the applicable Vesting Date for your Performance Units, your Performance Units will vest on the applicable Vesting Date.

You are retirement eligible if you have attained one of the retirement milestones as described in the General Employees Retirement Plan.

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Q22: What happens if my designation changes from appointed to civil service?

A22: If at any time from when you are notified by JEA of your eligibility to participate in the Plan and ending on the last day of the Performance Period, your designation changes from appointed to civil service (whether or not such change is voluntary), the level at which you participate in the Plan will be adjusted to reflect such change.

If such change occurs (a) at any time prior to the Purchase Date, the number of Performance Units that you will be eligible to purchase will be reduced to a number of Performance Units that is equal to the number of Performance Units you would have been eligible to purchase had you been civil service on the date on which you were notified of your eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, you will forfeit a number of Performance Units such that you will have purchased a number of Performance Units that is equal to the maximum number of Performance Units you would have been eligible to purchase had you been civil service on the Purchase Date (it being understood that such number of forfeited

Performance Units may be zero) and JEA will refund to you the aggregate Purchase Price for such forfeited Performance Units.

## **RECAPITALIZATION EVENT**

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Q23: What is a Recapitalization Event?

A23: A "Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (a) unencumbered cash proceeds to the City of Jacksonville of at least \$3,000,000,000 or (b) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.

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Q24: What happens to my Performance Units upon a Recapitalization Event?

A24: On the closing date of a Recapitalization Event, your Performance Units will vest and you will receive the applicable Redemption Price for your Performance Units. The Redemption Price will be paid in cash no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 16.

## **AMENDMENTS OF THE PLAN**

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Q25: May the Board amend the Plan?

A25: Yes, the Board may amend the Plan at any time. However, no amendment to the Plan may impair the rights of participants in the Plan without such participants' written consent. You will be provided any details of any amendment that would affect you as soon as reasonably practicable.

## **MISCELLANEOUS**

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Q26: Has the Plan been collectively bargained?<sup>10</sup>

A26: Yes, the Plan has been collectively bargained with the applicable union representatives.

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Q27: How should I respond if someone asks about my Plan benefits or JEA's financial status?

A27: All inquiries from persons other than your legal, financial and/or tax advisors relating to the value of your Performance Units, the Plan or JEA's financial status (including questions from the press, prospective JEA investors, JEA customers or vendors, prospective JEA

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<sup>10</sup> Information from the Board in Q&A can be shared.



hires and current co-workers) should be directed to the JEA's Chief Financial Officer via email at [wannrf@jea.com](mailto:wannrf@jea.com).

## TAB B

### **RISK FACTORS TO BE CONSIDERED BEFORE PURCHASING THE PERFORMANCE UNITS UNDER THE JEA LONG-TERM PERFORMANCE UNIT PLAN**

The occurrence of any of the following risks could materially and adversely affect JEA's business, operating results and financial condition. In addition, risks and uncertainties that are not presently known to us or that we currently believe are immaterial may also impair JEA's business and operations. If any of these risks occur, the value of your Performance Units could decline and you may lose all or part of your Purchase Price.

**The list of risk factors below does not purport to be a complete enumeration or explanation of the risks involved in purchasing the Performance Units under the Plan. You should carefully evaluate all of the information in this invitation booklet, the Plan and your Long-Term Performance Unit Agreement and consult with your own legal, tax and/or financial advisers before deciding whether to purchase Performance Units and pay the Purchase Price under the Plan.**

**There are a number of factors that may impact JEA's business and financial conditions.**

The Redemption Price of the Performance Units will be subject to the future performance of JEA and, accordingly, before purchasing the Performance Units, you should carefully consider the risk factors described in JEA's Electric System and Water & Sewer System Annual Disclosure Reports (the "Annual Reports") filed with the Municipal Securities Rulemaking Board on its EMMA website and on [www.jea.com](http://www.jea.com) under the "Financial Reports" section (About > Investor Relations > Financial Reports > Annual Disclosure Reports), which are incorporated by reference into this invitation booklet, together with the other information incorporated by reference herein or provided in this invitation booklet (including the risks set forth below).

**The issues and associated risks and uncertainties discussed in the Annual Disclosure Reports that are incorporated herein by reference are not the only ones JEA may face. Additional issues may arise or become material as the energy, water and wastewater industries evolve. The risks and uncertainties associated with those additional issues could impair JEA's businesses in the future.**

The Redemption Price of the Performance Units in the future may be higher or lower than the Purchase Price that you paid for the Performance Units due to changes in JEA's operating performance or prospects and other factors, including broad market fluctuations. Some specific factors that may have a significant effect on the Redemption Price of your Performance Units include:

- JEA has a history of losses, and may not achieve or maintain profitability in the future;
- climate change, or legal, regulatory or market measures to address climate change, may negatively affect JEA's business, operations and/or financial performance;

- natural disasters, including, but not limited to, hurricanes and/or fires, could destroy JEA's facilities and equipment;
- actual or anticipated fluctuations in JEA's operating results or future prospectus;
- factors outside of JEA's control, including modifications to JEA's book value;
- strategic actions by other industry participants, such as acquisitions or restructurings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to JEA's business;
- JEA may be subject to legal proceedings and litigation, which are costly and may subject JEA to significant liability and increased costs of doing business;
- changes in accounting standards, policies, guidance, interpretations or principles; and
- adverse conditions in the financial markets or general economic conditions, including but not limited to, those resulting from war, incidents of terrorism and responses to such events.

**There is no duty to update this invitation booklet.**

JEA has no obligation to update the information contained in this invitation booklet. Accordingly, you should bear in mind that there may have been material changes in the affairs of JEA since the date of this invitation booklet, and it is up to you to review JEA's publicly available reports and information.

The information and expressions of opinion set forth herein or included herein by specific reference are subject to change without notice, and neither the delivery of this invitation booklet, nor the Plan nor your Long-Term Performance Unit Agreement shall, under any circumstances, create the implication that there has been no change in the affairs of JEA since the date hereof and thereof.

**The Performance Units are not transferable and there is no market available for sale of the Performance Units.**

You may not transfer, sell, pledge or otherwise dispose of your Performance Units (other than by will or the laws of descent or distribution) and there is no market to sell the Performance Units.

\* \* \*

<p><b>THE PERFORMANCE UNITS ARE NOT EQUITY OR SECURITIES OF JEA, NOR ARE THEY INTENDED TO BE TREATED AS SUCH AND ANY REPRESENTATION BY JEA OR ITS AGENTS TO THE CONTRARY SHOULD NOT BE RELIED UPON.</b></p>
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**TAB C**

**FINANCIAL STATEMENTS**

You can access and view JEA's financial statements, including the unaudited Quarterly Analysis of Financial Performance for the quarter ended June 30, 2019, through this link:<sup>11</sup>

[https://www.jea.com/About/Investor\\_Relations/Financial\\_Reports/](https://www.jea.com/About/Investor_Relations/Financial_Reports/)

Please contact [NAME], [TITLE] at [EMAIL ADDRESS] if you have trouble viewing or accessing the financial statements.<sup>12</sup>

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<sup>11</sup> To be updated prior to distribution to participants, as necessary.

<sup>12</sup> JEA to provide the name, title and email address of the JEA representative.

TAB D

**INSTRUCTIONS FOR PARTICIPATING IN THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

To purchase Performance Units and participate in the Plan:

- You must sign and return your Long-Term Performance Unit Agreement enclosed with this invitation booklet; and
- You must complete, sign and return the Purchase of Performance Units and Deferral Election attached as Schedule I to your Long-Term Performance Unit Agreement.

The documents listed above must be returned to [NAME], [TITLE], at [Foley/Pillsbury],<sup>13</sup> at [ADDRESS], or at [EMAIL ADDRESS].

**All required forms and materials must be postmarked by no later [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase Performance Units and participate in the Plan.<sup>14</sup>**

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<sup>13</sup> JEA to confirm whether Foley or Pillsbury will receive the documents.

<sup>14</sup> JEA to provide the postmark date.

**TAB E**

**JEA LONG-TERM PERFORMANCE UNIT PLAN**

[To be attached]

**TAB F**

**JEA LONG-TERM PERFORMANCE UNIT AGREEMENT**

[To be attached]

[INSERT JEA LOGO]

## INVITATION TO PARTICIPATE IN THE JEA LONG-TERM PERFORMANCE UNIT PLAN

Dear [NAME],

~~We~~As a new benefit to JEA employees, we are delighted to let you know that you are eligible to participate in the JEA Long-Term Performance Unit Plan (the “Plan”). The Plan ~~is a new program that~~ was approved by JEA’s Board of Directors as part of the long-term compensation framework ~~authorized by the Board of Directors at its meeting on June 27, 2019.~~<sup>1</sup> and is available starting in 2020.

### *How the Plan Works*

The Plan allows you to purchase ~~up to a specified number of~~ performance units, ~~as set forth in your Long-Term Performance Unit Agreement,~~ from JEA ~~at a~~ referred to as “PUPs.” The purchase price of each PUP is \$10.00 ~~per unit.~~ ~~The purchase price~~ and is paid ~~by you~~ by deferring a portion of your pay earned in 2020 equal to the aggregate purchase price of the ~~performance units~~ PUPs you wish to purchase. The number of PUPs available to you to purchase is set forth in the cover letter to the Plan and your Long-Term Performance Unit Agreement provided to you.<sup>1</sup> For example, if JEA allocates you five ~~performance units~~ PUPs and you wish to purchase all five ~~performance units~~ PUPs, the aggregate purchase price to be deferred from your pay earned would be equal to \$50.00 (\$10.00 x five ~~performance units~~ PUPs). When the ~~performance units~~ PUPs vest, subject to the satisfaction of certain conditions, you are eligible to receive a cash payment in consideration for the ~~performance units~~ PUPs you purchased. The amount of the cash payment is calculated based on the attainment of specified corporate performance metrics and includes the aggregate purchase price you paid for your ~~performance units.~~ ~~Enclosed with this invitation booklet is a copy of the Plan and your Long-Term Performance Unit Agreement~~ PUPs. For additional information on how the Plan works, please refer to the frequently asked questions on Tab A of this invitation booklet.

### *Risks Associated with Participating in the Plan*

As described above, in order to purchase ~~performance units~~ PUPs under the Plan, you must pay a purchase price of \$10.00 per ~~unit~~ PUP. As it is possible that you may forfeit the entire amount of the purchase price under certain circumstances (for example, if your employment with JEA is terminated for cause), you should carefully consider whether to purchase the ~~performance units~~ PUPs. In considering whether to purchase the ~~performance units~~ PUPs, you should review the risks described on Tab B of this invitation booklet and the financial information contained in Tab C of this invitation booklet.

### *Instructions and Additional Information*

<sup>1</sup> JEA to confirm date.

<sup>1</sup> JEA to confirm whether there will be a separate cover letter to the Plan and Long-Term Performance Unit Agreement.



If you wish to participate in the Plan and purchase the ~~performance units~~PUPs, please review this invitation booklet carefully and follow the instructions set forth on Tab D of this invitation booklet. All required forms and materials must be postmarked by no later than [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase ~~performance units~~PUPs and participate in the Plan.<sup>2</sup>

For further information concerning the Plan, please contact [NAME], [TITLE] at JEA, via email at [EMAIL ADDRESS].<sup>3</sup>

This is an exciting time for JEA!

Sincerely,

Aaron Zahn  
Managing Director & Chief Executive Officer

<sup>2</sup> JEA to provide the postmark date.

<sup>3</sup> JEA to provide the name, title and email address of the JEA representative.

## TABLE OF CONTENTS

	<b>Page</b>
Questions and Answers About the <del>Jea</del> JEA Long-Term Performance Unit Plan	A-1
Risk Factors To Be Considered Before Purchasing the Performance Units Under the JEA Long-Term Performance Unit Plan	B-1
Financial Statements	C-1
Instructions for Participating in the Plan	D-1
JEA Long-Term Performance Unit Plan	E-1
JEA Long-Term Performance Unit Agreement	F-1

## TAB A

### QUESTIONS AND ANSWERS ABOUT THE JEA LONG-TERM PERFORMANCE UNIT PLAN

#### INTRODUCTION<sup>4</sup>

Below are a number of frequently asked questions (“FAQs”) regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

Where the context so requires, references to “JEA” refer to JEA, its affiliates, assigns, subsidiaries and successors.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR PARTICIPATION IN THE PLAN.**

#### GENERAL PLAN PROVISIONS

Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA, ~~drive value for customers, drive value for the community of North East Florida, drive environmental value and drive financial value for JEA and the City of Jacksonville~~ and share in the financial [health]<sup>5</sup> of JEA.

Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA, ~~its affiliates, assigns, subsidiaries and successors, (collectively, the “JEA Group” (including any full-time OGC attorney) who has been employed by any member of the JEA Group for at least three months prior to the Purchase Date (as described in Q&A 3) and any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at~~

<sup>4</sup> JEA to confirm whether all the references to “performance units” should be changed to “PUPs.” This was not reflected in the hand mark-up received from JEA.

<sup>5</sup> JEA to confirm whether this should instead refer to “success.”

~~least three months prior to the Purchase Date~~ is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

Any exceptions to the above eligibility requirements must be recommended by JEA's Chief Executive Officer (the "CEO") and approved by the Chair of the Compensation Committee (the "Committee Chair") of the Board of Directors of JEA (the "Board").

---

Q3: How does the Plan work?

A3: Each eligible employee may purchase a specified number of performance units (the "Performance Units") as set forth in ~~such~~the employee's Long-Term Performance Unit Agreement from JEA on January 15 of each year (the "Purchase Date")<sup>6</sup> by electing to defer a portion of ~~such~~the employee's pay equal to the aggregate purchase price (the "Purchase Price") for the Performance Units that ~~such~~the employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

---

Q4: Who administers the Plan?

A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions ~~it~~the Committee Chair deems necessary or advisable for the administration of the Plan. All decisions, interpretations, and other actions of the Committee Chair will be final and binding.

---

Q5: How many Performance Units are reserved under the Plan?

A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan. However, only 30,000 Performance Units will be available for purchase by eligible employees on the Purchase Date.

#### ALLOCATION OF PERFORMANCE UNITS

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Q6: What is a Performance Unit?

A6: Each Performance Unit ~~is a phantom or notional unit that~~ represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

---

Q7: How are Performance Units allocated under the Plan?

<sup>6</sup> To discuss the Purchase Date with JEA, including whether the Purchase Date should occur over multiple pay periods. Section 2(q) of the Plan specifies that the first Purchase Date will occur January 15, 2020.

A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement ~~evidencing the Performance Units.~~

The Committee Chair ~~has delegated its~~ may delegate the Committee Chair's authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees (other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

---

Q8: How many Performance Units must I purchase to participate in the Plan?

A8: You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated ~~to you.~~

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

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Q9: How is the Purchase Price determined?

A9: Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

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Q10: Will I be required to pay the Purchase Price for my Performance Units?

A10: Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Agreement will be equal to \$40.00 (\$10.00 x four Performance Units).

---

Q11: How do I pay the Purchase Price for my Performance Units?

A11: To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you. ~~You must elect to defer your pay in the calendar year prior to the calendar year in which the compensation is earned and you purchase the Performance Units.~~

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019 ~~(or an earlier date as selected by the Committee Chair)~~. If you do not make this election by December 31, 2019 ~~(or the earlier date as selected by the Committee Chair)~~, you will not be eligible to purchase Performance Units on January 15, 2020.

---

Q12: ~~Will~~ Under what circumstances will I forfeit the Purchase Price that I pay for my Performance Units?

A12: ~~Yes, if~~ If prior to the Vesting Date (as described in Q&A 13) your employment with ~~any member of the JEA Group~~ is terminated for cause (as described in Q&A 20) or you voluntarily ~~resign~~ terminate your employment with ~~any member of the JEA Group~~ for any reason, you will forfeit the entire amount of the Purchase Price that you paid for the Performance Units that have not vested as of the date of your termination or ~~resignation~~ voluntary termination, as applicable, of employment.

---

Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the “**Vesting Date**”). Except as otherwise described in Q&A 18, you must be employed with ~~a member of the JEA Group~~ on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price ~~in respect of~~ for vested Performance Units.

~~A member of the JEA Group~~ will pay the Redemption Price to you ~~in respect of~~ for your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

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Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the “**Performance Period**”).

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the “**2020/2023 Performance Period**”), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each “Value Change Percentage” increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the “**Redemption Price**”).

- For the 2020/2023 Performance Period, the “Challenge Value Target” will be 110% and the “Threshold Value Target” will be 90%.
- The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”
- “Current Year Value” means, with respect to the Performance Period, the sum of (a) JEA’s Net Position, as shown on JEA’s audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the closing date of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA’s customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) – (c).
- For the 2020/2023 Performance Period, “Base Year Value” is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA’s audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>27</sup>

**Example:** [To come]<sup>28</sup>

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Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

<sup>27</sup> To discuss with JEA to confirm that whether the Purchase Price will be refunded to a participant even if the performance metrics are not attained. There is a substantial risk of forfeiture on a termination for cause or a voluntary termination of employment.

<sup>28</sup> JEA to provide.

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

---

Q16: Who will calculate the Redemption Price?

A16: JEA’s Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA’s audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

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Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions ~~are~~include as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D;
- (b) except as described in Q&A 18, you must be continuously employed with JEA;
- (c) you must execute and not revoke a release of claims in favor of JEA and the City of Jacksonville (JEA will notify you when it is time for you to execute the release); and
- (d) you must comply with the covenants set forth in your Long-Term Performance Unit Agreement (the “**Agreement**”); ~~and~~.

~~(e) the conditions in Section 215.425(3), Florida Statutes must be satisfied.<sup>4</sup>~~

~~With respect to the conditions in (e), [insert description].<sup>5</sup>~~

---

Q18: What happens to my Performance Units and the Purchase Price that I paid upon an involuntary termination of employment with ~~the JEA Group~~?

<sup>4</sup> ~~JEA to consider whether to provide.~~

<sup>5</sup> ~~JEA to provide.~~



A18: If you experience an involuntary termination of employment prior to the applicable Vesting Date for your Performance Units, you will still be paid the Redemption Price ~~in respect of~~ for all of your Performance Units. Any Redemption Price payable to you as a terminated employee ~~in respect of~~ for your Performance Units will be paid to you at the same time as the amounts would have been paid had you not experienced an involuntary termination of employment.

An involuntary termination of employment means a termination of employment by JEA without cause (as described in Q&A 20) or due to your death or disability (as defined in the Plan).<sup>9</sup>

---

Q19: What happens to my Performance Units and the Purchase Price that I paid upon a termination of employment with ~~the JEA Group~~ for cause or a ~~resignation~~ voluntary termination of employment?

A19: If you experience a termination of employment for cause (as described in Q&A 20) or you ~~resign~~ voluntarily terminate your employment with JEA for any reason, in each case, prior to the applicable Vesting Date for your Performance Units, you will forfeit both the Performance Units to the extent unvested and the Purchase Price that you paid for such unvested Performance Units.

---

Q20: What is a termination of employment for “cause”?

A20: Under the Plan, “cause” generally means:

- (a) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement, or
- (b) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import): (i) you have been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, any felony under applicable law or any crime involving dishonesty or moral turpitude; (ii) you have engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence that would reasonably be expected to result in a material injury to ~~any member of the JEA Group~~; (iii) you willfully fail to perform your duties to ~~any member of the JEA Group~~ and/or willfully fail to comply with lawful directives of the Board; (iv) you materially breach any term of any contract to which you and ~~any member of the JEA Group~~ is a party; or (v) you materially breach any term of the Plan and/or your Long-Term Performance Unit Agreement.

<sup>9</sup> JEA to clarify what is meant by the request to include a “geographic trigger.”

With respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of “cause” is curable, JEA will provide written notice to you of the event within 30 days of JEA learning of the occurrence of such event, and such cause event must remain uncured 15 days after JEA has provided such written notice and any termination of your employment for “cause” with respect to clause (iii), (iv) or (v) must occur no later than 30 days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of “cause” is inconsistent with a definition of “cause” (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the “**Civil Service Rules**”), the definition of “cause” (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, will control.

---

Q21: What happens if I am retirement eligible and retire before the applicable Vesting Date?

A21: If you become a retirement eligible employee (as described below) and retire, in each case, prior to the applicable Vesting Date for your Performance Units, your Performance Units will vest on the applicable Vesting Date.

You are retirement eligible if you have attained one of the retirement milestones as described in the General Employees Retirement Plan.

---

Q22: What happens if my designation changes from appointed to civil service?

A22: If at any time ~~during the period commencing on the date on which~~from when you are notified by JEA of your eligibility to participate in the Plan and ending on the last day of the Performance Period, your designation changes from appointed to civil service (whether or not such change is voluntary), the level at which you participate in the Plan will be adjusted to reflect such change.

If such change occurs (a) at any time prior to the Purchase Date, the number of Performance Units that you will be eligible to purchase will be reduced to a number of Performance Units that is equal to the number of Performance Units you would have been eligible to purchase had you been civil service on the date on which you were notified of your eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, you will forfeit a number of Performance Units such that you will have purchased a number of Performance Units that is equal to the maximum number of Performance Units you would have been eligible to purchase had you been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA will refund to you the aggregate Purchase Price ~~in respect of~~for such forfeited Performance Units.

## RECAPITALIZATION EVENT

---

Q23: What is a Recapitalization Event?

A23: A "Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (a) unencumbered cash proceeds to the City of Jacksonville of at least \$3,000,000,000 or (b) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.

---

Q24: What happens to my Performance Units upon a Recapitalization Event?

A24: On the closing date of a Recapitalization Event, your Performance Units will vest and you will receive the applicable Redemption Price for your Performance Units. The Redemption Price will be paid in cash no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 16.

#### **AMENDMENTS OF THE PLAN**

---

Q25: May the Board amend the Plan?

A25: Yes, the Board may amend the Plan at any time. However, no amendment to the Plan may impair the rights of participants in the Plan without such participants' written consent. You will be provided any details of any amendment that would affect you as soon as reasonably practicable.

#### **MISCELLANEOUS**

---

Q26: Has the Plan been collectively bargained?<sup>10</sup>

A26: Yes, the Plan has been collectively bargained with the applicable union representatives.<sup>6</sup>

---

Q27: How should I respond if someone asks about my Plan benefits or JEA's financial status?

<sup>10</sup> 

<sup>6</sup> ~~JEA to update as applicable.~~

A27: All inquiries from persons other than your legal, financial and/or tax advisors relating to the value of your Performance Units ~~or JEA generally~~, the Plan or JEA's financial status (including questions from the press, prospective JEA investors, JEA customers or vendors, prospective JEA hires and current co-workers) should be directed to the JEA's ~~[[[REDACTED]]]~~ Chief Financial Officer via email at [wannrf@jea.com](mailto:wannrf@jea.com).

<sup>2</sup> ~~JEA to confirm that this is acceptable.~~

**TAB B**

**RISK FACTORS TO BE CONSIDERED BEFORE PURCHASING THE  
PERFORMANCE UNITS UNDER  
THE JEA LONG-TERM PERFORMANCE UNIT PLAN**

The occurrence of any of the following risks could materially and adversely affect JEA's business, operating results and financial condition. In addition, risks and uncertainties that are not presently known to us or that we currently believe are immaterial may also impair JEA's business and operations. If any of these risks occur, the value of your Performance Units could decline and you may lose all or part of your Purchase Price.

**The list of risk factors below does not purport to be a complete enumeration or explanation of the risks involved in purchasing the Performance Units under the Plan. You should carefully evaluate all of the information in this invitation booklet, the Plan and your Long-Term Performance Unit Agreement and consult with your own legal, tax and/or financial advisers before deciding whether to purchase Performance Units and pay the Purchase Price under the Plan.**

**There are a number of factors that may impact JEA's business and financial conditions.**

The Redemption Price of the Performance Units will be subject to the future performance of JEA and, accordingly, before purchasing the Performance Units, you should carefully consider the risk factors described in JEA's Electric System and Water & Sewer System Annual Disclosure Reports (the "**Annual Reports**") filed with the Municipal Securities Rulemaking Board on its EMMA website and on [www.jea.com](http://www.jea.com) under the "Financial Reports" section (About > Investor Relations > Financial Reports > Annual Disclosure Reports), which are incorporated by reference into this invitation booklet, together with the other information incorporated by reference herein or provided in this invitation booklet (including the risks set forth below).

**The issues and associated risks and uncertainties discussed in the Annual Disclosure Reports that are incorporated herein by reference are not the only ones JEA may face. Additional issues may arise or become material as the energy, water and wastewater industries evolve. The risks and uncertainties associated with those additional issues could impair JEA's businesses in the future.**

The Redemption Price of the Performance Units in the future may be higher or lower than the Purchase Price that you paid for the Performance Units due to changes in JEA's operating performance or prospects and other factors, including broad market fluctuations. Some specific factors that may have a significant effect on the Redemption Price of your Performance Units include:<sup>8</sup>

- JEA has a history of losses, and may not achieve or maintain profitability in the future;

JEA to continue

- climate change, or legal, regulatory or market measures to address climate change, may negatively affect JEA's business, operations and/or financial performance;
- natural disasters, including, but not limited to, hurricanes and/or fires, could destroy JEA's facilities and equipment;
- actual or anticipated fluctuations in JEA's operating results or future prospectus;
- factors outside of JEA's control, including modifications to JEA's book value;
- strategic actions by other industry participants, such as acquisitions or restructurings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to JEA's business;
- JEA may be subject to legal proceedings and litigation, which are costly and may subject JEA to significant liability and increased costs of doing business;
- changes in accounting standards, policies, guidance, interpretations or principles; and
- adverse conditions in the financial markets or general economic conditions, including but not limited to, those resulting from war, incidents of terrorism and responses to such events.

**There is no duty to update this invitation booklet.**

JEA has no obligation to update the information contained in this invitation booklet. Accordingly, you should bear in mind that there may have been material changes in the affairs of JEA since the date of this invitation booklet, and it is up to you to review JEA's publicly available reports and information.

The information and expressions of opinion set forth herein or included herein by specific reference are subject to change without notice, and neither the delivery of this invitation booklet, nor the Plan nor your Long-Term Performance Unit Agreement shall, under any circumstances, create the implication that there has been no change in the affairs of JEA since the date hereof and thereof.

**The Performance Units are not transferable and there is no market available for sale of the Performance Units.**

You may not transfer, sell, pledge or otherwise dispose of your Performance Units (other than by will or the laws of descent or distribution) and there is no market to sell the Performance Units.

\* \* \*

<p><b>THE PERFORMANCE UNITS ARE NOT EQUITY OR SECURITIES OF JEA, NOR ARE THEY INTENDED TO BE TREATED AS SUCH AND ANY REPRESENTATION BY JEA OR ITS AGENTS TO THE CONTRARY SHOULD NOT BE RELIED UPON.</b></p>
---

## TAB C

### FINANCIAL STATEMENTS

You can access and view JEA's financial statements, including the unaudited Quarterly Analysis of Financial Performance for the quarter ended June 30, 2019, through this link:<sup>911</sup>

[https://www.jea.com/About/Investor\\_Relations/Financial\\_Reports/](https://www.jea.com/About/Investor_Relations/Financial_Reports/)

Please contact [NAME], [TITLE] at [EMAIL ADDRESS] if you have trouble viewing or accessing the financial statements.<sup>12</sup>

<sup>911</sup> To be updated prior to distribution to participants, as necessary.

<sup>12</sup> JEA to provide the name, title and email address of the JEA representative.

TAB D

**INSTRUCTIONS FOR PARTICIPATING IN THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

To purchase Performance Units and participate in the Plan:

- You must sign and return your Long-Term Performance Unit Agreement enclosed with this invitation booklet; and
- You must complete, sign and return the Purchase of Performance Units and Deferral Election attached as Schedule I to your Long-Term Performance Unit Agreement; ~~and~~.
- ~~[Any other requirements?]~~<sup>10</sup>

The documents listed above must be returned to [NAME], [TITLE], at JEA; Foley/Pillsbury,<sup>13</sup> at [ADDRESS], or at [EMAIL ADDRESS].

**All required forms and materials must be postmarked by no later [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase Performance Units and participate in the Plan.<sup>14</sup>**

<sup>10</sup> ~~JEA to confirm.~~

<sup>13</sup> JEA to confirm whether Foley or Pillsbury will receive the documents.

<sup>14</sup> JEA to provide the postmark date.



**TAB E**

**JEA LONG-TERM PERFORMANCE UNIT PLAN**

[To be attached]

**TAB F**

**JEA LONG-TERM PERFORMANCE UNIT AGREEMENT**

[To be attached]

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.5.0.0 Document comparison done on 9/26/2019 11:51:54 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> JEA - Long-Term Performance Unit Plan - Invitation Booklet.docx	
<b>Modified filename:</b> JEA - Long-Term Performance Unit Plan - Invitation Booklet(1).docx	
<b>Changes:</b>	
Add	90
<del>Delete</del>	105
<del>Move From</del>	0
Move To	0
Table Insert	0
<del>Table Delete</del>	0
Table moves to	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>195</b>

**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Wednesday, October 16, 2019 9:11 AM  
**To:** 'Lutrin, Jessica'; Dykes, Melissa H. - President/COO; KHyde@foley.com  
**Cc:** Hunt, Peter J.; Krawitz, Justin; Bradley, Danielle  
**Subject:** RE: Out of the Office

Ok, thank you Jessica. We will circulate to Kevin, you, Peter, Justin, and Danielle today pay for performance documents for review.

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



**From:** Lutrin, Jessica <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)>  
**Sent:** Tuesday, October 15, 2019 7:32 PM  
**To:** Dykes, Melissa H. - President/COO <[dykemh@jea.com](mailto:dykemh@jea.com)>; Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>; KHyde@foley.com  
**Cc:** Hunt, Peter J. <[peter.hunt@pillsburylaw.com](mailto:peter.hunt@pillsburylaw.com)>; Krawitz, Justin <[justin.krawitz@pillsburylaw.com](mailto:justin.krawitz@pillsburylaw.com)>; Bradley, Danielle <[danielle.bradley@pillsburylaw.com](mailto:danielle.bradley@pillsburylaw.com)>  
**Subject:** Out of the Office

[This is an External Email - Exercise Caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Dear Melissa, Lynne and Kevin –

I will be out of the office starting tomorrow for a couple of days. Peter Hunt, Justin Krawitz and Danielle Bradley (copied) who have all been working on Project Scampi will be available to assist in my absence and their contact details are below. If you could please continue to copy me on emails while I am out, that would be much appreciated.


Best,  
Jessica

Peter J. Hunt | Partner  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1139 | f +1.212.858.1500 | m +1.917.836.6826  
[peter.hunt@pillsburylaw.com](mailto:peter.hunt@pillsburylaw.com) | website bio [[pillsburylaw.com](http://pillsburylaw.com)]

Justin Krawitz | Senior Associate  
Pillsbury Winthrop Shaw Pittman LLP  
401 Congress Avenue, Suite 1700 | Austin, TX 78701-3797  
t +1.512.580.9639 | m +1.646.879.7601  
justin.krawitz@pillsburylaw.com | website bio [[pillsburylaw.com](http://pillsburylaw.com)]

Danielle Bradley | Associate  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1128  
danielle.bradley@pillsburylaw.com | website bio

Jessica Lutrin | Partner  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1090  
jessica.lutrin@pillsburylaw.com | website bio [[pillsburylaw.com](http://pillsburylaw.com)]

 [[pillsburylaw.com](http://pillsburylaw.com)]

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From: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Sent: Monday, December 9, 2019, 3:56 PM

To: "Luster, Jill R. - Executive Staff Assistant" <lustjr@jea.com>

Subject: Fwd: Discussion re Administration of a new JEA Performance Unit Plan 61373

Attachments: image003.jpg; ATT00001.htm; JEA - Long-Term Performance Unit Plan AS REVISED (FINAL).pdf; ATT00002.htm; JEA - Form of Long-Term Performance Unit Agreement AS REVISED (FINAL).pdf; ATT00003.htm

---

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - VP & Chief Human Resources Officer" <kendja@jea.com>  
**Date:** December 9, 2019 at 10:31:23 AM EST  
**To:** "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>  
**Subject:** **FW: Discussion re Administration of a new JEA Performance Unit Plan 61373**

Lynne,

This was initial correspondence to Mass Mutual to discuss administration of the PUP's. Pat sat in on a call that I wasn't able to make, but it never proceeded as the decision was made to suspend the program. I'll send a few more emails.

Thanks.

Jon

**From:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer  
**Sent:** Friday, October 25, 2019 12:19 PM  
**To:** 'DiGrande, Silvio' <sdigrande@massmutual.com>; Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>; Scheetz, Michael <mscheetz@massmutual.com>  
**Subject:** RE: Discussion re Administration of a new JEA Performance Unit Plan 61373

Hi Silvio,

I've attached the documents relating to the plan. Looking forward to the call.

Thanks.

Jon

**Jon Kendrick**  
Vice President & Chief Human Resources Officer  
Direct: (904) 665-4747  
Mobile: (904) 466-8517

**From:** DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)>  
**Sent:** Friday, October 25, 2019 9:42 AM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Cc:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <[kendja@jea.com](mailto:kendja@jea.com)>  
**Subject:** RE: Discussion re Administration of a new JEA Performance Unit Plan 61373

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Pat,

Our Retirement Advisory Services dept. just reached out to me. It does not look like they will have someone available for the call on Monday. Think this may need to be moved to Tuesday. In the meantime they are requesting a copy of the Long Term Incentive Plan Document so they can review it before the call.

Thank you,

Silvio

**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Thursday, October 24, 2019 10:53 AM  
**To:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Cc:** DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)>; Kendrick, Jonathan A. - VP & Chief Human Resources Officer <[kendja@jea.com](mailto:kendja@jea.com)>  
**Subject:** [EXTERNAL]RE: Discussion re Administration of a new JEA Performance Unit Plan 61373

Let's go with 10:00 AM Monday. I'll send out a meeting invite with a conference number.

**From:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Sent:** Thursday, October 24, 2019 9:09 AM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)>  
**Subject:** RE: Discussion re Administration of a new JEA Performance Unit Plan 61373

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

**JEA0126**



I am available on Monday from 10:00 to 1:00 and Tuesday I am available all day.

**Michael M. Scheetz**

Client Engagement Manager | Government Markets

Workplace Solutions

**MassMutual**

100 Bright Meadow Boulevard | Enfield, CT 06082

C: (813) 244-1059

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**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Thursday, October 24, 2019 7:52 AM  
**To:** DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)>  
**Cc:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Subject:** [EXTERNAL]Re: Discussion re Administration of a new JEA Performance Unit Plan 61373

Mike, let me know some times on either day that are good.

Pat

Sent from my iPhone

On Oct 23, 2019, at 4:05 PM, DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)> wrote:

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Pat,

We are looking into seeing if there is a retirement advisory specialist that can be on the call. If we can find someone, I can try to be on the call with them. I think it may be best to try to schedule something Monday or Tuesday when Mike may be able to join.

Silvio

**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Wednesday, October 23, 2019 3:34 PM  
**To:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Cc:** DiGrande, Silvio <[sdigrande@massmutual.com](mailto:sdigrande@massmutual.com)>  
**Subject:** [EXTERNAL]RE: Discussion re Administration of a new JEA Performance Unit Plan

**JEA0127**

Would Silvio be able to participate in a call tomorrow at 10:00 with Jon and I?

Otherwise, Monday and Tuesday, Jon was off, but he can call in. Any availability Monday or Tuesday?

**From:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Sent:** Wednesday, October 23, 2019 3:06 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Subject:** RE: Discussion re Administration of a new JEA Performance Unit Plan

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

This is to confirm receipt of your e-mail. Currently traveling on business in Louisiana on client meetings and benefit fairs. In regards to the times you proposed I will be in the air tomorrow and on Friday I have grandparent duties with the grandkids and have the day off.

I have forwarded your e-mail onto Silvio so that we can get your inquiry into the que with our internal consulting group for comment on what JEA is looking to accomplish.

I will try to give you a buzz when I get another break this afternoon.

Regards,

**Michael M. Scheetz**

Client Engagement Manager | Government Markets

Workplace Solutions

**MassMutual**

100 Bright Meadow Boulevard | Enfield, CT 06082

☎ 813.244.0059

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**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Wednesday, October 23, 2019 1:04 PM  
**To:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Subject:** [EXTERNAL]Discussion re Administration of a new JEA Performance Unit Plan

**JEA0128**

Hi Mike,

Left you a voice mail regarding this. Would like to schedule a call with you and possibly the team within Mass Mutual that can administer a performance unit plan. JEA is getting ready to have an open enrollment period for a long-term incentive plan being offered to all employees of JEA. Employees will be able to elect during an enrollment period a number of units. The units are valued at purchase at \$10.00 per unit. The purchase will be over a few pay periods in 2020.

Would like to talk to Mass Mutual about the administration of a plan of this nature and if they have the capability. The units may not be invested. The value and growth of the units are based on financial performance factors of JEA. So I am envisioning that JEA Finance would have to provide information on a quarterly basis to show the increase or decrease in value. The election is irrevocable and there is risk of forfeiture if the employee leaves before the units vest.

Jon Kendrick and I are very eager to talk about the plan and would like to see if you may be available tomorrow morning. Both of us are available from 10:00 – 11:00 AM or Friday after 3:00 PM.

Pat Maillis

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)

<image007.jpg> <image009.jpg> <image011.jpg> <image013.jpg> <image015.jpg>

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

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## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.



- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date and the Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the last day of the Performance Period.

### **SECTION 3 ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA’s senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

#### **SECTION 4 EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

**SECTION 5**  
**VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from

appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

#### **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

#### **SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the

Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units.

## **SECTION 8 AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## **SECTION 9 MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A

and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment

Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

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**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

- (a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>
- (b) “Challenge Value Target” means [PERCENT].<sup>2</sup>
- (c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.
- (d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.
- (e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_] day of [\_\_\_\_], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that the Participant defers hereunder are unfunded and unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax

[ID NUMBER]

advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to the Participant the aggregate Purchase Price of such forfeited Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) Confidentiality.

(i) Protection of Information. The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the

Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the

parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0147**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name:	[•]
Participant First Name:	[•]
No. of Performance Units Available for Purchase (the "Available Performance Units"):	[•]
Purchase Price per Performance Unit:	\$10.00
No. of Performance Units Participant Purchases: (capped at the number of Available Performance Units):	_____
Aggregate Purchase Price: (\$10.00 x No. of Performance Units Participant Purchases)	_____

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE]	_____
Equal installments from pay to be paid over the next [NUMBER] pay periods commencing with the payroll period on [DATE]	_____

_____	_____	_____
NAME	SIGNATURE	DATE

[ID NUMBER]

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.



From: "Lutrin, Jessica" <jessica.lutrin@pillsburylaw.com>

Sent: Tuesday, September 10, 2019, 11:17 AM

To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Subject: PUP

Attachments: JEA - Long-Term Performance Unit Plan - Invitation Booklet 4816-7518-1216 v.7.docx; JEA - Long-Term Performance Unit Plan 4819-6312-2076 v.11.docx; JEA - Form of Long-Term Performance Unit Agreement 4812-4130-8572 v.10.docx; Redline - JEA - Long-Term Performance Unit Plan.pdf; Redline - JEA - Form of Long-Term Performance Unit Agreement.pdf

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[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Lynne,

As requested, I reviewed the PUP plan document and form of agreement and attached are revised drafts (clean and redlines) reflecting my comments. I've also attached a draft of the invitation booklet we discussed yesterday. You'll see that I've flagged a couple of items for your consideration in the footnotes to the booklet.

---

Please let me know if you have any questions.

Best,  
Jessica

**Jessica Lutrin** | Partner

Pillsbury Winthrop Shaw Pittman LLP

31 West 52nd Street | New York, NY 10019-6131

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SILICON VALLEY TAIPEI TOKYO WASHINGTON, DC

 [pillsburylaw.com]

**JEA0150**

[INSERT JEA LOGO]

## INVITATION TO PARTICIPATE IN THE JEA LONG-TERM PERFORMANCE UNIT PLAN

Dear [NAME],

We are delighted to let you know that you are eligible to participate in the JEA Long-Term Performance Unit Plan (the “Plan”). The Plan is a new program that was approved by JEA’s Board of Directors as part of the long-term compensation framework authorized by the Board of Directors at its meeting on June 27, 2019.<sup>1</sup>

### *How the Plan Works*

The Plan allows you to purchase up to a specified number of performance units, as set forth in your Long-Term Performance Unit Agreement, from JEA at a purchase price of \$10.00 per unit. The purchase price is paid by you by deferring a portion of your pay earned in 2020 equal to the aggregate purchase price of the performance units you wish to purchase. For example, if JEA allocates you five performance units and you wish to purchase all five performance units, the aggregate purchase price to be deferred from your pay earned would be equal to \$50.00 (\$10.00 x five performance units). When the performance units vest, subject to the satisfaction of certain conditions, you are eligible to receive a cash payment in consideration for the performance units you purchased. The amount of the cash payment is calculated based on the attainment of specified corporate performance metrics and includes the aggregate purchase price you paid for your performance units. Enclosed with this invitation booklet is a copy of the Plan and your Long-Term Performance Unit Agreement. For additional information on how the Plan works, please refer to the frequently asked questions on Tab A of this invitation booklet.

### *Risks Associated with Participating in the Plan*

As described above, in order to purchase performance units under the Plan, you must pay a purchase price of \$10.00 per unit. As it is possible that you may forfeit the entire amount of the purchase price under certain circumstances (for example, if your employment with JEA is terminated for cause), you should carefully consider whether to purchase the performance units. In considering whether to purchase the performance units, you should review the risks described on Tab B of this invitation booklet and the financial information contained in Tab C of this invitation booklet.

### *Instructions and Additional Information*

If you wish to participate in the Plan and purchase the performance units, please review this invitation booklet carefully and follow the instructions set forth on Tab D of this invitation booklet. All required forms and materials must be postmarked by no later than [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase performance units and participate in the Plan.

---

<sup>1</sup> JEA to confirm date.

For further information concerning the Plan, please contact [NAME], [TITLE] at JEA, via email at [EMAIL ADDRESS].

This is an exciting time for JEA!

Sincerely,

Aaron Zahn  
Managing Director & Chief Executive Officer

## TABLE OF CONTENTS

	<b>Page</b>
Questions and Answers About the Jea Long-Term Performance Unit Plan .....	A-1
Risk Factors To Be Considered Before Purchasing the Performance Units Under the JEA Long-Term Performance Unit Plan .....	B-1
Financial Statements .....	C-1
Instructions for Participating in the Plan .....	D-1
JEA Long-Term Performance Unit Plan .....	E-1
JEA Long-Term Performance Unit Agreement.....	E-1

## TAB A

### QUESTIONS AND ANSWERS ABOUT THE JEA LONG-TERM PERFORMANCE UNIT PLAN

#### INTRODUCTION

Below are a number of frequently asked questions (“FAQs”) regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR PARTICIPATION IN THE PLAN.**

#### GENERAL PLAN PROVISIONS

---

Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA, drive value for customers, drive value for the community of North East Florida, drive environmental value and drive financial value for JEA and the City of Jacksonville.

---

Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA, its affiliates, assigns, subsidiaries and successors, (collectively, the “**JEA Group**”) who has been employed by any member of the JEA Group for at least three months prior to the Purchase Date (as described in Q&A 3) and any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three months prior to the Purchase Date is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

Any exceptions to the above eligibility requirements must be recommended by JEA’s Chief Executive Officer (the “**CEO**”) and approved by the Chair of the Compensation Committee (the “**Committee Chair**”) of the Board of Directors of JEA (the “**Board**”).

---

Q3: How does the Plan work?

- A3: Each eligible employee may purchase a specified number of performance units (the “**Performance Units**”) as set forth in such employee’s Long-Term Performance Unit Agreement from JEA on January 15 of each year (the “**Purchase Date**”) by electing to defer a portion of such employee’s pay equal to the aggregate purchase price (the “**Purchase Price**”) for the Performance Units that such employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

- 
- Q4: Who administers the Plan?

- A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Committee Chair will be final and binding.

- 
- Q5: How many Performance Units are reserved under the Plan?

- A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan.

#### **ALLOCATION OF PERFORMANCE UNITS**

- 
- Q6: What is a Performance Unit?

- A6: Each Performance Unit is a phantom or notional unit that represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

- 
- Q7: How are Performance Units allocated under the Plan?

- A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement evidencing the Performance Units.

The Committee Chair has delegated its authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees (other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

- 
- Q8: How many Performance Units must I purchase to participate in the Plan?

A8: You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated to you.

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

---

Q9: How is the Purchase Price determined?

A9: Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

---

Q10: Will I be required to pay the Purchase Price for my Performance Units?

A10: Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Price will be equal to \$40.00 (\$10.00 x four Performance Units).

---

Q11: How do I pay the Purchase Price for my Performance Units?

A11: To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you. You must elect to defer your pay in the calendar year prior to the calendar year in which the compensation is earned and you purchase the Performance Units.

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019 (or an earlier date as selected by the Committee Chair). If you do not make this election by December 31, 2019 (or the earlier date as selected by the Committee Chair), you will not be eligible to purchase Performance Units on January 15, 2020.

---

Q12: Will I forfeit the Purchase Price that I pay for my Performance Units?

A12: Yes, if prior to the Vesting Date (as described in Q&A 13) your employment with any member of the JEA Group is terminated for cause (as described in Q&A 20) or you voluntarily resign your employment with any member of the JEA Group for any reason, you will forfeit the entire amount of the Purchase Price that you paid for the Performance

Units that have not vested as of the date of your termination or resignation, as applicable, of employment.

---

Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the “**Vesting Date**”). Except as otherwise described in Q&A 18, you must be employed with a member of the JEA Group on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price in respect of vested Performance Units.

A member of the JEA Group will pay the Redemption Price to you in respect of your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

---

Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the “**Performance Period**”).

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the “**2020/2023 Performance Period**”), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each “Value Change Percentage” increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the “**Redemption Price**”).

- For the 2020/2023 Performance Period, the “Challenge Value Target” will be 110% and the “Threshold Value Target” will be 90%.
- The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”
- “Current Year Value” means, with respect to the Performance Period, the sum of (a) JEA’s Net Position, as shown on JEA’s audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the closing date



of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA's customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) – (c).

- For the 2020/2023 Performance Period, "Base Year Value" is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA's audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>2</sup>

**Example:** [To come]<sup>3</sup>

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Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each "Value Change Percentage" decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

---

Q16: Who will calculate the Redemption Price?

A16: JEA's Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA's audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

---

Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions are as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D;

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<sup>2</sup> JEA to confirm that the Purchase Price will be refunded to a participant even if the performance metrics are not attained.

<sup>3</sup> JEA to provide.

- (b) except as described in Q&A 18, you must be continuously employed with JEA;
- (c) you must execute and not revoke a release of claims in favor of JEA and the City of Jacksonville (JEA will notify you when it is time for you to execute the release);
- (d) you must comply with the covenants set forth in your Long-Term Performance Unit Agreement (the “**Agreement**”); and
- (e) the conditions in Section 215.425(3), Florida Statutes must be satisfied.<sup>4</sup>

With respect to the conditions in (e), [insert description].<sup>5</sup>

---

Q18: What happens to my Performance Units and the Purchase Price that I paid upon an involuntary termination of employment with the JEA Group?

A18: If you experience an involuntary termination of employment prior to the applicable Vesting Date for your Performance Units, you will be paid the Redemption Price in respect of all of your Performance Units. Any Redemption Price payable to you as a terminated employee in respect of your Performance Units will be paid to you at the same time as the amounts would have been paid had you not experienced an involuntary termination of employment.

An involuntary termination of employment means a termination of employment by JEA without cause (as described in Q&A 20) or due to your death or disability (as defined in the Plan).

---

Q19: What happens to my Performance Units and the Purchase Price that I paid upon a termination of employment with the JEA Group for cause or a resignation of employment?

A19: If you experience a termination of employment for cause (as described in Q&A 20) or you resign your employment with JEA for any reason, in each case, prior to the applicable Vesting Date for your Performance Units, you will forfeit both the Performance Units to the extent unvested and the Purchase Price that you paid for such unvested Performance Units.

---

Q20: What is a termination of employment for “cause”?

A20: Under the Plan, “cause” generally means:

- (a) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement, or

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<sup>4</sup> JEA to consider whether to provide.

<sup>5</sup> JEA to provide.

(b) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import): (i) you have been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, any felony under applicable law or any crime involving dishonesty or moral turpitude; (ii) you have engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence that would reasonably be expected to result in a material injury to any member of the JEA Group; (iii) you willfully fail to perform your duties to any member of the JEA Group and/or willfully fail to comply with lawful directives of the Board; (iv) you materially breach any term of any contract to which you and any member of the JEA Group is a party; or (v) you materially breach any term of the Plan and/or your Long-Term Performance Unit Agreement.

With respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of “cause” is curable, JEA will provide written notice to you of the event within 30 days of JEA learning of the occurrence of such event, and such cause event must remain uncured 15 days after JEA has provided such written notice and any termination of your employment for “cause” with respect to clause (iii), (iv) or (v) must occur no later than 30 days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of “cause” is inconsistent with a definition of “cause” (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the “**Civil Service Rules**”), the definition of “cause” (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, will control.

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Q21: What happens if I am retirement eligible and retire before the applicable Vesting Date?

A21: If you become a retirement eligible employee (as described below) and retire, in each case, prior to the applicable Vesting Date for your Performance Units, your Performance Units will vest on the applicable Vesting Date.

You are retirement eligible if you have attained one of the retirement milestones as described in the General Employees Retirement Plan.

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Q22: What happens if my designation changes from appointed to civil service?

A22: If at any time during the period commencing on the date on which you are notified by JEA of your eligibility to participate in the Plan and ending on the last day of the Performance Period, your designation changes from appointed to civil service (whether or not such change is voluntary), the level at which you participate in the Plan will be adjusted to reflect such change.

If such change occurs (a) at any time prior to the Purchase Date, the number of Performance Units that you will be eligible to purchase will be reduced to a number of Performance

Units that is equal to the number of Performance Units you would have been eligible to purchase had you been civil service on the date on which you were notified of your eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, you will forfeit a number of Performance Units such that you will have purchased a number of Performance Units that is equal to the maximum number of Performance Units you would have been eligible to purchase had you been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA will refund to you the aggregate Purchase Price in respect of such forfeited Performance Units.

## **RECAPITALIZATION EVENT**

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Q23: What is a Recapitalization Event?

A23: A "Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (a) unencumbered cash proceeds to the City of Jacksonville of at least \$3,000,000,000 or (b) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.

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Q24: What happens to my Performance Units upon a Recapitalization Event?

A24: On the closing date of a Recapitalization Event, your Performance Units will vest and you will receive the applicable Redemption Price for your Performance Units. The Redemption Price will be paid in cash no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 16.

## **AMENDMENTS OF THE PLAN**

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Q25: May the Board amend the Plan?

A25: Yes, the Board may amend the Plan at any time. However, no amendment to the Plan may impair the rights of participants in the Plan without such participants' written consent. You will be provided any details of any amendment that would affect you as soon as reasonably practicable.

## **MISCELLANEOUS**

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Q26: Has the Plan been collectively bargained?

A26: Yes, the Plan has been collectively bargained with the applicable union representatives.<sup>6</sup>

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<sup>6</sup> JEA to update as applicable.

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Q27: How should I respond if someone asks about my Plan benefits or JEA's financial status?

A27: All inquiries from persons other than your legal, financial and/or tax advisors relating to the value of your Performance Units or JEA generally (including questions from the press, prospective JEA investors, JEA customers or vendors, prospective JEA hires and current co-workers) should be directed to the JEA's [TITLE].<sup>7</sup>

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<sup>7</sup> JEA to confirm that this is acceptable.

## TAB B

### **RISK FACTORS TO BE CONSIDERED BEFORE PURCHASING THE PERFORMANCE UNITS UNDER THE JEA LONG-TERM PERFORMANCE UNIT PLAN**

The occurrence of any of the following risks could materially and adversely affect JEA's business, operating results and financial condition. In addition, risks and uncertainties that are not presently known to us or that we currently believe are immaterial may also impair JEA's business and operations. If any of these risks occur, the value of your Performance Units could decline and you may lose all or part of your Purchase Price.

**The list of risk factors below does not purport to be a complete enumeration or explanation of the risks involved in purchasing the Performance Units under the Plan. You should carefully evaluate all of the information in this invitation booklet, the Plan and your Long-Term Performance Unit Agreement and consult with your own legal, tax and/or financial advisers before deciding whether to purchase Performance Units and pay the Purchase Price under the Plan.**

**There are a number of factors that may impact JEA's business and financial conditions.**

The Redemption Price of the Performance Units will be subject to the future performance of JEA and, accordingly, before purchasing the Performance Units, you should carefully consider the risk factors described in JEA's Electric System and Water & Sewer System Annual Disclosure Reports (the "Annual Reports") filed with the Municipal Securities Rulemaking Board on its EMMA website and on [www.jea.com](http://www.jea.com) under the "Financial Reports" section (About > Investor Relations > Financial Reports > Annual Disclosure Reports), which are incorporated by reference into this invitation booklet, together with the other information incorporated by reference herein or provided in this invitation booklet (including the risks set forth below).

**The issues and associated risks and uncertainties discussed in the Annual Disclosure Reports that are incorporated herein by reference are not the only ones JEA may face. Additional issues may arise or become material as the energy, water and wastewater industries evolve. The risks and uncertainties associated with those additional issues could impair JEA's businesses in the future.**

The Redemption Price of the Performance Units in the future may be higher or lower than the Purchase Price that you paid for the Performance Units due to changes in JEA's operating performance or prospects and other factors, including broad market fluctuations. Some specific factors that may have a significant effect on the Redemption Price of your Performance Units include:<sup>8</sup>

- JEA has a history of losses, and may not achieve or maintain profitability in the future;

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<sup>8</sup> JEA to confirm.

- climate change, or legal, regulatory or market measures to address climate change, may negatively affect JEA's business, operations and/or financial performance;
- natural disasters, including, but not limited to, hurricanes and/or fires, could destroy JEA's facilities and equipment;
- actual or anticipated fluctuations in JEA's operating results or future prospectus;
- factors outside of JEA's control, including modifications to JEA's book value;
- strategic actions by other industry participants, such as acquisitions or restructurings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to JEA's business;
- JEA may be subject to legal proceedings and litigation, which are costly and may subject JEA to significant liability and increased costs of doing business;
- changes in accounting standards, policies, guidance, interpretations or principles; and
- adverse conditions in the financial markets or general economic conditions, including but not limited to, those resulting from war, incidents of terrorism and responses to such events.

**There is no duty to update this invitation booklet.**

JEA has no obligation to update the information contained in this invitation booklet. Accordingly, you should bear in mind that there may have been material changes in the affairs of JEA since the date of this invitation booklet, and it is up to you to review JEA's publicly available reports and information.

The information and expressions of opinion set forth herein or included herein by specific reference are subject to change without notice, and neither the delivery of this invitation booklet, nor the Plan nor your Long-Term Performance Unit Agreement shall, under any circumstances, create the implication that there has been no change in the affairs of JEA since the date hereof and thereof.

**The Performance Units are not transferable and there is no market available for sale of the Performance Units.**

You may not transfer, sell, pledge or otherwise dispose of your Performance Units (other than by will or the laws of descent or distribution) and there is no market to sell the Performance Units.

\* \* \*

<p><b>THE PERFORMANCE UNITS ARE NOT SECURITIES OF JEA, NOR ARE THEY INTENDED TO BE TREATED AS SUCH AND ANY REPRESENTATION BY JEA OR ITS AGENTS TO THE CONTRARY SHOULD NOT BE RELIED UPON.</b></p>
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## TAB C

### **FINANCIAL STATEMENTS**

You can access and view JEA's financial statements, including the unaudited Quarterly Analysis of Financial Performance for the quarter ended June 30, 2019, through this link:<sup>9</sup>

[https://www.jea.com/About/Investor\\_Relations/Financial\\_Reports/](https://www.jea.com/About/Investor_Relations/Financial_Reports/)

Please contact [NAME] at [EMAIL ADDRESS] if you have trouble viewing or accessing the financial statements.

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<sup>9</sup> To be updated prior to distribution to participants, as necessary.



**TAB D**

**INSTRUCTIONS FOR PARTICIPATING IN THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

To purchase Performance Units and participate in the Plan:

- You must sign and return your Long-Term Performance Unit Agreement enclosed with this invitation booklet;
- You must complete, sign and return the Purchase of Performance Units and Deferral Election attached as Schedule I to your Long-Term Performance Unit Agreement; [and]
- [Any other requirements?]<sup>10</sup>

The documents listed above must be returned to [NAME], [TITLE], at JEA, at [ADDRESS], or at [EMAIL ADDRESS].

**All required forms and materials must be postmarked by no later [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase Performance Units and participate in the Plan.**

<sup>10</sup> JEA to confirm.

**TAB E**

**JEA LONG-TERM PERFORMANCE UNIT PLAN**

[To be attached]

**TAB F**

**JEA LONG-TERM PERFORMANCE UNIT AGREEMENT**

[To be attached]

## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees’ proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this “Plan”) is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date and the Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the last day of the Performance Period.

### SECTION 3 ADMINISTRATION; CERTIFICATION

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA’s senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

#### **SECTION 4 EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.



**SECTION 5**  
**VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from

appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

#### **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

#### **SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the

Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units.

## **SECTION 8 AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## **SECTION 9 MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A

and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment

Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

*[Remainder of Page Intentionally Left Blank]*

**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_\_] day of [\_\_\_\_\_] , 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_\_] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that the Participant defers hereunder are unfunded and unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax

[ID NUMBER]



advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to the Participant the aggregate Purchase Price of such forfeited Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant; (ii) provide full support and cooperation in the best interests of the JEA Group; and (iii) take no action that would be considered contrary to the best interests of the JEA Group.

(b) Confidentiality.

(i) *Protection of Information.* The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the

Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among

the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

7. **Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

8. **Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

9. **Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

10. **Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

11. **Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0185**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]  
Participant First Name: [•]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [•]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases) \_\_\_\_\_

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_  
Equal installments from pay to be paid over the next [NUMBER] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME SIGNATURE DATE

## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(ii) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(iii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iv) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(v) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(vi) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any

termination of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan; payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date ~~or any~~ and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.



(l) “Involuntary Termination” means, with respect to a Participant, a termination of the Participant’s employment by any member of the JEA Group without Cause or due to such Participant’s death or Disability.

(m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.

(n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.

(o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date ~~and the Closing Date.~~

(p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.

(q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.

(r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.

(s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.

(t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.

(u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.

(v) “Vesting Date” means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

**SECTION 3  
ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

**SECTION 4  
EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

- (a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").
- (b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## **SECTION 5 VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent

unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

## **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To ~~receive a Purchase Price~~purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments

shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

## **SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

## **SECTION 8 AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## **SECTION 9 MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the

Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any ~~Agreement~~ Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of

Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the

JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

*[Remainder of Page Intentionally Left Blank]*



**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \${AMOUNT}.<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.5.0.0 Document comparison done on 9/10/2019 11:06:22 AM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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Move To	0
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Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>21</b>

**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this “**Agreement**”) is made effective as of the [ ] day of [ ], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“**JEA**”), and [ ] (the “**Participant**”).

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant’s proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA’s Long-Term Performance Unit Plan (the “**Plan**”) on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant’s pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant’s pay for performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that the Participant defers hereunder are unfunded

[ID NUMBER]

and unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to the Participant the aggregate Purchase Price of such forfeited Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant; (ii) provide full support and cooperation in the best interests of the JEA Group; and (iii) take no action that would be considered contrary to the best interests of the JEA Group.

(b) Confidentiality.

(i) *Protection of Information.* The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has

expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]  
Participant First Name: [•]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [•]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_  
Equal installments from pay to be paid over the next [FWONUMBER] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

NAME

SIGNATURE

DATE

I-1

[ID NUMBER]



<b>Summary report:</b>	
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Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>9</b>

From: "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>

Sent: Tuesday, November 5, 2019, 8:13 AM

To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Subject: Fwd: PUP Meeting

Attachments: Additional Questions and Inital Concerns on the PUP.docx; ATT00001.htm

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Begin forwarded message:

**From:** "Reber, Heather" <HReber@coj.net>

**Date:** October 31, 2019 at 3:12:47 PM EDT

**To:** "wannrf@jea.com" <wannrf@jea.com>, "Hall, Sherry" <HallSL2@jea.com>, "vinyht@jea.com" <vinyht@jea.com>

**Cc:** "Billy, Kyle" <KBilly@coj.net>, "Taylor, Kim" <KTAYLOR@coj.net>, "Peterson, Phillip" <PhillipP@coj.net>, "Rodda, Jeffrey" <JRodda@coj.net>, "Parks, Brian" <BParks@coj.net>

**Subject:** PUP Meeting

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486

**JEA0207**

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Additional Questions:**

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of \$808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the \$10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
  - a. Will the "In-kind" contributions be included in any of the redemption price schedule calculations?
  - b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
  - c. What will happen to forfeited Performance Units?
  - d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Concerns:**

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.

From: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>  
Sent: Monday, November 4, 2019, 12:28 PM  
To: "'Hodges, Lawsikia'" <LHodges@coj.net>  
Cc: "Rondinelli, Mellissa" <MRondinelli@coj.net>  
Subject: RE: docs needed for tomorrow's meeting  
Attachments: JEA - Form of Long-Term Performance Unit Agreement AS REVISED (FINAL).docx; JEA - Long-Term Performance Unit Plan AS REVISED (FINAL).docx

---

Hi Lawsikia,  
Attached are the current versions of the PUP and PUA.  
Best,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



Building Community\*

**From:** Hodges, Lawsikia <LHodges@coj.net>  
**Sent:** Monday, November 4, 2019 11:08 AM  
**To:** Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>  
**Subject:** FW: docs needed for tomorrow's meeting

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne, I do not believe I ever received the final PUP from you; can you please send me this document.

**JEA0210**

**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [\_\_\_\_\_] day of [\_\_\_\_\_] , 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [\_\_\_\_\_] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that the Participant defers hereunder are unfunded and unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax [ID NUMBER]



advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to the Participant the aggregate Purchase Price of such forfeited Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) Confidentiality.

(i) *Protection of Information.* The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the



Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "**Confidential Information**" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the

parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

**7. Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

**8. Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

**9. Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

**10. Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

**11. Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0215**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]  
Participant First Name: [•]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [•]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases) \_\_\_\_\_

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_  
Equal installments from pay to be paid over the next [NUMBER] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME SIGNATURE DATE

## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees’ proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this “Plan”) is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chairperson of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chairperson of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which a Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date and the Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 27th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 27th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 27, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. For the avoidance of doubt, (i) the Redemption Price shall include the Purchase Price per Performance Unit and the Purchase Price may be reduced to \$0 in accordance with the Redemption Price Schedule and (ii) if performance results in a percentage between the Challenge Value Target and the Threshold Value Target, then a Participant shall only be eligible to receive an amount equal to the Purchase Price paid by such Participant for his or her Performance Units.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the last day of the Performance Period.



**SECTION 3  
ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

**SECTION 4  
EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## **SECTION 5 VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. Upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis (provided, however, that all the Performance Units have not previously been purchased by Participants).

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

## **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than March 15th of the calendar year following the calendar year in which the applicable Performance Period ends.

**SECTION 7**  
**CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes (if applicable). Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units.

**SECTION 8**  
**AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan.

**SECTION 9**  
**MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and

457(f)”), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term “JEA” whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant’s estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding

arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

*[Remainder of Page Intentionally Left Blank]*

**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.



## Luster, Jill R. - Executive Staff Assistant

---

**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, December 9, 2019 3:57 PM  
**To:** Luster, Jill R. - Executive Staff Assistant  
**Subject:** Fwd: JEA - Performance Unit Plan - Enrollment Material

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - VP & Chief Human Resources Officer" <[kendja@jea.com](mailto:kendja@jea.com)>  
**Date:** December 9, 2019 at 10:31:42 AM EST  
**To:** "Rhode, Lynne C. (City of Jacksonville)" <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** FW: JEA - Performance Unit Plan - Enrollment Material

FYI

**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Monday, November 4, 2019 3:28 PM  
**To:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <[kendja@jea.com](mailto:kendja@jea.com)>  
**Subject:** FW: JEA - Performance Unit Plan - Enrollment Material  
**Importance:** High

Jon,

See below. Mass Mutual cannot pull this off in 4-6 weeks.

Would you still like for us to proceed to the plan for administration as discussed last week with Mass Mutual RetireSmart online access as go-live in March 2020? We will commence work with them now and if we can start the implementation project sooner, we will do this.

I am also awaiting the proposed contract for the work associated with the administration.

Pat

**From:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Sent:** Monday, November 4, 2019 2:11 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Subject:** JEA - Performance Unit Plan - Enrollment Material  
**Importance:** High

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

Following our conversation on Friday, I made a number of internal inquiries regarding the preparation of enrollment materials for the new plan. Since the enrollment materials are all generated based on how a plan is setup and established on our recordkeeping we will be unable to have the necessary material in four weeks as it takes 60 to 90 days to establish new plans on the system.

I tried but was not successful in pushing for an exception.

I am heading out for meetings the rest of the day. I will be around most of the day tomorrow.

Regards,

**Michael M. Scheelz**

**Client Engagement Manager | Government Markets  
Workplace Solutions**

**MassMutual**

100 Bright Meadow Boulevard | Enfield, CT 06082  
C:(813) 244 0059

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**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, November 4, 2019 12:29 PM  
**To:** 'Hodges, Lawsikia'  
**Cc:** Rondinelli, Mellissa  
**Subject:** RE: docs needed for tomorrow's meeting  
**Attachments:** JEA - Form of Long-Term Performance Unit Agreement AS REVISED (FINAL).docx; JEA - Long-Term Performance Unit Plan AS REVISED (FINAL).docx

Hi Lawsikia,  
Attached are the current versions of the PUP and PUA.  
Best,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



**From:** Hodges, Lawsikia <[LHodges@coj.net](mailto:LHodges@coj.net)>  
**Sent:** Monday, November 4, 2019 11:08 AM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** FW: docs needed for tomorrow's meeting

(If you're not a subscriber to this email list, you may have received this message in error. If you have received this message in error, please do not reply to this email.)

Lynne, I do not believe I ever received the final PUP from you; can you please send me this document.

**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Vinyard, Herschel T. - Chief Administrative Officer  
**Sent:** Tuesday, November 5, 2019 8:13 AM  
**To:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** Fwd: PUP Meeting  
**Attachments:** Additional Questions and Inital Concerns on the PUP.docx; ATT00001.htm

Begin forwarded message:

**From:** "Reber, Heather" <HReber@coj.net>  
**Date:** October 31, 2019 at 3:12:47 PM EDT  
**To:** "wannrf@jea.com" <wannrf@jea.com>, "Hall, Sherry" <HallSL2@jea.com>, "vinyht@jea.com" <vinyht@jea.com>  
**Cc:** "Billy, Kyle" <KBilly@coj.net>, "Taylor, Kim" <KTAYLOR@coj.net>, "Peterson, Phillip" <PhillipP@coj.net>, "Rodda, Jeffrey" <JRodda@coj.net>, "Parks, Brian" <BParks@coj.net>  
**Subject:** PUP Meeting

[Internal Email - Exercise Caution: DO NOT open attachments or click links from unknown senders in unexpected email.]

Ryan, Sherry and Herschel,

---

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Additional Questions:**

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of \$808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the \$10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
  - a. Will the "In-kind" contributions be included in any of the redemption price schedule calculations?
  - b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
  - c. What will happen to forfeited Performance Units?
  - d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Concerns:**

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.

From: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Sent: Monday, December 9, 2019, 3:56 PM

To: "Luster, Jill R. - Executive Staff Assistant" <lustjr@jea.com>

Subject: Fwd: A Proposal for JEA Non-Qualified Plan

Attachments: image001.gif; ATT00001.htm; image003.png; ATT00002.htm; image001.gif; ATT00003.htm; image004.gif; ATT00004.htm; image004.gif; ATT00005.htm; image004.gif; ATT00006.htm; image004.gif; ATT00007.htm; image004.gif; ATT00008.htm; image004.gif; ATT00009.htm; image005.png; ATT00010.htm; image006.png; ATT00011.htm; image008.png; ATT00012.htm; image009.png; ATT00013.htm; image004.gif; ATT00014.htm; MassMutual Pricing Proposal for JEA Non-Qualified Plan.pdf; ATT00015.htm

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1 of 3

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - VP & Chief Human Resources Officer" <kendja@jea.com>  
**Date:** December 9, 2019 at 10:32:11 AM EST  
**To:** "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

FYI

**From:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Sent:** Monday, November 18, 2019 8:21 AM  
**To:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <kendja@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Jon,

If there is an intent to roll this plan out in the future, e.g., 2021, we would prefer 6 mos get contract signed and set-up automated enrollment and administration.

NOTE: assuming we no longer need this at this time.

Pat

**From:** Scheetz, Michael <mscheetz@massmutual.com>  
**Sent:** Friday, November 8, 2019 10:36 AM

JEA0235

**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

I am forwarding to your attention the proposal for the annual recordkeeping for the Non-Qualified Performance Unit Plan. Since we do not know the number of participants that will participate in the plan, we had to make some assumptions. We extracted from the database a list of employees with compensation over \$150,000 with the assumption this group of employees are the most likely to contribute. Based on that extraction we arrived at 37 participants for pricing purposes.

Let me know if you have any follow up questions.

Regards,

**Michael M. Scheetz**  
Client Engagement Manager | Government Markets  
Workplace Solutions  
**MassMutual**  
100 Bright Meadow Boulevard | Enfield, CT 06082  
C:(813) 244-0059

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[Twitter \[twitter.com\]](https://www.twitter.com) | [LinkedIn \[linkedin.com\]](https://www.linkedin.com)

**From:** Girard, Chad <CGirard@MassMutual.com>  
**Sent:** Friday, November 08, 2019 10:19 AM  
**To:** Scheetz, Michael <mscheetz@massmutual.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Please let me know if you need anything else.

**Chad Girard**  
Sales Consultant  
Workplace Solutions & Strategic Distribution

**MassMutual**  
C: (413) 386-5658  
100 Bright Meadows Blvd  
Enfield, CT 06082

**JEA0236**



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JEA Non-Qualified Plan

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A nonqualified deferred compensation (NQDC) plan is an integral part of that package when it comes to attracting, rewarding and retaining key employees. It can help highly compensated employees (HCEs) bridge the gap between pre- and post-retirement incomes on a pre-tax basis.

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Rising health care costs



Shifting roles – employer as benefits funder to facilitator



Fragmented employee benefits selection experience



Defined contribution limitations for HCEs



Need to maximize benefits dollars



Changing regulations



Demand for simple, holistic solutions

**Retirement income gap for highly compensated employees**

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## Making it easy@work

Our team of highly knowledgeable professionals will consult with you to design a NQDC plan that meets your needs – whether you are not-for-profit or for-profit – and provides your employees with the best overall retirement plan package.

MassMutual's unique approach offers all the components you need to offer an attractive NQDC plan that complements your existing retirement benefits program, including:



Dedicated service team and resources to help ease administrative burden



Comprehensive plan design and consulting services



Complete plan documentation



Full recordkeeping and administration services



Quarterly management reports



Participant education and enrollment



Web access and quarterly participant statements



Investment solutions tailored to meet financial goals



Professional trust services

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## An integrated team approach

MassMutual, together with MyDeferral Executive Benefits and Reliance Trust Company, provides the resources you need to attract, reward, and retain top talent, and as a result, help your organization succeed. You will benefit from the combined experience of these three retirement plan specialists with expertise in their respective fields.

### MYDEFERRAL

#### MyDeferral Executive Benefits

We work closely with MyDeferral Executive Benefits, a leading national executive benefits firm specializing in nonqualified plan services, to provide administrative and recordkeeping services.

MyDeferral Executive Benefits currently provides services to more than 1,200 corporate clients in 49 states and 65 countries with over \$11 billion in assets under administration. They are ranked as a “Top 5 NQDC Provider” by PLANSPONSOR magazine.



#### Reliance Trust Company

We partner with Reliance Trust Company, a leading provider of customized retirement plan, trust, financial and investment solutions.

The retirement strategies group at Reliance Trust Company is one of the largest trust providers to retirement plans in the nation and currently provides services to more than 60,000 retirement plans with retirement plan assets over \$190 billion. All plans are administered and serviced by seasoned retirement professionals with a strong consulting-based approach supporting new innovative products, designing process efficiencies and providing ongoing fiduciary and trust support.

Neither MyDeferral Executive Benefits nor Reliance Trust Company is affiliated with MassMutual or any of its subsidiaries.

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## Employee resources to optimize retirement readiness

### Online account access



**RetireSmart.com** offers educational tools and resources to help assess and improve retirement readiness. It allows participants to view their NQDC account balances, annual account rates of return and investment performance together with their other qualified plan information.



Participants will also have single sign-on access to **MyDeferral Executive Benefits website** via the My NQDC page on **RetireSmart.com**, which provides functionality including online investment reallocation, transaction history and online enrollment.



**MapMyFinances** is an online educational planning tool that provides a comprehensive game plan tailored to an employee's unique situation to improve financial wellness.

<sup>1</sup>Apple® App Store® rating as of July 1, 2019. Apple® and App Store® are trademarks of Apple Inc.

<sup>2</sup>ContactCenterWorld top-performing call center 11 years in a row (2008-2018).

Guidance may not be available for certain products. Guidance is based on MapMyFinances assumptions and information provided by the employee and employer.

FOR EMPLOYER USE ONLY.

### Account access on the go

**RetireSmart mobile app** provides account access anytime, anywhere.

4.6



as rated  
by 2.94K  
RetireSmart  
app users<sup>1</sup>



### Participant call centers

Our award-winning **participant information centers**<sup>2</sup> are geographically dispersed around the United States and staffed with highly trained and knowledgeable professionals.

Additionally, **MyDeferral Executive Benefits representatives** are available for NQDC participants to provide customized deferred compensation plan support.

## The MassMutual difference

A strong mutual company with the right, experienced people

**1851**  
YEAR FOUNDED

**70+**  
YEARS  
servicing  
retirement plans

**2.6M**  
participating  
employees<sup>1</sup>

**\$185.3B**  
assets under  
management<sup>2</sup>

**93%**  
client  
retention<sup>3</sup>

Among the highest financial strength ratings<sup>4</sup> of any company in any industry

A.M. Best	A++
Fitch Ratings	AA+
Moody's Investors Service	Aa3
Standard & Poor's	AA+

MassMutual has paid dividends<sup>5</sup> to eligible participating policy owners every year since 1869.

## Award-winning success



Ranked as  
**34<sup>th</sup>** on the  
**FORTUNE<sup>®</sup> 500**  
list in 2019<sup>6</sup>



Recognized as a  
**2019 World's Most  
Ethical Company** by  
Ethisphere Institute for the  
sixth consecutive year



Named a  
**2018 Top-Performing  
Call Center**  
by ContactCenterWorld for  
the eleventh consecutive year



Earned **39 Plan  
Sponsor Council  
of America  
"Signature Awards"**  
since 2013

<sup>1</sup> Data for MassMutual's Workplace and Institutional Solutions, as of December 31, 2018.

<sup>2</sup> Financial strength ratings are as of July 1, 2019. Ratings are for MassMutual (Springfield, MA 01111) and its subsidiaries, C.M. Life Insurance Co. and MML Bay State Life Insurance Co. (Enfield, CT 06082). Ratings are subject to change.

<sup>3</sup> Dividends are not guaranteed.

<sup>4</sup> FORTUNE<sup>®</sup> and FORTUNE<sup>®</sup> 500 are registered trademarks of Time, Inc. and are used under license. FORTUNE<sup>®</sup> and Time, Inc. are not affiliated with and do not endorse products or services of MassMutual.

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## Experience the MassMutual difference



Financial wellness solutions for your employees and your bottom line



Capabilities to drive better outcomes



Resources to make it easy for you to do business with us

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For more information, call your financial professional  
or local MassMutual retirement specialist.

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# NQDC Cost and Disclosure

JEA Non-Qualified Plan - Plan Pricing

**Annual Applicable Fee** **\$5,550**

## Assumptions About Your Plan

Plan Type	For Profit/Top Hat
Total Number of Plans	1
Transferred assets	\$0
Estimated annual cash flow	\$370,000
Total Participants with Balances	37
Total Eligibles	37

The fees and assumptions included are subject to the plan design stated in this proposal and are in effect for 90 days from the date of the proposal. If the parameters are changed, we reserve the right to revise the fee estimates to better reflect the design and administrative needs of your organization's nonqualified plan. All services and fees are finalized by execution of a service agreement with MassMutual. Any additional services will be quoted upon request.

# NQDC Cost and Disclosure

## Proposal Assumptions

Platform / Funding Type	Mutual Fund
Share class package	S
Trustee Services	Included
Up to 10 accounts for each participant including one account for 457(b) and up to 10 accounts for 457(f) tied to vesting	Included
Participant deferrals and sponsor contribution sources	Included
Contribution frequency of bi-weekly, semi-monthly, monthly, quarterly, or annually	Included
Rabbi Trust	Included

Compensation to Your Financial Advisor	First Year	Subsequent Years
Flat Dollar Amount	\$0	\$0
Percentage of Plan Assets	0.00%	0.00%

# About your plan expenses and our compensation

This section describes the expenses that you and your plan may incur for investment management and administrative services (found under the MassMutual Smart Architecture<sup>SM</sup> Investment Program (“Smart Architecture Report”) Appendix 2). This section also identifies the portion of those expenses that we retain as compensation for the services we provide to your plan. It is important to keep in mind that the revenue we retain is a part of, and is not additional to, your plan’s total expenses. Your plan’s total expenses are impacted by the nature and complexity of your plan, the investment options and share classes you select, the services you ask us to provide and the compensation we pay to your financial intermediary. Not all of the expenses described here will apply to your plan and we offer you various alternatives for structuring and paying for the services we provide.

The MassMutual nonqualified program includes a grantor trust, commonly known as a rabbi trust. Under the grantor or rabbi trust, the trust assets remain subject to the claims of the Employer’s general creditors but are protected from future management ability to use money deposited in the trust for other corporate purposes.

Under our programs, plan expenses are generally paid in two ways: (1) expenses paid through or in connection with the plan’s investment options, and (2) fees paid directly out of corporate assets or, if permitted under your rabbi trust, out of participant

accounts. We may be paid for our services, including our investment, administrative and recordkeeping services, in the same way – through the plan’s investments indirectly or through the plan sponsor directly.

## Expenses paid through or in connection with the plan’s investment funds

The expenses paid through the plan’s investments (e.g., the investment’s “Expense Ratio”) cover some or all of the costs of investment management.

### Expense ratios and total weighted annual expense ratio:

The Expense Ratio for each of the investments included in our investment program is set forth in the accompanying Smart Architecture Report. The Expense Ratio is expressed as an annualized percentage of the investment options assets and refers to the amount paid from the investment options’ assets for investment management and other services and expenses (including any 12b-1 fees). It shows what your plan (and participants) pay, along with all other investors, in connection with the investment option. Because this amount is deducted from the investment options assets, it is reflected in the investment options net investment performance.

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An Investment's Expense Ratio may change over time as invested assets and underlying operating expenses increase or decrease. More detailed fee information for mutual funds you've selected is disclosed in each mutual fund's prospectus.

The Total Weighted Annual Expense Ratio (assuming a sample investment mapping has been prepared) is the sum of the Expense Ratios for each of the investments weighted for the assumed percentage of plan assets invested in each. For example, if a plan invests 50% of its assets in Fund A, which has a total annual Expense Ratio of 100bp, and 40% of its assets in Fund B, which has a total annual Expense Ratio of 50bp, then the Total Weighted Annual Expense Ratio for the plan is calculated as follows:

**TOTAL WEIGHTED ANNUAL EXPENSE RATIO**

	Expense Ratio	x	Allocation Percentage	=	Weighted Annual Expense Ratio
Fund A	100bp		60%		60bp
Fund B	50bp		40%		20bp
					<b>Total 80bp</b>

As explained above, we retain a portion of the plan's expenses as compensation for the services we provide. This section describes how we calculate the revenue (i.e., MassMutual's share of the Expense Ratio) that we receive from each investment option. The total weighted MassMutual revenue, assuming a sample investment mapping has been prepared, is the sum of the revenue received from each of the investments (calculated in the manner described below) weighted for the assumed percentage of plan assets invested in each. The accompanying Smart Architecture Report also shows our share of the Expense Ratio of each

investment option under the column "Revenue" (expressed as an annualized percentage of invested assets). This information is provided to illustrate both the revenue we anticipate receiving in connection with each investment option in which your plan invests and our relative financial interest in your investment selections. Here's how we arrived at our revenue rates included in the Smart Architecture Report:

- The revenue rates shown for mutual funds advised by unaffiliated advisers or by OppenheimerFunds, Inc. (our subsidiary) equals the gross revenues (commonly referred to as "revenue sharing payments") paid to us by those funds or their investment advisors for making these funds available and/or for providing certain distribution, record keeping and/or other services to those funds.
- For our own mutual funds (MassMutual Premier and Select Funds) our revenue rates shown equal the gross revenues we receive from these investments less certain amounts we pay to others, including fee waivers/reimbursements, sub-advisor fees (which may be paid to affiliated sub-advisers), sub-administrator fees, 12b-1 fees, expenses we incur to establish and maintain these investment options and any other direct expenses of the investment option we are required to pay under our investment management agreements with the funds.

**Loads, sales charges, redemption fees and surrender charges:**

Currently, none of the mutual fund investment options offered as part of our program impose front-end loads, sales charges or redemptions fees on the plan in connection with the purchase or sale of the plan's interest

# Fees directly paid by the sponsor to MassMutual

In addition to expenses paid through or in connection with your plan's investments options, plan expenses can be paid out of corporate assets and, if permitted under your rabbi trust, out of participant accounts. These fees may be one-time or recurring and may be for services provided to the plan sponsor as a whole or to individual participants.

Fees for nonqualified plan cannot be cross-subsidized by any qualified plans you sponsor for which MassMutual provides administrative services.

Generally, these fees constitute revenue to us. Exceptions to this general rule include expenses that we collect on behalf of third-party service providers (e.g., vendor expense for administrative services).

The Proposal lists the following direct fees as applicable to your plan:

**One-time plan set-up fee:** The fee for transitioning your plan from your prior provider and installing it on our systems, if any, is included in the plan pricing.

**Ongoing annual fees:** Ongoing annual fees applicable to your plan are listed in Appendix 1. These expenses may be expressed as flat dollar amount.

**Transactional and optional services fees:** The Service and Fee Schedule lists the comprehensive services we provide, including those services that may be requested by you and your participants for which a separate fee may apply.

**Financial intermediary compensation:** We generally sell our retirement plan services through intermediaries, including our career insurance agents, independent brokers (including insurance brokers, investment advisors, and registered representatives of broker-dealers), third party administrators of retirement plans, and consultants.

When your plan selects one of our products, we (or one of our affiliates) compensates the financial intermediary. The nature and level of services that intermediaries provide to us or plans, plan sponsors, and plan participants can impact the amount of compensation we pay to an intermediary with respect to a specific retirement plan sale. In addition, the form or method for compensating intermediaries varies from sale to sale.

Because we pay intermediary compensation from the revenue we receive on your plan, the level of intermediary compensation may impact our fee proposal for your plan.

Note that these compensation arrangements (and those that your intermediary may have with other providers) may provide an intermediary with a financial incentive to recommend one

product or provider over another. As a fiduciary, you may want to take such compensation arrangements into account when evaluating recommendations from your intermediary. If you have any questions regarding the compensation that may be paid by us or other providers to your intermediary, you should contact the intermediary or his/her organization to determine if they have entered into any such agreements.

The *Appendix 1/Fees/NQDC Proposal Assumptions* Section of the Proposal identifies the proposed advisor compensation that we have specifically taken into account in preparing your proposal. A detailed explanation of the forms of intermediary compensation identified in the NQDC Proposal Assumptions section of the Proposal and other forms of advisor compensation to which your advisor may be entitled is set forth below.

## Forms of intermediary compensation

**Commissions:** The most common form of intermediary compensation we pay is a commission. Commissions normally are calculated as a percentage of asset, calculated at an annual rate and computed on the aggregate assets invested by the Plan Sponsor through the Product at the close of the last business day of each calendar month, and paid monthly in arrears.

Commissions may also be paid as a flat percentage, a one-time payment of a percentage of the assets initially invested by the Plan Sponsor through the Product.

Commissions may also be contribution-based in which case a payment of some percentage of contributions made to the plan for a specified time frame is computed on the aggregate contributions through the Product by the Plan Sponsor as of the close of the last business day of each calendar month and said monthly paid in arrears.

**Distribution and shareholder service fees:** Intermediaries may receive Distribution Fees or Shareholder Service Fees for services provided in connection with investments in our proprietary mutual funds. Distribution fees may be paid for providing services in connection with the distribution and marketing of investments in our proprietary mutual fund shares and for related expenses. Shareholder Service Fees may be paid for providing services to shareholders or maintaining shareholder accounts and for related expenses. Expenditures for Shareholder Servicing Fees may include: providing advice regarding the particular shareholder account options offered by the mutual fund in light of shareholder needs; delivering current prospectuses, reports, notices, and other information, including information about the mutual funds; providing support services, including answering participant inquiries; forwarding communications from the mutual funds to participants; and providing any other shareholder services with respect to the mutual funds which we may request.

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**Sub-contracting service fees:** We may compensate an intermediary for providing plan administrative services to the plan sponsor that we otherwise would provide ourselves.

Such services might include, for example, assistance with enrollment meetings.

**Sponsorship payment:** We may compensate an intermediary for promotional activities not specific to any particular plan.

For example, we may provide training support, conference support, marketing or other services to promote general awareness of our products or services.

**Override payment:** If an intermediary is associated with an organization that maintains a sales force (a “selling organization”) that sells our products, we may pay the selling organization an “override payment” pursuant to the terms of a written agreement. This payment is designed, in part, to defray a portion of the selling organization’s cost of maintaining a sales force. Override Payments are paid as either (i) a flat fee or (ii) a percentage of the compensation paid to the intermediaries that are affiliated with the selling organization.

**Career agent cash and non-cash compensation:** MassMutual career agents who sell our products may receive, in addition to commissions, productivity bonuses, credits towards their benefit plans, recognition items, and payment of the costs associated with conferences or seminars.

## Additional disclosures

**Fiduciary responsibility:** In making the investments under our products available, we are not acting as a fiduciary of your plan. The Plan Sponsor or its delegate is responsible for selecting the investment options for the Plan, including the investment options to which Plan assets are mapped. When performing our non-discretionary administrative services for the Plan, we act only in the capacity of a service provider and not in any fiduciary capacity. The Plan Sponsor is responsible for appointing an Administrator who has discretionary authority in the administration of the Plan.



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CRS 40939 00

**JEA0253**



**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Zahn, Aaron F. - Managing Director/CEO  
**Sent:** Tuesday, November 12, 2019 5:13 PM  
**To:** Jason Gabriel (jgabriel@coj.net)  
**Cc:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** Letter on Plan  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

Jason –  
Please see attached letter. Thank you again for all the analysis of OGC.  
Regards –  
Aaron

*Auto Deleted*

*From:*

*Sent:*

*To:*

*Subject:*

*Attachments:* [zahnaf@jea.com](mailto:zahnaf@jea.com)

**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Gabriel, Jason <JGabriel@coj.net>  
**Sent:** Tuesday, November 12, 2019 5:46 PM  
**To:** Zahn, Aaron F. - Managing Director/CEO  
**Cc:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** RE: Letter on Plan  
**Attachments:** GC-#1320996-v1-Letter\_to\_Mr\_Zahn\_re\_JEA\_PUP.PDF

{External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.}

Aaron –

Thank you, please see my letter attached. We appreciate the opportunity to work with you in these matters. Don't hesitate to contact me with any questions or concerns.

-Jason G.

**From:** Zahn, Aaron F. - Managing Director/CEO [mailto:zahnaf@jea.com]  
**Sent:** Tuesday, November 12, 2019 5:13 PM  
**To:** Gabriel, Jason  
**Cc:** Rhode, Lynne C. (City of Jacksonville)  
**Subject:** Letter on Plan

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Jason –  
Please see attached letter. Thank you again for all the analysis of OGC.  
Regards –  
Aaron

  
Aaron Zahn  
Managing Director/CEO  
City of Jacksonville  
1000 Municipal Center Blvd  
Jacksonville, FL 32209  
Phone: 904.255.1000  
Fax: 904.255.1001  
Email: [zahnaf@jea.com](mailto:zahnaf@jea.com)

---

Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records

Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

**Rhode, Lynne C. (City of Jacksonville)**

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**From:** Zahn, Aaron F. - Managing Director/CEO  
**Sent:** Wednesday, November 13, 2019 11:21 AM  
**To:** Rhode, Lynne C. (City of Jacksonville); Jones, Madricka L. - Executive Staff Assistant  
**Subject:** CC to BOD  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

Madricka –  
Please send the attached letter to each BOD member individually.  
Thanks.

[zahnaf@jea.com](mailto:zahnaf@jea.com)

**Luster, Jill R. - Executive Staff Assistant**

---

**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, December 9, 2019 3:56 PM  
**To:** Luster, Jill R. - Executive Staff Assistant  
**Subject:** Fwd: A Proposal for JEA Non-Qualified Plan  
**Attachments:** image001.gif; ATT00001.htm; image003.png; ATT00002.htm; image001.gif; ATT00003.htm; image004.gif; ATT00004.htm; image004.gif; ATT00005.htm; image004.gif; ATT00006.htm; image004.gif; ATT00007.htm; image004.gif; ATT00008.htm; image004.gif; ATT00009.htm; image005.png; ATT00010.htm; image006.png; ATT00011.htm; image008.png; ATT00012.htm; image009.png; ATT00013.htm; image004.gif; ATT00014.htm; MassMutual Pricing Proposal for JEA Non-Qualified Plan.pdf; ATT00015.htm

1 of 3

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - VP & Chief Human Resources Officer" <kendja@jea.com>  
**Date:** December 9, 2019 at 10:32:11 AM EST  
**To:** "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

FYI

**From:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Sent:** Monday, November 18, 2019 8:21 AM  
**To:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <kendja@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Jon,

If there is an intent to roll this plan out in the future, e.g., 2021, we would prefer 6 mos get contract signed and set-up automated enrollment and administration.

NOTE: assuming we no longer need this at this time.

Pat

**From:** Scheetz, Michael <mscheetz@massmutual.com>  
**Sent:** Friday, November 8, 2019 10:36 AM  
**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]



Pat:

I am forwarding to your attention the proposal for the annual recordkeeping for the Non-Qualified Performance Unit Plan. Since we do not know the number of participants that will participate in the plan, we had to make some assumptions. We extracted from the database a list of employees with compensation over \$150,000 with the assumption this group of employees are the most likely to contribute. Based on that extraction we arrived at 37 participants for pricing purposes.

Let me know if you have any follow up questions.

Regards

**Michael M. Scheetz**

**Client Engagement Manager | Government Markets**

**Workplace Solutions**

**MassMutual**

100 Bright Meadow Boulevard | Enfield, CT 06082

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**From:** Girard, Chad <[CGirard@MassMutual.com](mailto:CGirard@MassMutual.com)>  
**Sent:** Friday, November 08, 2019 10:19 AM  
**To:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Please let me know if you need anything else.

**Chad Girard**

Sales Consultant

Workplace Solutions & Strategic Distribution

**MassMutual**

C: (413) 386 5658

100 Bright Meadows Blvd

Enfield, CT 06082

[MassMutual.com \[massmutual.com\]](https://www.massmutual.com) [RetireSmart \[retiresmart.com\]](https://retiresmart.com) [Facebook \[facebook.com\]](https://www.facebook.com/massmutual) [Twitter \[twitter.com\]](https://twitter.com/massmutual) [LinkedIn \[linkedin.com\]](https://www.linkedin.com/company/massmutual)



... MassMutual



MassMutual@WORK

JEA Non-Qualified Plan

**Experience the MassMutual® difference**

Nonqualified Deferred Compensation solution

**Thank you for considering MassMutual for your retirement plan needs.**

Our goal is to provide flexible retirement solutions so that you can offer a competitive benefits package.

A nonqualified deferred compensation (NQDC) plan is an integral part of that package when it comes to attracting, rewarding and retaining key employees. It can help highly compensated employees (HCEs) bridge the gap between pre- and post-retirement incomes on a pre-tax basis.

---

## Converging factors create today's reality@work



Demographic shifts in the workforce



Rising health care costs



Shifting roles – employer as benefits funder to facilitator



Fragmented employee benefits selection experience



Defined contribution limitations for HCEs



Need to maximize benefits dollars



Changing regulations



Demand for simple holistic solutions

**Retirement income gap for highly compensated employees**

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## Making it easy@work

Our team of highly knowledgeable professionals will consult with you to design a NQDC plan that meets your needs – whether you are not-for-profit or for-profit – and provides your employees with the best overall retirement plan package.

MassMutual's unique approach offers all the components you need to offer an attractive NQDC plan that complements your existing retirement benefits program, including:



Dedicated service team and resources to help ease administrative burden



Comprehensive plan design and consulting services



Complete plan documentation



Full recordkeeping and administration services



Quarterly management reports



Participant education and enrollment



Web access and quarterly participant statements



Investment solutions tailored to meet financial goals



Professional trust services

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10

## An integrated team approach

MassMutual, together with MyDeferral Executive Benefits and Reliance Trust Company, provides the resources you need to attract, reward, and retain top talent, and as a result, help your organization succeed. You will benefit from the combined experience of these three retirement plan specialists with expertise in their respective fields.

## MYDEFERRAL

### MyDeferral Executive Benefits

We work closely with MyDeferral Executive Benefits, a leading national executive benefits firm specializing in nonqualified plan services, to provide administrative and recordkeeping services.

MyDeferral Executive Benefits currently provides services to more than 1,200 corporate clients in 49 states and 65 countries with over \$11 billion in assets under administration. They are ranked as a “Top 5 NQDC Provider” by PLANSPONSOR magazine.



### Reliance Trust Company

We partner with Reliance Trust Company, a leading provider of customized retirement plan, trust, financial and investment solutions.

The retirement strategies group at Reliance Trust Company is one of the largest trust providers to retirement plans in the nation and currently provides services to more than 60,000 retirement plans with retirement plan assets over \$190 billion. All plans are administered and serviced by seasoned retirement professionals with a strong consulting-based approach supporting new innovative products, designing process efficiencies and providing ongoing fiduciary and trust support.

Neither MyDeferral Executive Benefits nor Reliance Trust Company is affiliated with MassMutual or any of its subsidiaries.

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## Employee resources to optimize retirement readiness

### Online account access



**RetireSmart.com** offers educational tools and resources to help assess and improve retirement readiness. It allows participants to view their NQDC account balances, annual account rates of return and investment performance together with their other qualified plan information.



Participants will also have single sign-on access to **MyDeferral Executive Benefits website** via the My NQDC page on **RetireSmart.com**, which provides functionality including online investment reallocation, transaction history and online enrollment.



**MapMyFinances** is an online educational planning tool that provides a comprehensive game plan tailored to an employee's unique situation to improve financial wellness.

<sup>1</sup>Apple, App Store, rating and of July 1, 2019. Apple and App Store are trademarks of Apple Inc. ContactCenterWorld Top performing call center 11 years in a row (2008-2018)

<sup>2</sup>Guidance may not be available for certain products. Guidance is based on MapMyFinances assumptions and information provided by the employee and employer.

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### Account access on the go

**RetireSmart mobile app** provides account access anytime, anywhere.

4.6

as rated  
by 2.94K  
RetireSmart  
app users<sup>1</sup>



### Participant call centers

Our award-winning **participant information centers** are geographically dispersed around the United States and staffed with highly trained and knowledgeable professionals.

Additionally, **MyDeferral Executive Benefits representatives** are available for NQDC participants to provide customized deferred compensation plan support.

## The MassMutual difference

A strong mutual company with the right, experienced people

**1851**  
YEAR FOUNDED

**70+**  
YEARS  
servicing  
retirement plans

**2.6M**  
participating  
employees

**\$185.3B**  
Assets under  
management<sup>1</sup>

**93%**  
long-  
tenure

Among the highest financial strength ratings<sup>2</sup> of any company in any industry

A.M. Best	A+
Fitch Ratings	AAA
Moody's Investors Service	Aa3
Standard & Poor's	A+

MassMutual has paid dividends<sup>3</sup> to eligible participating policy owners every year since 1869.

## Award-winning success



Named as  
**84<sup>th</sup>** on the  
**FORTUNE® 500**  
list in 2019



Recognized as a  
**2019 World's Most  
Ethical Company** by  
Ethisphere Institute for the  
16<sup>th</sup> consecutive year



Named a  
**2018 Top-Performing  
Call Center**  
by ContactCenterWorld for  
the eleventh consecutive year



Named **39 Plan  
Sponsor Council  
of America**  
"Signature Awards"  
since 2013

<sup>1</sup> Data for MassMutual's Workplace and Institutional Solutions as of December 31, 2018.

<sup>2</sup> A.M. Best and Fitch Ratings as of July 1, 2019. Ratings are for MassMutual (Springfield, MA, UMIL) and its subsidiaries, UMW Life Insurance Co. and UMW Life State Company, Inc. (St. Louis, MO) and UMW Ratings, Inc. (St. Louis, MO).

<sup>3</sup> Dividends are not guaranteed.

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**Experience the MassMutual difference**



Financial wellness solutions for your employees and your bottom line



Capabilities to drive better outcomes



Resources to make it easy for you to do business with us

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For more information, call your financial professional  
or visit [MassMutual.com/retirement](http://MassMutual.com/retirement).

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MA 01118-0001

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# NQDC Cost and Disclosure

JEA Non-Qualified Plan - Plan Pricing

Annual Applicable Fee **\$5,550**

## Assumptions About Your Plan

Plan Type	For Profit/Top Hat
Total Number of Plans	1
Is an exempt asset?	
Estimated annual cash flow	\$370,000
Total Participants with Balances	1

These assumptions are based on the information provided to us. They are not intended to be a guarantee of any kind. The actual results may vary. We are not providing any advice or recommendation. This is not a contract. It is only a summary of the information provided to us. It is not intended to be a guarantee of any kind. The actual results may vary. We are not providing any advice or recommendation. This is not a contract. It is only a summary of the information provided to us.

# NQDC Cost and Disclosure

## Proposal Assumptions

Assumption / Item	Included / Excluded
Trade dress package	Included
Trusted Services	Included
Participant deferrals and advisor contribution	Included
Participant deferral frequency of bi-weekly, semi-monthly, monthly, quarterly, or annually	Included
Rabbi Trust	Included

Compensation to Your Financial Advisor	First Year	Subsequent Years
Flat Dollar Amount	\$0	\$0
Percentage of Plan Assets	0%	0%

## About your plan expenses and our compensation

This section describes the expenses that you and your plan may incur for investment management and administrative services (found under the MassMutual Smart Architecture<sup>SM</sup> Investment Program ("Smart Architecture Report") Appendix 2). This section also identifies the portion of those expenses that we retain as compensation for the services we provide to your plan. It is important to keep in mind that the revenue we retain is a part of, and is not additional to, your plan's total expenses. Your plan's total expenses are impacted by the nature and complexity of your plan, the investment options and share classes you select, the services you ask us to provide and the compensation we pay to your financial intermediary. Not all of the expenses described here will apply to your plan and we offer you various alternatives for structuring and paying for the services we provide.

The MassMutual nonqualified program includes a grantor trust, commonly known as a rabbi trust. Under the grantor or rabbi trust, the trust assets remain subject to the claims of the Employer's general creditors but are protected from future management ability to use money deposited in the trust for other corporate purposes.

Under our programs, plan expenses are generally paid in two ways: (1) expenses paid through or in connection with the plan's investment options, and (2) fees paid directly out of corporate assets or, if permitted under your rabbi trust, out of participant

accounts. We may be paid for our services, including our investment, administrative and recordkeeping services, in the same way – through the plan's investments indirectly or through the plan sponsor directly.

### Expenses paid through or in connection with the plan's investment funds

The expenses paid through the plan's investments (e.g., the investment's "Expense Ratio") cover some or all of the costs of investment management.

#### Expense ratios and total weighted annual expense ratio:

The Expense Ratio for each of the investments included in our investment program is set forth in the accompanying Smart Architecture Report. The Expense Ratio is expressed as an annualized percentage of the investment options assets and refers to the amount paid from the investment options' assets for investment management and other services and expenses (including any 12b-1 fees). It shows what your plan (and participants) pay, along with all other investors, in connection with the investment option. Because this amount is deducted from the investment options assets, it is reflected in the investment options net investment performance.

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An investment's Expense Ratio may change over time as invested assets and underlying operating expenses increase or decrease. More detailed fee information for mutual funds you've selected is disclosed in each mutual fund's prospectus.

The Total Weighted Annual Expense Ratio (assuming a sample investment mapping has been prepared) is the sum of the Expense Ratios for each of the investments weighted for the assumed percentage of plan assets invested in each. For example, if a plan invests 60% of its assets in Fund A, which has a total annual Expense Ratio of 100bp, and 40% of its assets in Fund B, which has a total annual Expense Ratio of 50bp, then the Total Weighted Annual Expense Ratio for the plan is calculated as follows:

#### TOTAL WEIGHTED ANNUAL EXPENSE RATIO

	Expense Ratio	x	Allocation Percentage	=	Weighted Annual Expense Ratio
Fund A	100bp		60%		60bp
Fund B	50bp		40%		20bp
					<b>Total 80bp</b>

As explained above, we retain a portion of the plan's expenses as compensation for the services we provide. This section describes how we calculate the revenue (i.e., MassMutual's share of the Expense Ratio) that we receive from each investment option. The total weighted MassMutual revenue, assuming a sample investment mapping has been prepared, is the sum of the revenue received from each of the investments (calculated in the manner described below) weighted for the assumed percentage of plan assets invested in each. The accompanying Smart Architecture Report also shows our share of the Expense Ratio of each

investment option under the column "Revenue" (expressed as an annualized percentage of invested assets). This information is provided to illustrate both the revenue we anticipate receiving in connection with each investment option in which your plan invests and our relative financial interest in your investment selections. Here's how we arrived at our revenue rates included in the Smart Architecture Report:

- The revenue rates shown for mutual funds advised by unaffiliated advisers or by OppenheimerFunds, Inc. (our subsidiary) equals the gross revenues (commonly referred to as "revenue sharing payments") paid to us by those funds or their investment advisors for making these funds available and/or for providing certain distribution, record keeping and/or other services to those funds.
- For our own mutual funds (MassMutual Premier and Select Funds) our revenue rates shown equal the gross revenues we receive from these investments less certain amounts we pay to others, including fee waivers/reimbursements, sub-advisor fees (which may be paid to affiliated sub-advisers), sub-administrator fees, 12b-1 fees, expenses we incur to establish and maintain these investment options and any other direct expenses of the investment option we are required to pay under our investment management agreements with the funds.

**Loads, sales charges, redemption fees and surrender charges:** Currently, none of the mutual fund investment options offered as part of our program impose front-end loads, sales charges or redemptions fees on the plan in connection with the purchase or sale of the plan's interest.

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## Fees directly paid by the sponsor to MassMutual

In addition to expenses paid through or in connection with your plan's investments options, plan expenses can be paid out of corporate assets and, if permitted under your rabbi trust, out of participant accounts. These fees may be one-time or recurring and may be for services provided to the plan sponsor as a whole or to individual participants.

Fees for nonqualified plan cannot be cross-subsidized by any qualified plans you sponsor for which MassMutual provides administrative services.

Generally, these fees constitute revenue to us. Exceptions to this general rule include expenses that we collect on behalf of third-party service providers (e.g., vendor expense for administrative services).

The Proposal lists the following direct fees as applicable to your plan:

**One-time plan set-up fee:** The fee for transitioning your plan from your prior provider and installing it on our systems, if any, is included in the plan pricing.

**Ongoing annual fees:** Ongoing annual fees applicable to your plan are listed in Appendix 1. These expenses may be expressed as flat dollar amount.

**Transactional and optional services fees:** The Service and Fee Schedule lists the comprehensive services we provide, including those services that may be requested by you and your participants for which a separate fee may apply.

**Financial intermediary compensation:** We generally sell our retirement plan services through intermediaries, including our career insurance agents, independent brokers (including insurance brokers, investment advisors, and registered representatives of broker-dealers), third party administrators of retirement plans, and consultants.

When your plan selects one of our products, we (or one of our affiliates) compensates the financial intermediary. The nature and level of services that intermediaries provide to us or plans, plan sponsors, and plan participants can impact the amount of compensation we pay to an intermediary with respect to a specific retirement plan sale. In addition, the form or method for compensating intermediaries varies from sale to sale.

Because we pay intermediary compensation from the revenue we receive on your plan, the level of intermediary compensation may impact our fee proposal for your plan.

Note that these compensation arrangements (and those that your intermediary may have with other providers) may provide an intermediary with a financial incentive to recommend one

product or provider over another. As a fiduciary, you may want to take such compensation arrangements into account when evaluating recommendations from your intermediary. If you have any questions regarding the compensation that may be paid by us or other providers to your intermediary, you should contact the intermediary or his/her organization to determine if they have entered into any such agreements.

The *Appendix 1/Fees/NQDC Proposal Assumptions* Section of the Proposal identifies the proposed advisor compensation that we have specifically taken into account in preparing your proposal. A detailed explanation of the forms of intermediary compensation identified in the NQDC Proposal Assumptions section of the Proposal and other forms of advisor compensation to which your advisor may be entitled is set form below.

## Forms of intermediary compensation

**Commissions:** The most common form of intermediary compensation we pay is a commission. Commissions normally are calculated as a percentage of asset, calculated at an annual rate and computed on the aggregate assets invested by the Plan Sponsor through the Product at the close of the last business day of each calendar month, and paid monthly in arrears.

Commissions may also be paid as a flat percentage, a one-time payment of a percentage of the assets initially invested by the Plan Sponsor through the Product.

Commissions may also be contribution-based in which case a payment of some percentage of contributions made to the plan for a specified time frame is computed on the aggregate contributions through the Product by the Plan Sponsor as of the close of the last business day of each calendar month and said monthly paid in arrears.

**Distribution and shareholder service fees:** Intermediaries may receive Distribution Fees or Shareholder Service Fees for services provided in connection with investments in our proprietary mutual funds. Distribution fees may be paid for providing services in connection with the distribution and marketing of investments in our proprietary mutual fund shares and for related expenses. Shareholder Service Fees may be paid for providing services to shareholders or maintaining shareholder accounts and for related expenses. Expenditures for Shareholder Servicing Fees may include: providing advice regarding the particular shareholder account options offered by the mutual fund in light of shareholder needs; delivering current prospectuses, reports, notices, and other information, including information about the mutual funds; providing support services, including answering participant inquiries; forwarding communications from the mutual funds to participants; and providing any other shareholder services with respect to the mutual funds which we may request.

**Sub-contracting service fees:** We may compensate an intermediary for providing plan administrative services to the plan sponsor that we otherwise would provide ourselves.

Such services might include, for example, assistance with enrollment meetings.

**Sponsorship payment:** We may compensate an intermediary for promotional activities not specific to any particular plan.

For example, we may provide training support, conference support, marketing or other services to promote general awareness of our products or services.

**Override payment:** If an intermediary is associated with an organization that maintains a sales force (a "selling organization") that sells our products, we may pay the selling organization an "override payment" pursuant to the terms of a written agreement. This payment is designed, in part, to defray a portion of the selling organization's cost of maintaining a sales force. Override Payments are paid as either (i) a flat fee or (ii) a percentage of the compensation paid to the intermediaries that are affiliated with the selling organization.

**Career agent cash and non-cash compensation:** MassMutual career agents who sell our products may receive, in addition to commissions, productivity bonuses, credits towards their benefit plans, recognition items, and payment of the costs associated with conferences or seminars.

## Additional disclosures

**Fiduciary responsibility:** In making the investments under our products available, we are not acting as a fiduciary of your plan. The Plan Sponsor or its delegate is responsible for selecting the investment options for the Plan, including the investment options to which Plan assets are mapped. When performing our non-discretionary administrative services for the Plan, we act only in the capacity of a service provider and not in any fiduciary capacity. The Plan Sponsor is responsible for appointing an Administrator who has discretionary authority in the administration of the Plan.





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RS4161 1217

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**JEA0275**

**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Rondinelli, Melissa <MRondinelli@coj.net>  
**Sent:** Wednesday, December 4, 2019 4:26 PM  
**To:** Hall, Sherry L.; Rhode, Lynne C. (City of Jacksonville)  
**Cc:** Granat, Sean; Hodges, Lawsikia  
**Subject:** FW: records request #2 12/2/2019 - JEA/OGC  
**Attachments:** GC-#1325603-v1-Memo\_re\_JEA\_PUP\_(Supp\_Ltr)\_11-12-19.PDF; GC-#1320996-v1-Letter\_to\_Mr\_Zahn\_re\_JEA\_PUP.PDF

**Importance:** High

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Please see the attached.

Thank you,

***Melissa A. Rondinelli***

Office Administrator  
Executive Assistant to Jason R. Gabriel, General Counsel  
Office of General Counsel - City of Jacksonville  
117 W. Duval Street, Ste. 480  
Jacksonville, FL 32202  
904-255-5051  
904-255-5119 (facsimile)  
[mrondinelli@coj.net](mailto:mrondinelli@coj.net)

**From:** Rondinelli, Melissa  
**Sent:** Wednesday, December 04, 2019 12:16 PM  
**To:** Feiser, Craig  
**Subject:** FW: records request #2 12/2/2019 - JEA/OGC  
**Importance:** High

Craig,

Per Chris Hong's request, please see the attached.

Thank you,

***Melissa A. Rondinelli***

**From:** Feiser, Craig  
**Sent:** Monday, December 02, 2019 3:32 PM  
**To:** Gabriel, Jason; Granat, Sean; Kimbleton, Nikki; Burch, Stephanie

**Subject:** FW: records request #2 12/2/2019 - JEA/OGC  
**Importance:** High

See below for #2. I believe this is the same request I received from Nate Monroe earlier today. Please advise/provide to me. Thanks.

**From:** Hong, Christopher [mailto:chong@jacksonville.com]  
**Sent:** Monday, December 02, 2019 3:30 PM  
**To:** Feiser, Craig  
**Subject:** records request #2 12/2/2019

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Craig,

Can I please receive copies of the following records:

-Any documents created by the Office of General Counsel related to JEA's Performance Unit Plan.

—  
Christopher Hong  
Staff Writer  
The Florida Times-Union  
Office:(904) 359-4272  
Cell: (404) 409-6949

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**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** Currents  
**Sent:** Friday, November 15, 2019 9:37 AM  
**To:** !(EVERYONE - JEA)  
**Subject:** Long-Term Performance Unit Plan Postponed



## **Long-Term Performance Unit Plan Postponed**

JEA Team:

As a valued JEA team member, we wanted to give you an update in real time of the developments about the Long-Term Performance Unit Plan (Plan). The Plan was being explored, at the direction of JEA's Board, as a long-term incentive program available to those employees who chose to participate in it.

This week, our managing director & CEO, Aaron Zahn, wrote a letter to the General Counsel for the City of Jacksonville, upon consultation with JEA's Board Chair and JEA leadership, to indefinitely postpone the implementation of the Plan.

This decision was not made lightly. As the details of the Plan were developed, it was determined that now is not the right time to implement the Plan based on the long-term nature of it and the potential short-term implications it could have on JEA's strategic planning process.

It is important to point out that this decision concerning the Long-Term Performance Unit Plan has no effect on the retention agreements for all JEA employees, should a recapitalization event occur. As previously stated and agreed to, retention agreements will be available to all full-time JEA employees. Retention agreements for JEA employees represented by unions are within the Collective Bargaining Agreements that are currently pending approval by the City

Council. This decision also has no effect on any other incentive program you may be eligible for over the course of your employment.

Should you have any questions or concerns, as always, please contact your supervisor or JEA's Human Resources.

FOLLOW US



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From: "Rondinelli, Mellissa" <MRondinelli@coj.net>

Sent: Wednesday, December 4, 2019, 4:26 PM

To: "Hall, Sherry L." <hallsl2@jea.com>; "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>

Cc: "Granat, Sean" <SGranat@coj.net>; "Hodges, Lawsikia" <LHodges@coj.net>

Subject: FW: records request #2 12/2/2019 - JEA/OGC

Attachments: GC-#1325603-v1-Memo\_re\_JEA\_PUP\_(Supp\_Ltr)\_11-12-19.PDF; GC-#1320996-v1-Letter\_to\_Mr\_Zahn\_re\_JEA\_PUP.PDF

---

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Please see the attached.

Thank you,

***Mellissa A. Rondinelli***

Office Administrator

Executive Assistant to Jason R. Gabriel, General Counsel

Office of General Counsel - City of Jacksonville

117 W. Duval Street, Ste. 480

Jacksonville, FL 32202

904-255-5051

904-255-5119 (facsimile)

[mrondinelli@coj.net](mailto:mrondinelli@coj.net)

---

**From:** Rondinelli, Mellissa

**Sent:** Wednesday, December 04, 2019 12:16 PM

**To:** Feiser, Craig

**Subject:** FW: records request #2 12/2/2019 - JEA/OGC

**Importance:** High

Craig,

Per Chris Hong's request, please see the attached.

**JEA0280**

Thank you,

***Melissa A. Rondinelli***

---

**From:** Feiser, Craig  
**Sent:** Monday, December 02, 2019 3:32 PM  
**To:** Gabriel, Jason; Granat, Sean; Kimbleton, Nikki; Burch, Stephanie  
**Subject:** FW: records request #2 12/2/2019 - JEA/OGC  
**Importance:** High

See below for #2. I believe this is the same request I received from Nate Monroe earlier today. Please advise/provide to me. Thanks.

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**From:** Hong, Christopher [mailto:chong@jacksonville.com]  
**Sent:** Monday, December 02, 2019 3:30 PM  
**To:** Feiser, Craig  
**Subject:** records request #2 12/2/2019

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Craig,

Can I please receive copies of the following records:

-Any documents created by the Office of General Counsel related to JEA's Performance Unit Plan.

--

Christopher Hong  
Staff Writer  
The Florida Times-Union  
Office:(904) 359-4272  
Cell: (404) 409-6949

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**JEA0281**

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202  
PHONE: (904) 255-5050



MEMORANDUM

**TO:** JEA FILE

**FROM:** Jason R. Gabriel, General Counsel *JRG*

**RE:** JEA Long Term Performance Unit Plan (the "PUP")

**DATE:** November 12, 2019

---

The JEA Long Term Performance Unit Plan, approved by the JEA Board on July 23, 2019 (the "PUP"), was proposed by JEA as a voluntary employee benefit program designed as a deferred compensation plan that would have allowed full-time JEA employees to personally invest in the growth of JEA in the next three years. It was developed by JEA in consultation with and reliance on outside special legal counsel (Foley & Lardner and Pillsbury Winthrop Shaw & Pittman).

At the time of Board approval on July 23, 2019, the PUP was understood by OGC in general, conceptual terms as an employee incentive program. Since enrollment in the PUP would not take place until December 2019 with possible subsequent implementation of the plan in January 2020, OGC was assured by JEA that it had the few months from the time of the Board meeting on July 23, 2019 to the enrollment date to learn of the details of the plan, review outside counsel's findings as to the validity and legality of the plan, and to independently research and provide OGC's position on the plan at the conclusion of that process.

Because of how unique this suggestion was to the government sector, it was important to OGC to conduct its own research with respect to the validity and legality of the plan under federal, state, and local law, with a special emphasis on what is permitted, required, or prohibited under the Charter. Through the course of several conferences and meetings between outside counsel for JEA, OGC attorneys, and JEA management, OGC researched and conferred on the issues related to the plan.

This internal review resulted in a final determination by OGC and a recommendation to JEA that the proposed PUP, in its current form, would not be authorized under the City Charter, and had outstanding issues and unanswered questions related to state, local, and federal law. In addition, because ultimately it is City funds that are in question, *at a minimum*, Council approval would be required for the plan to be implemented. I expressed this legal position in several conversations with JEA. OGC's review and discussions occurred during the months of September, October and into the beginning of November. OGC's final position as to the PUP prompted the need for a formal meeting with outside counsel and JEA to discuss the outstanding legal issues prior to any further implementation of the plan.

Document Number: 1325479

JEA0282



Accordingly, on November 5, 2019, I met with Aaron Zahn and Herschel Vineyard from JEA, Lawsikia Hodges and Lynne Rhode from OGC, Kevin Hyde (special legal counsel with Foley & Lardner), Steve Arndur and Jessica Lutrin by phone (special legal counsel with Pillsbury Winthrop Shaw & Pittman), to discuss OGC's issues with the PUP; to note and categorize the current legal deficiencies with the plan, and to outline minimum requirements necessary to continue with any sort of employee incentive plan or deferred compensation plan. The main purpose of the meeting was to review these ultimate legal concerns regarding the PUP, that though were brought up in some form or another to JEA over the course of the preceding several weeks, needed to be officially dealt with in the appropriate manner.

On that date, the following concerns were brought up by OGC and discussed with JEA: Upon our review, the PUP is seemingly *akin* to an employee stock option plan, and for similar size *private* multi-billion dollar corporations, employee programs like the PUP may be the norm. However, the PUP would be unique to the public sector and founded on the fundamental principle that a governmental entity, such as JEA, may underwrite and offer for sale a portion of JEA's value as an "investment product" pursuant to Section 112.215, *Florida Statutes*. This fundamental PUP principle is not only a novel concept to our Consolidated Government but is also novel to government concepts and principles in general. Further, in addition to the more fundamental issues associated with the PUP, there were other issues cited, including allowing non-JEA employees in the plan and various potential adverse tax consequences.

Accordingly, we advised that the current plan should be officially dissolved. Should JEA insist on pursuing some version of the PUP as currently proposed in the future, the following minimum prerequisites must be met:

- 1) City Council review and approval (via legislation) authorizing JEA to sell a portion of JEA's value as an "investment product" under Section 112.215, Florida Statutes;
- 2) An opinion in accordance with Section 112.215, Florida Statutes from an appropriate federal agency or agencies (i.e., Internal Revenue Service (IRS)) stating that any compensation deferred under the PUP would not be included in a participating employee's taxable income under federal or state law until it is actually received;
- 3) An opinion from the IRS indicating that JEA, as a governmental entity, will incur no negative or adverse tax consequences or penalties under the PUP;
- 4) Removal of any PUP requirement that directly or indirectly obligates JEA to pay any excise tax, interest or penalties under the IRS Code incurred by a participating employee under the PUP;
- 5) Removal of any non-JEA employees as participants in the PUP; and
- 6) Any other applicable requirements under state and federal law necessary to implement and administer the PUP.

Based on this advice from our office, I was informed that JEA would not proceed with the PUP.

On November 12, 2019, the JEA CEO sent a letter to me informing me officially that JEA was "postponing indefinitely" the PUP. On that same date I, in turn, sent JEA a letter reiterating that there were outstanding legal issues with the plan as currently structured.

GC-#1325603 (pdf)

Document Number: 1325479

JEA0283

**OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE**

**JASON R. GABRIEL\***  
GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING  
117 WEST DUVAL STREET, SUITE 480  
JACKSONVILLE, FLORIDA 32202

KAREN M. CHASTAIN  
DERREL Q. CHATMON  
ARIEL P. COOK  
JULIA B. DAVIS  
STEPHEN M. DURDEN  
SHANNON K. ELLER  
CRAIG D. FEISER  
GILBERT L. FELTEL, JR.  
LORRE L. FRENCH  
CHRISTOPHER GARRETT  
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SEAN B. GRANATY  
SUSAN C. GRANDIN  
KATY A. HARRIS  
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LAWSKIA J. HODGES  
SONYA HARRELL HOENER  
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KORTI PARDE  
JACOB J. PAYNE  
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JON R. PHILLIPS  
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LYNNE C. RHODE  
ASHLEY B. RUTHERFORD  
JOHN C. SAWYER, JR.  
MARGARET M. SIDMAN  
JASON R. TEAL  
ADINA TEODORESCU  
KEALEY WEST  
STANLEY M. WESTON  
GARY YOUNG

\*BOARD CERTIFIED CITY, COUNTY  
AND LOCAL GOVERNMENT LAW

November 12, 2019

Aaron F. Zahn  
Managing Director & CEO  
JEA  
21 W. Church Street, 19<sup>th</sup> Floor  
Jacksonville, FL 32202

RE: JEA Long Term Performance Unit Plan (the "PUP")

Dear Aaron:

I greatly appreciate you meeting with our office last week and providing us with additional information and insight regarding the JEA Long Term Performance Unit Plan approved by the JEA Board on July 23, 2019 (the "PUP"). As you indicated, the PUP was proposed as a voluntary employee benefit program akin to a deferred compensation plan under Florida law that would have allowed full-time JEA employees to personally invest in the enterprise growth of JEA in the next three years. In theory, under the PUP, employees would have been encouraged to have "skin in the game" by deferring their compensation to purchase a performance unit and later redeeming such performance unit for an amount based on JEA's current year value (i.e., the redemption price). At the employee's investment risk, the redemption price for a performance unit at the end of the PUP performance period could have been zero, or more than ten times the employee's initial investment amount. You also advised that the primary purpose of the PUP was to incentivize employees to drive and increase JEA's customer, community and environmental value.

First, I laud you, the JEA senior leadership team, and the JEA Board for your efforts to find outside-the-box ways to increase JEA's value and motivate JEA employees to do their best work for JEA. I also appreciate the extensive time and effort that specialized outside counsel has dedicated to analyzing the PUP in order to achieve the Board's directive. The plan would be a novel approach to accomplishing the Board's goals in the public sector, but as currently structured contains outstanding issues under the City Charter and other law. That is not to say that

---

Office Telephone  
(904) 255-5100

Writer's Direct Line  
(904) 255-5050

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(904) 255-5119

Writer's E-Mail Address  
JGabriel@coj.net

Office Web Site  
GeneralCounsel.coj.com

**JEA0284**

Aaron F. Zahn  
November 12, 2019  
Page 2

an appropriate plan under Section 215.425, Florida Statutes could not be designed and implemented. It is unnecessary, however, to go into any suggested restructure or outstanding issues at this time due to my understanding that JEA leadership, in consultation with the Chair and our office, has decided to postpone indefinitely the implementation of the PUP.

We appreciate the opportunity to have performed a detailed review of the plan and its documents. Our office continues to stand ready to assist you, JEA leadership and JEA Board should it decide in the future to move forward with an employee incentive plan.

Sincerely,



Jason R. Gabriel  
General Counsel

cc: Herschel Vinyard, Chief Administrative Officer  
Lynne C. Rhode, Chief Legal Officer

GC-1319864 (.doc)  
GC-1320996 (.pdf)

**JEA0285**

## Vinyard, Herschel T. - Chief Administrative Officer

---

**From:** Stewart, Kerri - VP & Chief Customer Officer  
**Sent:** Friday, December 6, 2019 10:53 AM  
**To:** Zahn, Aaron F. - Managing Director/CEO; Vinyard, Herschel T. - Chief Administrative Officer; Dykes, Melissa H. - President/COO; Rhode, Lynne C. (City of Jacksonville); Wannemacher, Ryan F. - Chief Financial Officer; Hall, Sherry L.  
**Subject:** Memo to April Green from Jason Gabriel re: PUPs

FYI

**From:** Rondinelli, Mellissa <MRondinelli@coj.net>  
**Sent:** Friday, December 6, 2019 10:06 AM  
**To:** Stewart, Kerri - VP & Chief Customer Officer <stewk@jea.com>  
**Subject:** FW: JEA re Preliminary Approval of PUP

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---

**From:** Gabriel, Jason  
**Sent:** Friday, December 06, 2019 10:01 AM  
**To:** April Green ([agreen@mebusinesssolutions.com](mailto:agreen@mebusinesssolutions.com))  
**Subject:** JEA re Preliminary Approval of PUP

Dear April –

Per our conversation earlier this morning, it has come to my attention that a certain implication has been made that JEA did something legally wrong with regard to the preliminary adoption of the Performance Unit Plan (PUP) at the July 23, 2019 meeting. I write to address this unfortunate suggestion.

Following the Board meeting, JEA gave OGC requisite time to research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. In preliminarily approving the PUP, the JEA Board did not act outside of their legal authority.

OGC ultimately concluded that the PUP had outstanding legal issues and JEA ultimately concluded that they would no longer pursue the plan. At the next JEA Board meeting, the Board will have the opportunity to vote to formally withdraw the plan. I anticipate that the Board will take appropriate action at that time.

Please do not hesitate to contact me with any questions or concerns.

Thank you,

-Jason G.

**Jason R. Gabriel**  
General Counsel

Office of General Counsel  
City of Jacksonville  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: (904) 255-5050  
Facsimile: (904) 255-5119  
email: [jgabriel@coj.net](mailto:jgabriel@coj.net)  
**\*\*Board Certified - City, County & Local Government Law\*\***



**\*\*\* Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. \*\*\***

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202  
PHONE: (904) 255-5100



MEMORANDUM

**TO:** Honorable Council Member Michael Boylan  
**CC:** Jason R. Gabriel, General Counsel  
**FROM:** Lawsikia J. Hodges, Deputy General Counsel, Government Operations  
**RE:** JEA Invitation to Negotiate #129-19 for Strategic Alternatives -  
Notice Requirements in Section 21.04(p) of the City Charter  
**DATE:** December 5, 2019

**I. Background.**

On July 23, 2019, the JEA Board approved Resolution 2019-07, which authorized the Chief Administrative Officer and Managing Director (the "JEA CEO") to undertake a competitive solicitation regarding JEA's assets (the "Resolution"). On August 2, 2019, JEA issued Invitation to Negotiate #129-19 for Strategic Alternatives (the "ITN")<sup>1</sup>.

**II. Question Asked.**

Whether the JEA Board was required under Section 21.04(p) of the City Charter to provide the Council Auditor with 30 days advance written notice of the JEA Board's action of approving the Resolution?

**III. Short Answer.**

No. The JEA Board was not required to provide the Council Auditor with 30 days advance written notice of the JEA Board's action of approving the Resolution because such approval by the JEA Board was not an "activity" pursuant to Section 21.04(p). The term "activity" as used in Section 21.04(p) refers to the specific activities listed therein (and any activities not listed of the same kind)<sup>2</sup> (i) that JEA, operating as a public utility, is permitted to

<sup>1</sup> The ITN was issued in accordance with the authority set forth in the Resolution, the JEA Procurement Code, the JEA Procurement Code Operational Procedures (the "Operational Procedures"), and Article 21 of the City Charter (the "City Charter").

<sup>2</sup> See statutory construction principle *ejusdem generis*.

enter into; and (ii) that transfers, sells, finances, leases or otherwise provides services or products, or by-products developed or used by JEA incident to the exercise of the powers conferred in Article 21 of the City Charter. As a public utility, the quintessential power conferred to JEA in Article 21 is the power of JEA to own, manage and operate a utilities system<sup>3</sup> within and without the City of Jacksonville<sup>4</sup>; all other powers conferred to JEA in Article 21, including the powers referenced in Section 21.04(p), is in support of this foremost power. As such, the activities referenced in Section 21.04(p) must constitute “services, products, or by-products” developed or used by JEA incident to operating a utilities system. As long as an activity meets the requirements of Section 21.04(p) (i.e., constitute services, products, or by-products developed or used by JEA incident to its power to operate a utilities system), JEA must provide the Council Auditor with advance written notice prior to JEA entering into such activity.

Here, the JEA Board’s action of approving the Resolution does not constitute an “activity” under Section 21.04(p) because in and of itself such action by the board is not a “service, product or by-product” developed or used by JEA incident to the powers conferred in Article 21. By way of example, the specific activities listed in Section 21.04(p) include services, products or by-products such as energy performance contracting, power marketing services, the supply of steam or other thermal energy, and the testing and maintenance of customer-owned facilities. These activities represent ordinary activities customary to JEA’s operation as a public utility, and thus, JEA is conferred authority to enter into such activities so as long as proper advance notice is provided to the Council Auditor. Here, the board’s action of approving the Resolution was a procurement authorization and approval of the JEA CEO to explore transferring a significant portion of JEA assets (comprising more than ten percent of the utilities system) to another utility to own, manage and operate for JEA (and the City).<sup>5</sup> Such action by the board was not an activity similar in nature or kind to the activities listed in Section 21.04(p);<sup>6</sup> therefore, the JEA Board’s action of approving the Resolution was not subject to the Council Auditor’s notice requirement contained in Section 21.04(p).<sup>7</sup>

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<sup>3</sup> The term “utilities systems” includes the electric utility system, the water and sewer utility system, the natural gas utility system, and any other additional utilities systems operated by JEA. See Section 21.02 City Charter.

<sup>4</sup> See Article 21.01 of the City Charter.

<sup>5</sup> Given the exploratory nature, a sale or transfer of JEA assets may or may not result from the procurement process. If the JEA Board ever seeks to consummate a sale or transfer (comprising more than ten percent of the utilities system) to another utility, the JEA Board must obtain City Council approval and a subsequent voter referendum pursuant to Section 21.04(p).

<sup>6</sup> See statutory construction principle *ejusdem generis*.

<sup>7</sup> Although the JEA Board was not required to provide notice to the Council Auditor under Section 21.04(p), the JEA Chief Legal Officer indicated that JEA emailed a link of the July 23, 2019 JEA Board meeting materials on July 22, 2019, to the Council Auditor’s office and also delivered a hard copy of the July 23<sup>rd</sup> board meeting materials to the Council Auditor’s office on July 23, 2019.

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**MEMORANDUM**  
***PRIVILEGED AND CONFIDENTIAL***

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**TO:** Lynne Rhode, Vice President & Chief Legal Officer, JEA

**FROM:** Kort Parde, Assistant General Counsel, OGC  
Sean Granat, Deputy General Counsel, OGC

**RE:** Compensation Plans

**DATE:** June 17, 2019

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**ISSUE:**

You have asked whether JEA may create or establish a long-term employee incentive program to pay a bonus or additional amounts to the employees of JEA over a period of years.

**ANSWER:**

Yes, JEA is authorized to adopt a bonus or incentive program so long as the program complies with the requirements of § 215.425, Florida Statutes. The program must (1) be based on work performance; (2) have pre-determined performance standards and evaluation processes; (3) provide notice of the program to all JEA employees prior its commencement; and (4) be available to all JEA employees. In addition to the requirements of §215.425, Florida Statutes, any bonus or incentive program JEA adopts should provide for objective metrics measured by impartial analysts and not potential program award recipients. Also, the program would have to comply with the specific constraints itemized in Part III of this memo, which include ethics laws, Civil Service Rules, and collective bargaining.

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**JEA0290**



## ANALYSIS:

### I. General Authority for Incentive Programs by Governmental Agencies

#### A. Florida Statute

The relevant statutory authority on the awarding of incentives by a unit of government to its employees is found in § 215.425(3),<sup>1</sup> Florida Statutes, which states that:

**Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:**

**(a) Base the award of a bonus on work performance;**

**(b) Describe the performance standards and evaluation process by which a bonus will be awarded;**

**(c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and**

**(d) Consider all employees for the bonus.**

Section 215.425 also contains a prohibition on providing “extra compensation...to any officer, agent, employee, or contractor after the service has been rendered or the contract made.” §215.425(a), Florida Statutes. The term “extra compensation” “. . . denotes something done or furnished in addition to, or in excess of the requirement of the contract; something not required in the performance of the contract.” *Fla. AGO 91-51* citing *Fla. AGO 81-98*. Therefore, a governmental agency has the authority to provide for bonuses or incentive programs so long as the programs strictly comply with the requirements set out in § 215.425(3), and offer no compensation for any work performed prior to the commencement of the programs.

#### B. Florida Constitution

Any action of a governmental agency, including providing a bonus program for employees, must be analyzed in light of the Article VII, § 10, Florida Constitution, prohibition against the State and its subdivisions from using their taxing power or pledging public credit to aid any private person or entity. The purpose of this constitutional provision is "to protect public funds and resources from being exploited in assisting or promoting private ventures when the

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<sup>1</sup> Section 215.425, Florida Statutes, applies broadly to “units of government” without limitation. Fla. Att’y Gen. Op. 2013-09 (2013). As an independent agency of the Consolidated City of Jacksonville, JEA is a unit of government subject to § 215.425, Florida Statutes. See *City Charter* §§ 18.07 and 21.

public would be at most only incidentally benefited." *Fla AGO 2012-26 citing Bannon v. Port of Palm Beach District*, 246 So.2d 737, 741 (Fla. 1971). "If the expenditure primarily or substantially serves a public purpose, however, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, § 10. *Id.* citing *State v. Housing Finance Authority of Polk County*, 376 So.2d 1158, 1160 (Fla. 1979). The Legislature "has recognized that lump sum bonus payments for county and municipal employees serve the public interest and represent a progressive innovation in personnel management." *Id.* In the past, Florida Statutes expressly authorized counties and municipalities "to adopt extra compensation programs to reward outstanding employees. *See* §§ 125.01 and 166.021, Florida Statutes (2010). These statutes allowed for lump-sum bonus payments, but required that the bonuses not be included in an employee's regular base rate of pay and not be carried forward in subsequent years. *Id.* In 2011, the Florida Legislature revised § 215.425, Florida Statutes, and deleted the express authorization to pay bonuses in §§ 125.01 and 166.021, Florida Statutes. The restriction that a bonus payment not be included in an employee's regular base rate of pay and not be carried forward in subsequent years was also deleted. Instead, the Legislature created §215.425(3), Florida Statutes, which permits any unit of government to establish a bonus or incentive program as long the program strictly complies with § 215.425(3)(a)-(d), described in section 1(a) above.

## II. General Authority for Incentive Programs by JEA

Article 21 of the Consolidated City of Jacksonville's Charter<sup>2</sup> "created and established a body politic and corporate to be known as JEA." *City Charter*, §21.01. Under § 21.01 the City delegated to JEA "all powers with respect to electric, water, sewer, natural gas and such other utilities which are now, in the future could be, or could have been but for this article, exercised by the City of Jacksonville". *Id.* Section 21.04 explicitly prescribes the powers of JEA to include the right to contract, and the more broad authority "to do all acts and deeds necessary, convenient or desirable, incidental to the exercise and performance of the power and duties granted to JEA in this article." *City Charter*, §§21.04(e) and (t).

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<sup>2</sup> See *Jacksonville, Fla., City Charter*, §3.01(a), providing that the Consolidated City of Jacksonville:

Shall have and may exercise any and all powers which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of the State of Florida, including, but not limited to, all powers of local self-government and home rule not inconsistent with general law conferred upon counties operating under county charters by s. 1(g) of Article VIII of the State Constitution; conferred upon municipalities by s. 2(b) of Article VIII of the State Constitution; conferred upon consolidated governments of counties and municipalities by section 3 of Article VIII of the State Constitution; conferred upon counties by ss. 125.85 and 125.86, Florida Statutes; and conferred upon municipalities by ss. 166.021, 166.031, and 166.042, Florida Statutes; all as fully and completely as though the powers were specifically enumerated herein.

Most relevant to the issue of whether JEA has the authority to create a bonus or incentive program is § 21.08 of the Charter, which prescribes JEA's powers with respect to its employees. Under § 21.08, the City delegated to JEA the following authority:

JEA shall have full and independent authority to hire, transfer, promote, discipline, terminate and evaluate employees engaged to provide any and all of the utilities services for which it is responsible and accordingly, consistent with the provisions of article 17, JEA may establish employment policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment and take such other employment related action as needed to assure effective and efficient administration and operation of the utilities system. In order to effectively implement the foregoing, JEA shall perform all functions with regard to its own employees that are performed by the City department or division which oversees city employees in regard to personnel matters.

*Id.* at §21.08. Section 21.08 gives JEA the express authority to establish employment policies and the implied authority to establish bonus or incentive programs under the authority to establish "other term and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment." *Id.*

### **III. Specific Constraints on the Contemplated Incentive Program**

JEA may establish a bonus program, subject to several constraints. First, as explained above, a bonus or incentive program policy must be strictly implemented under the requirements of §215.425(3), Florida Statutes, in that it must base the award of the bonus on work performance, provide for performance standards and an evaluation process, notify all employees of the policy before the beginning of the evaluation period, and consider all employees for the bonus. Further, the program must comply with state and local ethics laws. Lastly, bonus plans must comply with the City's Civil Service Personnel Rules and Regulations and collective bargaining requirements.

#### **A. Constraints Under State and Local Ethics Law**

Under state and local ethics laws, an otherwise proper JEA long-term incentive program benefiting both management and non-management employees is permissible within the following key parameters designed to prevent the misuse of public funds:

Article II, § 8 of the Florida Constitution (Ethics in Government) requires financial disclosure by public officials and generally prohibits public officials from acting in a manner in breach of the public trust. This general prescription has been codified by Florida Statute, namely

Chapter 112 Part III (Code of Ethics for Public Officers and Employees), and further enumerated for Jacksonville officials and employees within the Jacksonville Ethics Code (Chapter 602 of the Jacksonville Ordinance Code).

Within the state ethics code, which generally applies to all public officials and employees within the state, § 112.313, Florida Statutes, is the primary provision that should be considered when analyzing an incentive program adopted by an independent agency of the City. Section 112.313 (Standards of conduct) subsection (6) (Misuse of public position) states, in relevant part and with emphasis added, that “no public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. ...”. Pursuant to subsection (6), an independent agency employee may not corruptly use his position or perform his official duties in order to secure for himself or other individuals a unique benefit.

Similar to § 112.313(6), Florida Statutes, the city ethics code (which expressly at §602.631, Ordinance Code, applies to officers and employees of independent agencies) at §602.401 (Misuse of position, information, resources etc.) subsection (a) prohibits an employee of an independent agency from intentionally using his position or otherwise acting in a manner inconsistent with his official duties in order to obtain a special privilege, financial or otherwise.

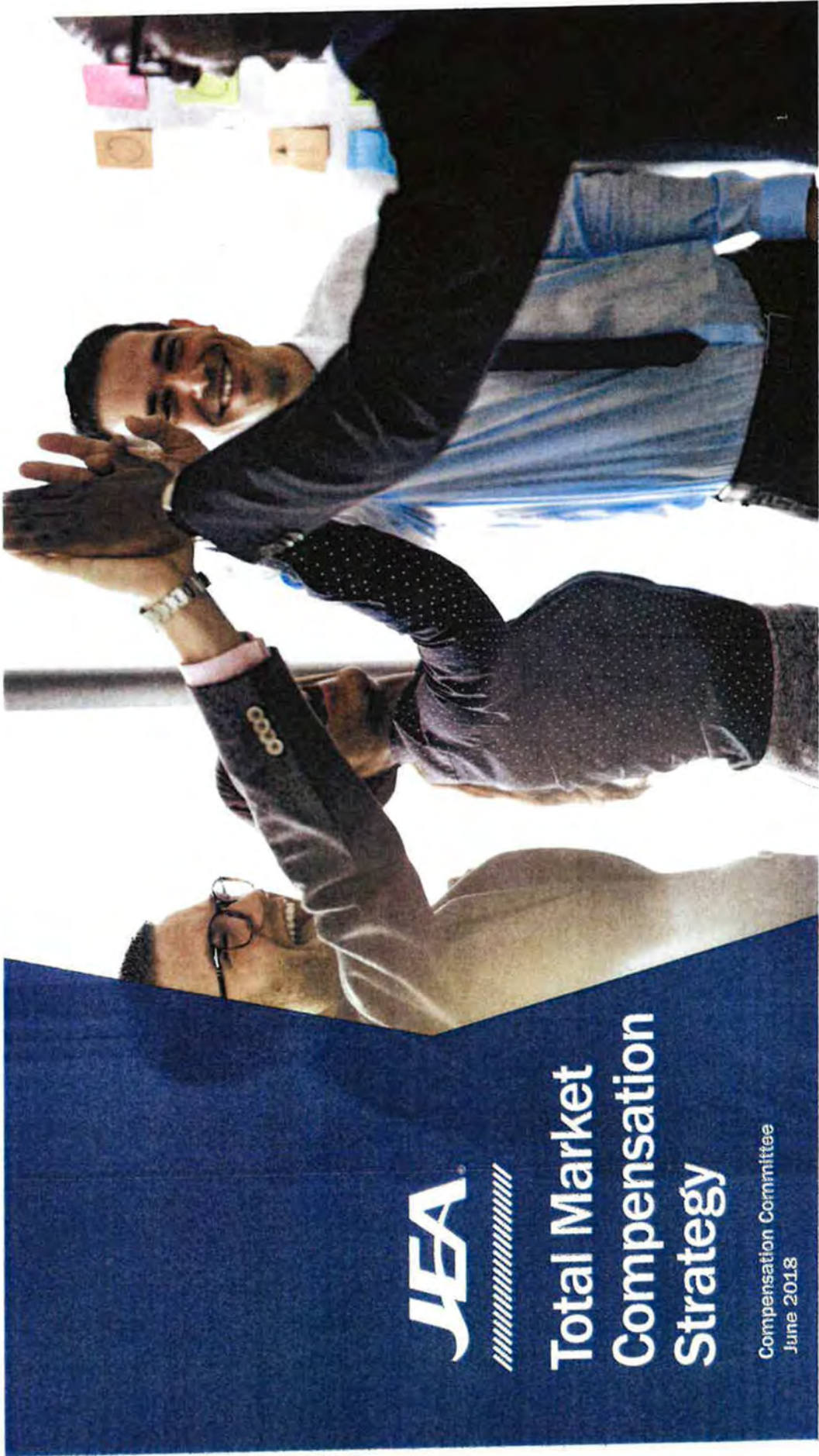
Both § 112.313(6), Florida Statutes, and Jacksonville, Florida, Municipal Code §602.401(a) contain intent and uniqueness components. An incentive program developed and implemented by managers generally responsible for developing and implementing compensation measures, that fully comports with all § 215.425, Florida Statutes, and JEA Charter strictures, under which all JEA employees are considered for the bonus in a transparent, impartial manner, and which is based upon objective financial metrics measured by an independent party generally would not run afoul of either the state or city ethics codes.

#### **B. Constraints Under Civil Service Rules and Collective Bargaining Agreements**

JEA is constrained in the type of award it may issue to the extent that it is bound by the City’s Civil Service Personnel Rules and Regulations. Those JEA employees covered by the Civil Service Personnel Rules and Regulations are subject to pay plans and salary schedules. Civil Service Personnel Rules and Regulations 2.01, 2.11, 10.01 and 10.02 serve to limit JEA to the award of lump sum bonuses, as JEA employees’ base salary may not exceed their pay bands.

Additionally, many of JEA’s employees are members of collective bargaining units. Florida Law requires that changes to wages and terms and conditions of employment are collectively bargained prior to being implemented. Thus, any bonus or incentive plan would have to be collectively bargained prior to implementation. *See Hamilton County Education Association v. Hamilton County School District*, 30 FPER ¶ 180(2004)(Unfair labor practice to unilaterally implement a bonus plan without negotiating its terms).





# Total Market Compensation Strategy

Compensation Committee  
June 2018



## **GUIDING PRINCIPLES**

ACCELERATING UTILITY INNOVATION

### **Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*



**Work together to elevate the entire team**

Core competencies accelerate results

2



## ELEVATE THE ENTIRE TEAM

1. Ensure JEA's corporate compensation philosophy is aligned with JEA's Guiding Principles
2. Encourage long-term culture of value creation
3. Establish formal compensation policy to align behavior to 4 Corporate Measures of Value and market based compensation
4. Ensure policy promotes collaboration to drive Vision and Mission

Employee incentives should drive "value" & "teamwork"



# Compensation Efforts to Date

January

February - June

- Board Approval of:
  - Guiding Principles
  - Development of a Compensation Framework
  - Extending CEO contract through 7/31/19
  - Change to Board Policy Manual

Framework developed and presented to the Board

Final Compensation Framework developed with the assistance of Willis Towers Watson

Final CEO Contract prepared

## JEA Board Policy Manual

(Revision to Policy 2.7 adopted by JEA Board on June 17, 2014)

“With respect to employment, compensation, and benefits to employees, consultants, and contract workers, the CEO shall promote a compensation philosophy that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits that align with and drive JEA’s Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.

Total compensation will meet the market (50% percentile), which is where the majority of companies in the industry and geographical area reside. Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives. The 50th percentile pays competitively for behavior that meets expectations. Short term and long term incentives will align to and drive JEA’s Corporate Measures of Value. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

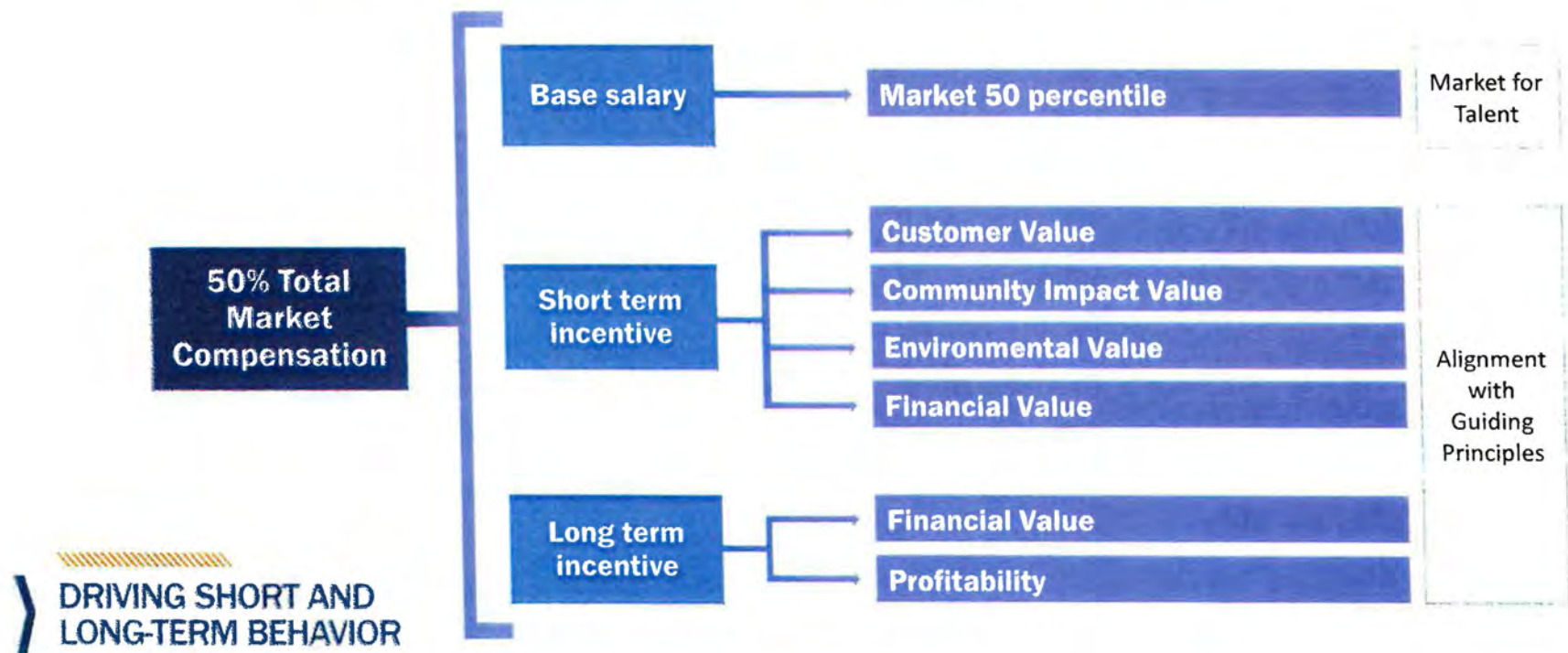
50<sup>th</sup> %



JEA’s total compensation structure should both compete with the market for talent & drive results aligned with “guiding principles”

  
JEA’S COMPENSATION  
PHILOSOPHY

## Establish a Formal Compensation Policy to Align with: 1) Talent Market and 2) Guiding Principles



## Compensation Benchmarking Summary

### ***Appointed Population vs. Market 50<sup>th</sup> Percentile Variances By Job Level***

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels
  - JEA provided performance bonuses to Appointed employees in April to begin closing the gap on base salary – the budget was 2.5%.

#### **Job Weighted:**

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
Total	-2%	-7%	-6%	--	-7%

## Short-Term Incentive Plan Practices

### ***Target Incentive Award Opportunities***

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to “close the gap” between market and JEA’s desired competitive positioning

Target Incentive Award Opportunities – By Job Level

Role/Career Level	Target STI Opportunities	
	Utilities	General Industry
Senior Directors	25%	24%
Managers	15%	13%
Supervisors	10%	9%
Senior Level Professionals	13-20%	11-18%
Entry-Mid Level Professionals	7-10%	5-8%
Non-exempt	5%	3-5%

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.

## Long-Term Incentive Plan Design

### Introduction

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

# Long-Term Incentive Plan Design

## Proposed Design

- Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:



\* Value of units tied to JEA Net Book Value.

# Long-Term Incentive Plan Design

## Proposed Design Details: Performance Unit

### Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Performance Unit; value of unit tied to <b>JEA Net Book Value</b>; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees would be eligible in order to drive collective focus on JEA long-term performance</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Annual</li> </ul>
Circuit Breaker	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded</li> </ul>
Performance Measures	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>
Performance Period	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul>
Payout Range	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.



# Proposed Compensation Adjustments

## Market Positioning Based on Proposed Pay Adjustments

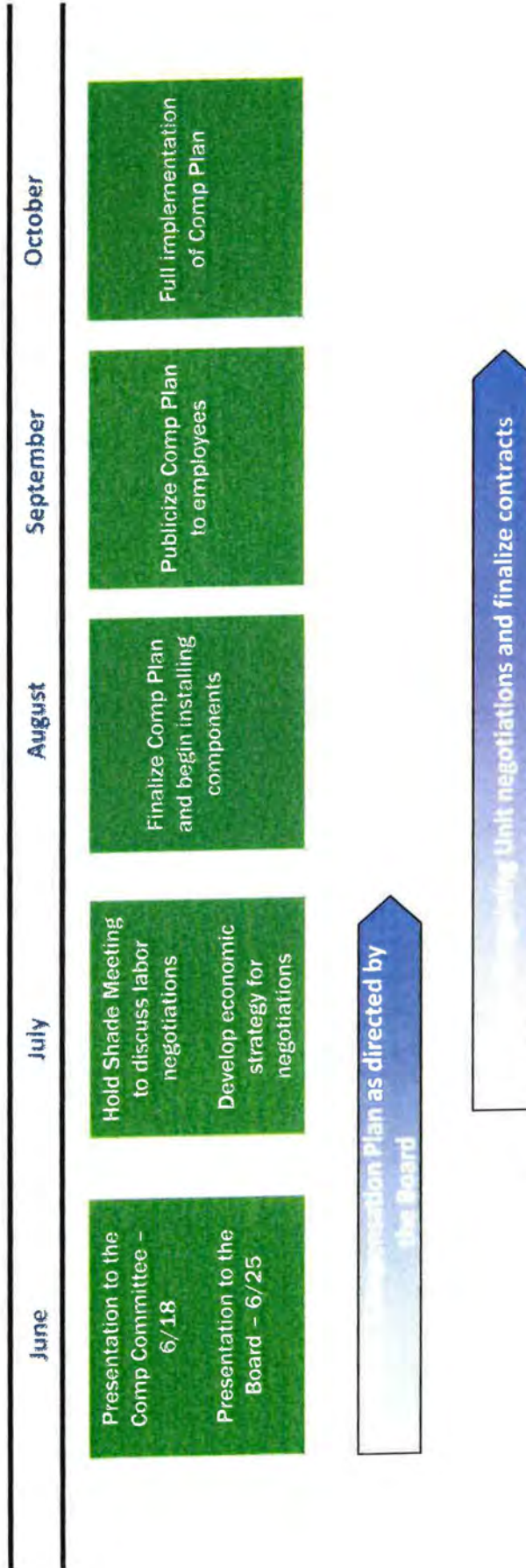
- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

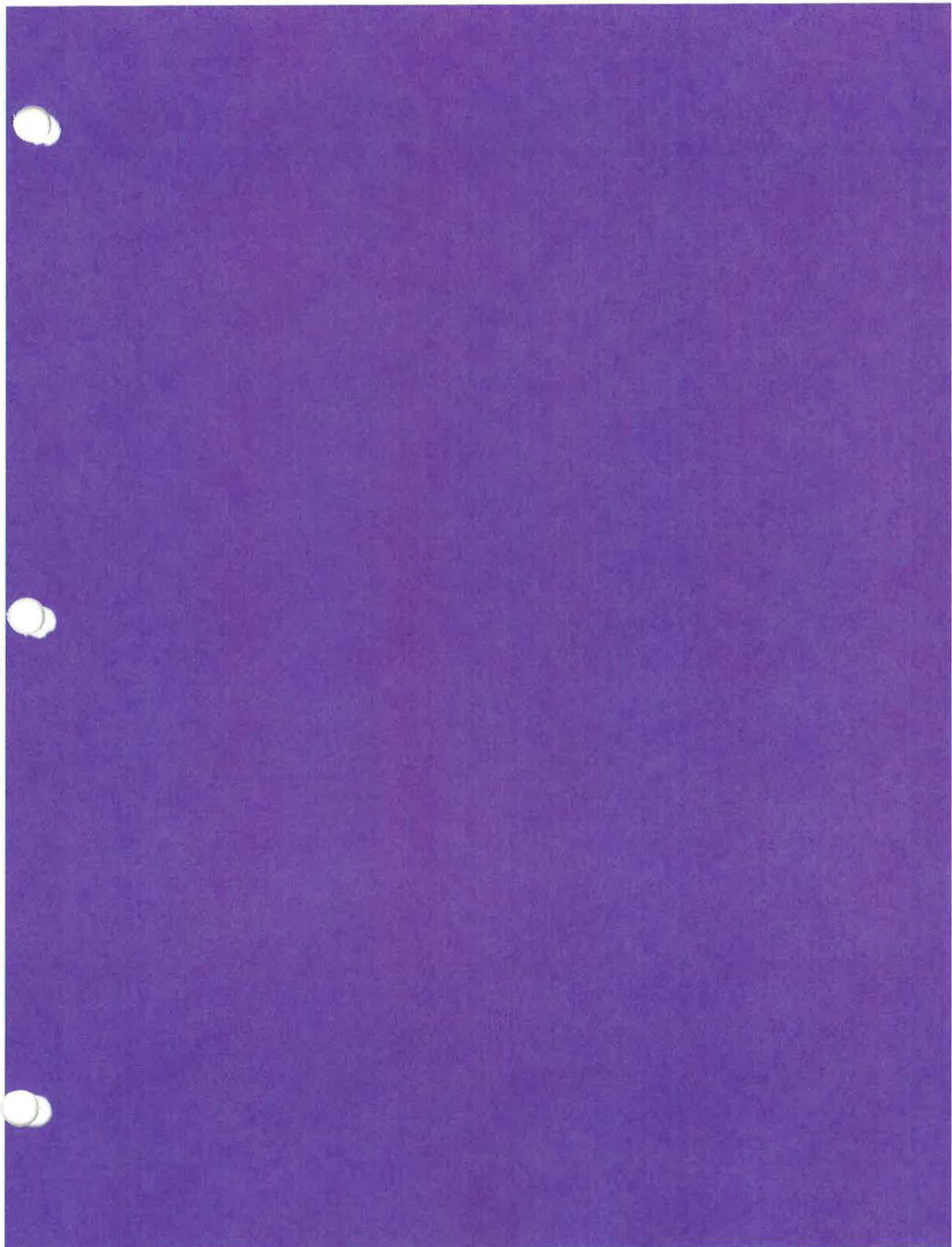
### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
Executive	-12%	45%	43%	-6%	40%	40%	-2%
Director	-1%	20%	18%	2%	5%	8%	1%
Manager	-2%	10%	13%	-3%	3%	--	-1%
Individual Contributor	-1%	7%	10%	-1%	3%	--	2%
Bargaining Units	11%	2%	7%	8%	1%	--	9%
Total	3%	8%	12%	2%	3%	19%	3%

Note: Market data provided by JEA.

# Compensation Plans





**JEA0308**

# Compensation Program Appendix for Compensation Committee Meeting

Prepared for JEA

June 18, 2019



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Willis Towers Watson

## Table of Contents

Section	Page
Introduction	2
Compensation Philosophy Review	4
Evolution of JEA's Compensation Program	6
CEO Competitive Market Pricing	8
Compensation Benchmarking Summary	11
Short-Term Incentive Plan Practices	14
Long-Term Incentive Plan Design	22
Proposed Compensation Adjustments	29
Modernizing Total Rewards	33
Appendix	37

## Introduction

### Summary

- JEA engaged Willis Towers Watson (“WTW”) to complete the following:
  - Conduct a competitive market assessment for JEA’s entire employee population
  - Provide a summary of market practices related to short-term incentive plan design
  - Conduct a competitive market analysis of long-term incentive (“LTI”) plan design practices and develop a proposed design
- This report includes the following:
  - Confirmation of JEA’s current compensation philosophy
  - Review of the evolution of JEA’s compensation programs
  - Analysis of the compensation variances for JEA’s employee population
  - Analysis of the gaps to market for JEA’s Appointed population and Bargaining Units
  - Proposed LTI plan design
  - Total rewards market best practices

## Compensation Philosophy Review

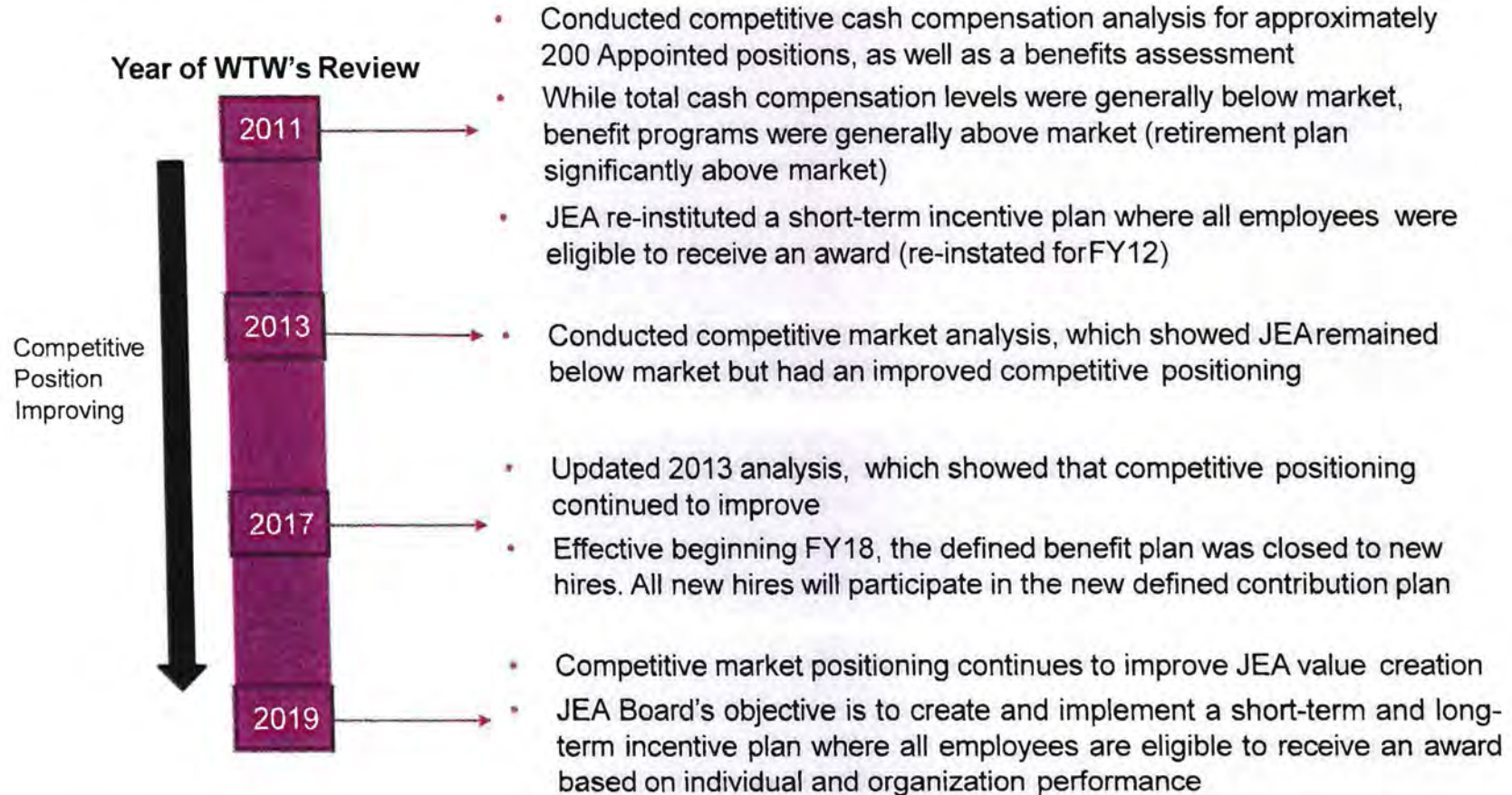
### JEA's Current Compensation Philosophy

- The following table summarizes JEA's current compensation philosophy, which guided WTW's review of JEA's competitive market assessments:

Compensation Philosophy Element	Details
<b>Alignment of Interest Between Employees, Stakeholders, and Organization</b>	JEA's compensation philosophy should support the overall business and board strategy with the ultimate goal of driving performance of the organization
<b>Market for Talent</b>	JEA's geographic market for talent varies by job level: <ul style="list-style-type: none"> <li>• <u>Individual Contributors/Managers</u> – local and regional scope</li> <li>• <u>Directors/Executives</u> – national scope</li> </ul>
<b>Target Competitiveness</b>	Targets the market 50 <sup>th</sup> %ile for all pay elements (Base Salary, Short-Term Incentive, and Long-Term Incentive)
<b>Pay Mix</b>	JEA's pay mix currently consists of base salary and a short-term incentive award, but JEA is implementing a long-term incentive plan in 2020 to align the interests of employees to JEA's Guiding Principles and four (4) Corporate Measures of Value (Customer, Community, Environmental and Financial)
<b>Industry Perspectives</b>	For <u>functional roles</u> – a 50/50 weighted mix of Utility/General Industry market data For <u>operational roles</u> – only Utility Industry market data

## Evolution of JEA's Compensation Program

### Timeline of Goals and Major Changes





## CEO Competitive Market Pricing Methodology

- To conduct the competitive market pricing for the CEO position, a peer group was developed reflecting:
  - Investor Owned Utilities (“IOUs”) and Public Power Utilities
  - Focus on electric and/or diversified utilities (electric and gas and/or water utilities)
  - Comparably-sized (revenues in a range of ½ to 2x JEA’s revenues of \$1.79B OR generation capacity in a range of ½ to 2x JEA’s generation capacity of 3,330 kWh)
  - Survey source: Willis Towers Watson’s *2018 Energy Services Industry Executive Compensation Database*
- Target TDC for the Combined Peer Group perspective is built up by using this formula:
  - Target TCC + (Base Salary \* ½ reported LTI opportunity %)
    - Given public power utilities do not typically provide LTI, market data is not shown for the public power peers; therefore, the Combined Peer Group perspective reflects 1/2 of the reported market data because the data are comprised of responses from both public power and IOUs (average of public power and IOUs)

## CEO Competitive Market Pricing

### Market Pricing Details

Chief Executive Officer		Competitive Market Data <sup>(1)</sup>		
Pay Component	Data Perspective	25th %ile	50th %ile	75th %ile
Base (\$000s)	Combined Peer Group	\$605.0	\$800.0	\$980.0
	Investor Owned Utility Peers	\$730.0	\$835.0	\$995.0
	Public Power Peers	\$475.0	\$580.0	\$920.0
Target Bonus % <sup>(1)</sup>	Combined Peer Group	48%	100%	108%
	Investor Owned Utility Peers	100%	100%	110%
	Public Power Peers <sup>(2)</sup>	---	---	---
Target TCC (\$000s)	Combined Peer Group	\$760.0	\$1,275.0	\$1,790.0
	Investor Owned Utility Peers	\$1,380.0	\$1,725.0	\$2,065.0
	Public Power Peers	\$515.0	\$720.0	\$985.0
LTI % <sup>(2)</sup>	Combined Peer Group	107%	125%	166%
	Investor Owned Utility Peers	213%	249%	331%
	Public Power Peers	---	---	---
Target TDC (\$000s)	Combined Peer Group <sup>(4)</sup>	\$1,515.0	\$2,270.0	\$3,010.0
	Investor Owned Utility Peers	\$2,845.0	\$3,970.0	\$5,110.0
	Public Power Peers	\$515.0	\$720.0	\$985.0

"--"= Data not available.

(1) Target bonus percentages are represented as a percentage of base salary.

(2) Long-term incentive (LTI) percentages are represented as a percentage of base salary. LTI figures are based on ASC 718 (FAS 123R) "accounting values". Given public power utilities do not typically provide LTI, market data is not shown for the public power peers; therefore, the Combined Peer Group perspective reflects 1/2 of the reported market data because the data are comprised of responses from both public power and IOUs (average of public power and IOUs).

(3) Only 4 public power peers report a target bonus opportunity (sample size less than 5 is too small to report data). Responses range from 8-35% with an average of 22%.

(4) Target TDC for the Combined Peer Group perspective is built up by using Base Salary, Target TCC, and LTI % data.

(5) Market data greater than \$100,000 rounded to the nearest \$5,000.

## Compensation Benchmarking Summary

### *Methodology*

- The following page contains a summary of WTW's review of JEA's competitive market data for its Appointed population (including 13 executives)
- WTW reviewed the most current incumbent and market data provided by JEA
  - Market data for the positions below the Director-level reflect a -5% geographic differential to account for the cost of labor of Jacksonville, FL vs. the US national average
  - Analysis of competitive positioning focused on market data at the 50<sup>th</sup> percentile

## Compensation Benchmarking Summary

### *Appointed Population vs. Market 50<sup>th</sup> Percentile Variances By Job Level*

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels

#### Job Weighted:

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
Total	-2%	-7%	-6%	--	-7%

## Short-Term Incentive Plan Practices

### *Introduction*

- JEA re-instated a broad-based short-term incentive plan several years ago, both to address competitive pay levels, as well as to reinforce specific messages related to performance expectations
- The following pages summarize market practices related to short-term incentive plan design
  - As appropriate, JEA may consider these practices as they continue to evolve their incentive plan design
  - Key design features covered include eligibility, target award opportunities, payout ranges, bonus pool funding, performance measures and performance range
- The market practices information has been summarized from survey research, as well as our consulting experiences

## Short-Term Incentive Plan Practices

### *Eligibility*

- Eligibility for short-term incentive plans is typically broad for both the Utility and General Industries, with prevalence actually higher in the Utility Industry (particularly at the lower job levels)
- Over 60% of organizations in the industry extend eligibility to the lower exempt and non-exempt roles
  - Lower roles may not have an expressed target opportunity, but they may be part of a “sharing program” based on organizational performance
  - In some cases, overall funding and participation at lower levels may be discretionary

## Short-Term Incentive Plan Practices

### Target Incentive Award Opportunities

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to “close the gap” between market and JEA’s desired competitive positioning

Target Incentive Award Opportunities – By Job Level

Role/Career Level	Target STI Opportunities	
	Utilities	General Industry
Senior Directors	25%	24%
Managers	15%	13%
Supervisors	10%	9%
Senior Level Professionals	13-20%	11-18%
Entry-Mid Level Professionals	7-10%	5-8%
Non-exempt	5%	3-5%

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.

## Short-Term Incentive Plan Practices

### *Payout Ranges*

- Payout ranges reflect the total award opportunity as a percentage of the target award, and represent the minimum award opportunity if threshold performance is achieved, and the maximum opportunity if maximum performance is achieved
- Payout ranges are typically 50% of target at threshold performance and 200% of target at maximum performance
  - In WTW's consulting experience, public power utilities typically have a maximum payout of 150% of target
- In most cases (and based on the specific performance standards), organizations will interpolate actual performance between threshold, target and maximum to provide appropriate incentive to improve performance at every possible increment
- Note that it is important to calibrate the payout range with the performance range to ensure that the awards are aligned with the probability of achievement



## Short-Term Incentive Plan Practices

### ***Bonus Pool Funding***

- There are two primary approaches to determine bonus pool funding:
  1. Sum-of-targets: specific target opportunities are defined (typically by role or grade) and the sum of these targets determines the bonus “pool” (the aggregated award which would be generated at target performance)
  2. Financial results-based formula: typically a financially-driven formula (e.g., bonus pool equals 10% of profits above a specific threshold)
- The sum-of-targets approach is typically the most common in both the Utility and General Industries
  - Prevalence for financial results-based formulas increases slightly for broad-based plans that are separate from executive plans because there is often a greater requirement that they be self-funding
- Particularly for sum-of-target plans, circuit breakers are a common design feature
  - A circuit breaker represents a single performance measure (typically a financial measure) that must be reached before any incentive award is paid regardless of performance in other measures
  - In other words, if the circuit breaker financial performance isn’t achieved, it shuts down the entire plan regardless of performance on other performance measures
  - Note that a financial circuit breaker may be set at levels below threshold levels for payout
- Another design feature is a modifier, which can be used to adjust the initial funding up or down based on another important measure (e.g. determine pool based on financial performance, and then modify by operational or customer performance measures)

## Short-Term Incentive Plan Practices

### *Performance Measures*

- Performance measures send an important message about what an organization must achieve, and how individual employees can contribute to those objectives
- We consider it a best practice to have a portfolio of performance measures to balance expectations across financial, operational and customer service categories
  - However, in order to ensure appropriate focus, we typically see 4-6 performance measures, with each measure having at least a 10% weight
- It is typical for organizations in both the Utility and General Industries to include at least one profit or income measure, with profit / operating income being the most common in both industries
- For non-financial performance measures, environmental health and safety, as well as operating / strategic measures are the most common in the Utility Industry
- Individual performance measures are also common in the Utility and General Industries
  - These measures help create line-of-sight to broader corporate measures

## Short-Term Incentive Plan Practices

### *Performance Range*

- Performance ranges reflect the minimum acceptable performance as a percentage of target performance, and the maximum performance recognized as a percentage of target performance
- Narrow performance ranges are typically used for measures where results are not expected to vary significantly from target (e.g., revenues)
- Wider performance ranges are typically used for measures where performance can fluctuate significantly year to year (e.g., profitability)
- In the Utility Industry, performance ranges for profitability at minimum is typically set to be 90% of target and for maximum is typically set to be 115% of target
- An important consideration in establishing the performance range is the probability of achievement
  - A best practice is to set threshold performance goals where the probability of achievement is 80-90% to ensure appropriate motivation
  - Similarly, probability of achievement for target performance should be 50-60% and 10-20% for maximum performance
  - As noted earlier, it is important to calibrate the performance range with the payout range

# Long-Term Incentive Plan Design

## Introduction

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

## Long-Term Incentive Plan Design Market Practices Summary

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Prevalence</b>	LTI plans are used selectively	All 13 IOU peers have an LTI plan	LTI plans are very prevalent with almost all IOUs using an LTI plan
<b>Eligibility</b>	For those Public Power Utilities with an LTI plan, eligibility typically limited to select executives	Typically executives down to director level positions	Typically executives down to director level positions
<b>Target Opportunity (% of Base Salary)</b>	Varies widely based on the organization, but targets will be lower than IOU levels	Median for CEOs: 230% Median for NEOs*: 110% Median for Directors: NA	Median for CEOs: 240% Median for NEOs*: 75% Median for Directors: 15-25%
<b>Award Frequency</b>	Annual awards with overlapping cycles are most common	All 13 peers grant annual awards with overlapping cycles	98.1% of organizations grant annual awards and overlapping cycles are the most common

NEOs\* = Named Executive Officers, as disclosed in the IOU's proxy statement.

## Long-Term Incentive Plan Design Market Practices Summary (continued)

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Award Vehicles</b>	Cash-based performance plans	100% of peers use performance plans 69% use restricted stock No peers use stock options	93% of organizations use performance plans 66% use restricted stock 16% use stock options
<b>Performance Metrics</b>	Financial and operational	TSR (100%) EPS (38%) Operational (15%)	TSR (64%) EPS (22%) Other operational metrics are also common
<b>Performance Metrics Weights</b>	Operational metrics weighted more heavily than financial metrics	TSR and financial metrics weighted more heavily than operational metrics	Not available
<b>Performance Range</b>	More conservative compared to IOUs	Relative TSR: 28 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum	Relative TSR: 25 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum
<b>Payout Range</b>	Threshold: 50% of Target Maximum: 150% of Target	Threshold: 0-50% of Target Maximum: 150-200% of Target	Threshold: 50% of Target Maximum: 200% of Target

## Long-Term Incentive Plan Design

### Proposed Design

- Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:



\* Value of units tied to JEA Net Book Value.

# Long-Term Incentive Plan Design

## Proposed Design Details: Performance Unit

### Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees would be eligible in order to drive collective focus on JEA long-term performance</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Annual</li> </ul>
Circuit Breaker	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded</li> </ul>
Performance Measures	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>
Performance Period	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul>
Payout Range	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.



# Long-Term Incentive Plan Design

## Proposed Design Details: Time-Based Unit

### Time-Based Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Time-Based Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees eligible, but awards targeted to <b>critically skilled employees or employees viewed as retention risk</b>; awards generally intended for Manager level positions and below in order to enhance employee retention</li> <li>Target 10% of employees below the Director level (approximately 1,500 including Bargaining Units) or approximately 150 employees below the Director level to receive awards each year</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Retention award values range from 10% to 20% depending on criticality of role and/or retention need</li> </ul>
Award Pool Funding	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established each year with intent for contribution level to ensure LTI plan, covering both Performance Unit and Time-Based Unit awards, is self funded</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Ad hoc awards</li> </ul>
Vesting Period	<ul style="list-style-type: none"> <li>3-year cliff vesting period</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Time-Based Unit awards to employees below the Director level based on current incumbent base salaries* is \$1.2M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

## Proposed Compensation Adjustments

### Competitive Pay Gaps to Market by Pay Element

- The following exhibit summarizes the current gaps to market for JEA's population (excluding the M&C roles due to lack of incumbent data) by each pay element:
  - JEA's base salary, target TCC, and target TDC show variances comparing incumbent pay to market for the Appointed population
  - Bargaining Units' pay elements and JEA target bonus % are based off of pay structures (many of the Bargaining Units are in step structures)
- Gaps to market exist at target bonus % and long-term incentive %, particularly for the executives and directors, which lead to higher variances to market at target TCC and target TDC

#### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA	Market	JEA	JEA	Market	JEA
Executive	-12%	10%	43%	-28%	--	40%	-42%
Director	-1%	8%	18%	-8%	--	8%	-13%
Manager	-2%	7%	13%	-6%	--	--	-6%
Individual Contributor	-1%	7%	10%	-1%	--	--	-1%
Bargaining Units	11%	2%	7%	8%	--	--	8%
<b>Total</b>	<b>3%</b>	<b>5%</b>	<b>12%</b>	<b>-1%</b>	<b>--</b>	<b>19%</b>	<b>-2%</b>

Note: Market data provided by JEA.

## Proposed Compensation Adjustments

### Proposed Base Salary, Target Bonus and Long-Term Incentive Adjustments

- **Base Salary:** assess individual competitive position to market; for individual positions well below market, JEA could bring positions to within the competitive range of the market median within two to three years, assuming performance expectations are being met
- **Target Bonus % and LTI % (as % of salary):** the tables below summarize JEA's current average target bonus and LTI incentive opportunities and proposed target values
  - The incentive targets below are intended to close the gap to market for target total direct compensation within the first year in order to align with the Board's compensation philosophy
  - **Note:** when material gaps to market exist, typical market practice is to make incremental adjustments over a multi-year period (2 to 3 years) to close the gap to market. Company performance, cost considerations and stakeholder optics will influence the level of pay adjustment and the timeframe over which pay is brought to market

Level	Target Bonus %			LTI Opportunity %			Total At Risk Compensation		
	Current	Market	Proposed	Current	Market	Proposed	Current	Market	Proposed
Executive	10%	43%	45%	--	40%	40%	10%	83%	85%
Director	8%	18%	20%	--	8%	5%	8%	26%	25%
Manager	7%	13%	10%	--	--	3%	7%	13%	13%
Individual Contributor	6%	10%	7%	--	--	3%	6%	10%	10%
Bargaining Units	2%	7%	2%	--	--	1%	2%	7%	3%

- **Estimated Cost Impact:** estimated incremental cost impact of proposed target bonus and LTI adjustments to bring JEA compensation to the market median is **\$5.8M**; see details below for cost breakdown:
  - Target Bonus Cost: **\$2.4M** based off current incumbent base salaries
  - LTI Cost: **\$3.4M** based off current incumbent base salaries for performance unit award (total cost of **\$4.6M** if time-based unit award is included)

Note: Market data provided by JEA.

## Proposed Compensation Adjustments

### Market Positioning Based on Proposed Pay Adjustments

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

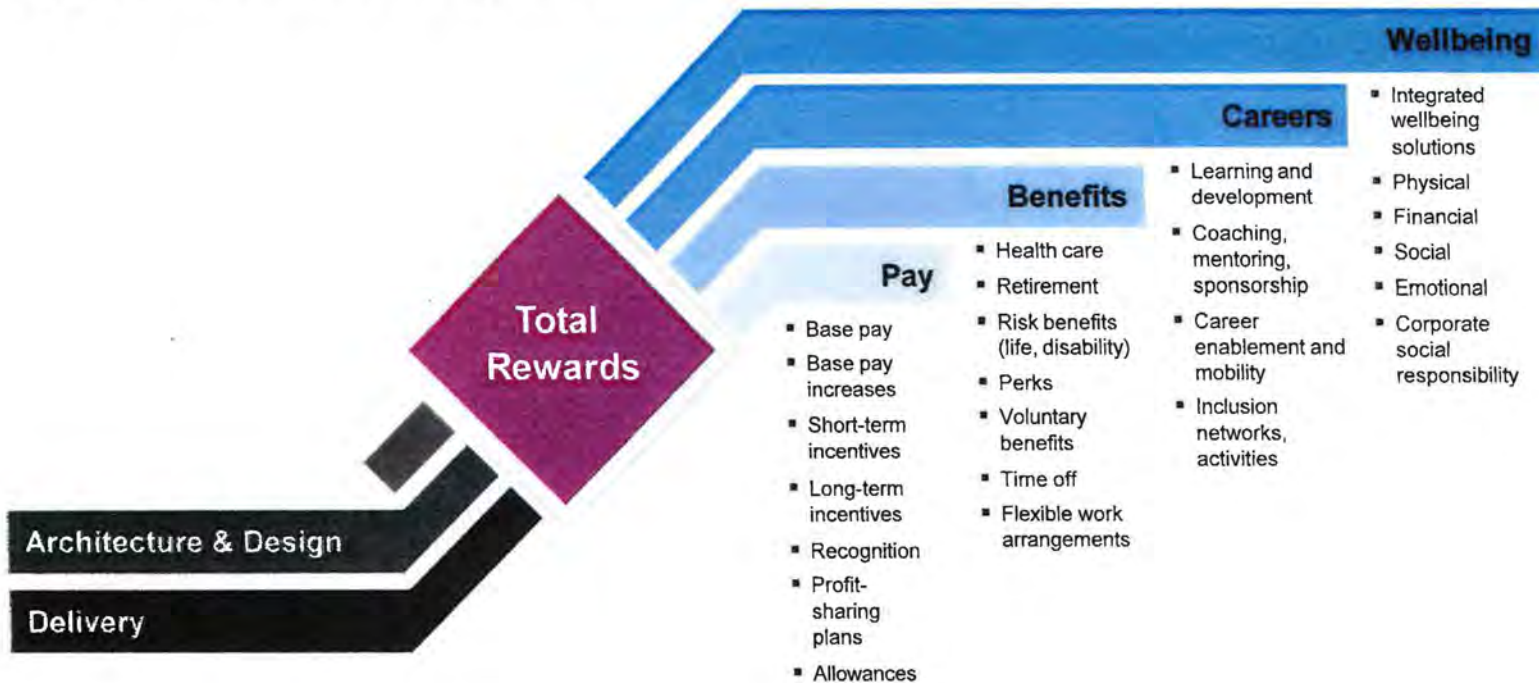
#### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
Executive	-12%	45%	43%	-6%	40%	40%	-2%
Director	-1%	20%	18%	2%	5%	8%	1%
Manager	-2%	10%	13%	-3%	3%	--	-1%
Individual Contributor	-1%	7%	10%	-1%	3%	--	2%
Bargaining Units	11%	2%	7%	8%	1%	--	9%
Total	3%	8%	12%	2%	3%	19%	3%

Note: Market data provided by JEA.

# Modernizing Total Rewards

*Integrated Total Rewards strategy, architecture & design and delivery for a superior Talent Value Proposition*



Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

# Modernizing Total Rewards

Key themes emerging in the market with implications for Total Rewards

<b>1. Future focused</b> Emerging work dynamics and skills and multi-generational workforce re-write the deal 	<b>2. Technology Advancements</b> Expansion of <i>digitization</i> of the Total Rewards delivery and experience 	<b>3. Optimising cost and risk of TR</b> Analytics and data measurement 
<b>4. Segmentation</b> More tailored Total Rewards with increased choice 	<b>5. Consumerism and flexibility</b> Expansion of worker choice and <i>voluntary benefits</i> 	<b>6. Transparency</b> Legislative and social media increase public scrutiny 
<b>7. Inclusion and diversity</b> Total rewards that enable an inclusive culture and diverse workforce 	<b>9. Talent experience</b> Emphasis on <i>workplace differentials</i> that enhance the environment and Talent Value Proposition 	<b>10. Good governance</b> Being <i>agile and nimble</i> to adapt to changing, fast-moving business strategies 
<b>8. Wellbeing</b> Holistic <i>physical, financial, social and emotional health</i> 		

Source: 2019 Willis Towers Watson McKinsey Total Rewards Survey

## Modernizing Total Rewards

*Our findings identify five areas critical to meeting employees' Total Rewards expectations and delivering a consumer-grade experience*



**Understand  
what  
employees  
value**



**Consider  
employee  
wellbeing a  
top priority**



**Make effective  
use of  
technology**

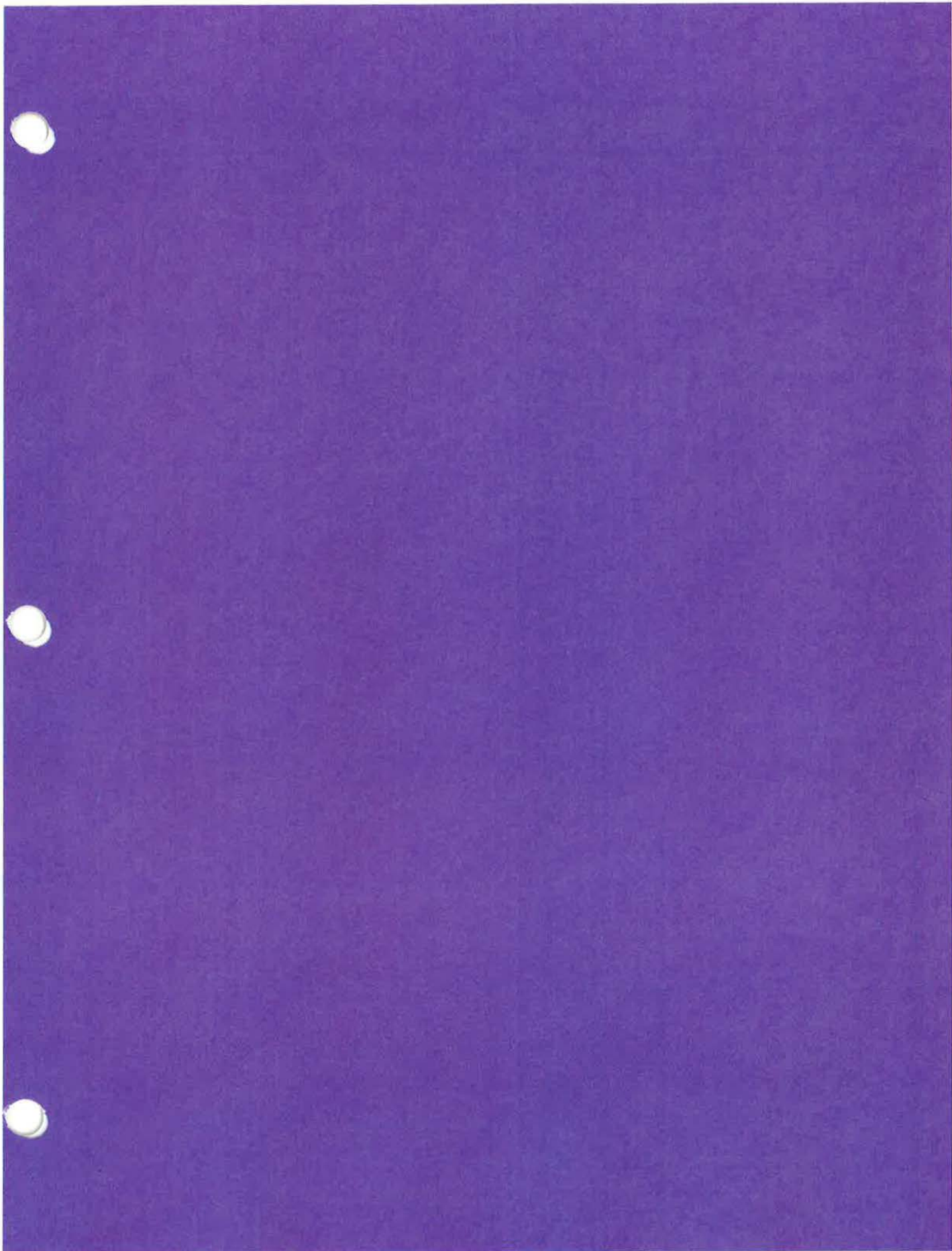


**Measure cost  
and impact of  
programs**



**Prioritize  
fairness,  
purpose-driven  
benefits, and  
I&D**

*Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey*



**JEA0337**



## JEA COMPENSATION COMMITTEE MINUTES

June 18, 2019

The Compensation Committee of JEA met on Tuesday, June 18, 2019, in the 8<sup>th</sup> Floor Conference Room, JEA Plaza Tower, 21 W. Church Street, Jacksonville, Florida.

### Agenda Item I – Opening Considerations

- A. Call to Order –Committee Chair Johnson called the meeting to order at 2:01 PM with Committee Member April Green in attendance, as well as Board Chair Alan Howard in observance. Also present were Aaron Zahn, Ryan Wannemacher, Jon Kendrick, Lynne Rhode, Herschel Vinyard, and Gina Kyle.
- B. Adoption of Agenda – The Agenda was adopted on **motion** by Ms. Green and second by Board Chair Howard.
- C. Approval of Minutes – The January 15, 2019 minutes were approved on **motion** by Ms. Green and second by Board Chair Howard.

### Agenda Item II – New Business

- A. Introduction – Aaron Zahn, Managing Director/CEO introduced the subjects that would be discussed during the meeting.
- B. Towers Watson Analysis of JEA vs Industry Compensation – Jon Kendrick, Interim Chief Human Resource Officer provided the committee an overview, as well as, answer question related to the Towers Watson presentation. This item was presented for information to the committee.
- C. Long Term Compensation Update – Aaron Zahn, Managing Director/CEO and Herschel Vinyard, Chief Administrative Officer presented the Long Term Compensation Update. With this program, employees are eligible to receive self-funded long term incentives based on clear measurable factors on a three year industry standard cycle. Mr. Zahn advised the committee that if they commissioned JEA leadership to move forward the team would work to develop an appropriate plan. This item was presented for information to the committee.  
  
Board Chair Howard made a **motion** to direct JEA management to start the process of finalizing the long term compensation framework, with a second by Ms. Green, motion carries.
- D. Executive Contract – Aaron Zahn, Managing Director/CEO and Committee Chair Johnson discussed the executive contract and discussed extending the current contract until July 31, 2019, to allow time for the total compensation plan to be worked out prior to finalizing the contract for the Managing Director/CEO. Contract discussions were deferred.
- E. Other New Business
- F. Announcements
  - 1. Schedule Next Meeting as Appropriate
- G. Adjournment

APPROVED BY:

JEA0338

\_\_\_\_\_  
Camille Lee-Johnson, Committee Chair

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

Submitted by:

\_\_\_\_\_  
Brandi Taylor  
Executive Assistant

## Vinyard, Herschel T. - Chief Administrative Officer

---

**From:** Stewart, Kerri - VP & Chief Customer Officer  
**Sent:** Friday, December 6, 2019 10:53 AM  
**To:** Zahn, Aaron F. - Managing Director/CEO; Vinyard, Herschel T. - Chief Administrative Officer; Dykes, Melissa H. - President/COO; Rhode, Lynne C. (City of Jacksonville); Wannemacher, Ryan F. - Chief Financial Officer; Hall, Sherry L.  
**Subject:** Memo to April Green from Jason Gabriel re: PUPs

FYI

**From:** Rondinelli, Mellissa <MRondinelli@coj.net>  
**Sent:** Friday, December 6, 2019 10:06 AM  
**To:** Stewart, Kerri - VP & Chief Customer Officer <stewk@jea.com>  
**Subject:** FW: JEA re Preliminary Approval of PUP

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

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**From:** Gabriel, Jason  
**Sent:** Friday, December 06, 2019 10:01 AM  
**To:** April Green ([agreen@mebusinesssolutions.com](mailto:agreen@mebusinesssolutions.com))  
**Subject:** JEA re Preliminary Approval of PUP

Dear April –

Per our conversation earlier this morning, it has come to my attention that a certain implication has been made that JEA did something legally wrong with regard to the preliminary adoption of the Performance Unit Plan (PUP) at the July 23, 2019 meeting. I write to address this unfortunate suggestion.

Following the Board meeting, JEA gave OGC requisite time to research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. In preliminarily approving the PUP, the JEA Board did not act outside of their legal authority.

OGC ultimately concluded that the PUP had outstanding legal issues and JEA ultimately concluded that they would no longer pursue the plan. At the next JEA Board meeting, the Board will have the opportunity to vote to formally withdraw the plan. I anticipate that the Board will take appropriate action at that time.

Please do not hesitate to contact me with any questions or concerns.

Thank you,

-Jason G.

**Jason R. Gabriel**  
General Counsel

Office of General Counsel  
City of Jacksonville  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: (904) 255-5050  
Facsimile: (904) 255-5119  
email: [jgabriel@coj.net](mailto:jgabriel@coj.net)  
**\*\*Board Certified - City, County & Local Government Law\*\***



**\*\*\* Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. \*\*\***

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202  
PHONE: (904) 255-5100



MEMORANDUM

TO: Honorable Council Member Michael Boylan

CC: Jason R. Gabriel, General Counsel

FROM: Lawsikia J. Hodges, Deputy General Counsel, Government Operations

RE: **JEA Invitation to Negotiate #129-19 for Strategic Alternatives -  
Notice Requirements in Section 21.04(p) of the City Charter**

DATE: December 5, 2019

I. **Background.**

On July 23, 2019, the JEA Board approved Resolution 2019-07, which authorized the Chief Administrative Officer and Managing Director (the "JEA CEO") to undertake a competitive solicitation regarding JEA's assets (the "Resolution"). On August 2, 2019, JEA issued Invitation to Negotiate #129-19 for Strategic Alternatives (the "ITN")<sup>1</sup>.

II. **Question Asked.**

Whether the JEA Board was required under Section 21.04(p) of the City Charter to provide the Council Auditor with 30 days advance written notice of the JEA Board's action of approving the Resolution?

III. **Short Answer.**

No. The JEA Board was not required to provide the Council Auditor with 30 days advance written notice of the JEA Board's action of approving the Resolution because such approval by the JEA Board was not an "activity" pursuant to Section 21.04(p). The term "activity" as used in Section 21.04(p) refers to the specific activities listed therein (and any activities not listed of the same kind)<sup>2</sup> (i) that JEA, operating as a public utility, is permitted to

<sup>1</sup> The ITN was issued in accordance with the authority set forth in the Resolution, the JEA Procurement Code, the JEA Procurement Code Operational Procedures (the "Operational Procedures"), and Article 21 of the City Charter (the "City Charter").

<sup>2</sup> See statutory construction principle *ejusdem generis*.

enter into; and (ii) that transfers, sells, finances, leases or otherwise provides services or products, or by-products developed or used by JEA incident to the exercise of the powers conferred in Article 21 of the City Charter. As a public utility, the quintessential power conferred to JEA in Article 21 is the power of JEA to own, manage and operate a utilities system<sup>3</sup> within and without the City of Jacksonville<sup>4</sup>; all other powers conferred to JEA in Article 21, including the powers referenced in Section 21.04(p), is in support of this foremost power. As such, the activities referenced in Section 21.04(p) must constitute “services, products, or by-products” developed or used by JEA incident to operating a utilities system. As long as an activity meets the requirements of Section 21.04(p) (i.e., constitute services, products, or by-products developed or used by JEA incident to its power to operate a utilities system), JEA must provide the Council Auditor with advance written notice prior to JEA entering into such activity.

Here, the JEA Board’s action of approving the Resolution does not constitute an “activity” under Section 21.04(p) because in and of itself such action by the board is not a “service, product or by-product” developed or used by JEA incident to the powers conferred in Article 21. By way of example, the specific activities listed in Section 21.04(p) include services, products or by-products such as energy performance contracting, power marketing services, the supply of steam or other thermal energy, and the testing and maintenance of customer-owned facilities. These activities represent ordinary activities customary to JEA’s operation as a public utility, and thus, JEA is conferred authority to enter into such activities so as long as proper advance notice is provided to the Council Auditor. Here, the board’s action of approving the Resolution was a procurement authorization and approval of the JEA CEO to explore transferring a significant portion of JEA assets (comprising more than ten percent of the utilities system) to another utility to own, manage and operate for JEA (and the City).<sup>5</sup> Such action by the board was not an activity similar in nature or kind to the activities listed in Section 21.04(p);<sup>6</sup> therefore, the JEA Board’s action of approving the Resolution was not subject to the Council Auditor’s notice requirement contained in Section 21.04(p).<sup>7</sup>

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<sup>3</sup> The term “utilities systems” includes the electric utility system, the water and sewer utility system, the natural gas utility system, and any other additional utilities systems operated by JEA. See Section 21.02 City Charter.

<sup>4</sup> See Article 21.01 of the City Charter.

<sup>5</sup> Given the exploratory nature, a sale or transfer of JEA assets may or may not result from the procurement process. If the JEA Board ever seeks to consummate a sale or transfer (comprising more than ten percent of the utilities system) to another utility, the JEA Board must obtain City Council approval and a subsequent voter referendum pursuant to Section 21.04(p).

<sup>6</sup> See statutory construction principle *ejusdem generis*.

<sup>7</sup> Although the JEA Board was not required to provide notice to the Council Auditor under Section 21.04(p), the JEA Chief Legal Officer indicated that JEA emailed a link of the July 23, 2019 JEA Board meeting materials on July 22, 2019, to the Council Auditor’s office and also delivered a hard copy of the July 23<sup>rd</sup> board meeting materials to the Council Auditor’s office on July 23, 2019.



OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE



CITY HALL, ST. JAMES BUILDING  
117 WEST DUVAL STREET, SUITE 480  
JACKSONVILLE, FLORIDA 32202

MEMORANDUM  
JULY 22, 2019

TO: FILE

FROM: LAWSIKIA J. HODGES, DEPUTY GOVERNMENT OPERATIONS  
LYNNE C. RHODE, JEA CHIEF LEGAL OFFICER  
JASON R. GABRIEL, GENERAL COUNSEL

RE: STRATEGIC PLANNING ACTIONS TAKEN BY THE JEA BOARD BASED ON SCENARIO-BASED PLANNING  
OPTIONS PRESENTED BY THE JEA SENIOR LEADERSHIP TEAM

The JEA Senior Leadership Team<sup>1</sup> ("SLT") has presented, and intends to present scenario-based planning options to the JEA Board ("Board") to assist the Board in making strategic planning decisions regarding JEA's future. In scenario-based strategic planning, SLT presents various scenarios regarding JEA's future to the Board, and depending on the scenario chosen by the Board, the Board makes strategic planning decisions based on the scenario selected.

SLT presented scenario-based planning option 1 (Scenario 1 - Status Quo) to the Board on May 28, 2019. SLT intends to present three additional scenario-based planning options to the Board at its regular meeting on July 23, 2019: Scenario 2A - Traditional Utility Response, Scenario 2B - Traditional Utility Response (with traditional legislative approach) and Scenario 3 - Non-Traditional Utility Response (collectively "Options" or individually "Option").

Any decision by the Board to proceed with implementing one of the Options presented by SLT will require formal actions by the Board in the form of various Board resolutions and/or motions. The Office of General Counsel, in consultation with outside counsel,<sup>2</sup> has reviewed the proposed resolutions associated with each Option (Resolutions 2019-06 through 2019-10), and we believe that the Board is authorized under its charter provisions, subject to applicable laws, to proceed with implementing through formal action one of the Options, as presented.

The decision to proceed with implementing one of the Options, as presented, is a business decision for the Board to make and within its authority under the City Charter.

<sup>1</sup> The Senior Leadership Team consists primarily of the Managing Director and Chief Executive Officer, the Chief Operating Officer, the Chief Administrative Officer and the Chief Financial Officer.

<sup>2</sup> Office of General Counsel engaged and relied on various outside specialized counsel to assist JEA in the preparation of the resolutions and underlying documents required for each Option presented by SLT. Accordingly, the scope of this memorandum does not address the legality of the underlying documents drafted to implement such resolutions, as such legality has been confirmed, and will continue to be developed and approved by special counsel to JEA appointed and supervised by the Office of General Counsel pursuant to the course of action approved by the JEA Board.





**JEA BOARD MINUTES**  
**July 23, 2019**

The JEA Board met in regular session on Tuesday, July 23, 2019, on the 19<sup>th</sup> Floor, 21 W. Church Street, Jacksonville, Florida. Present were April Green, Camille Lee-Johnson, Alan Howard, Reverend Fredrick Newbill, Kelly Flanagan, and Andy Allen. John Campion was absent and excused.

**Agenda Item I – Welcome**

- A. The meeting was **called to order** at 9:00 AM by Chair April Green.
- B. A **Moment of Reflection** was observed by all.
- C. The **Pledge of Allegiance** was led by Chair Green.
- D. **Adoption of Agenda** – The agenda was approved on **motion** by Vice Chair Newbill and second by Mr. Howard.
- E. **Introductions** were made by board members present, Aaron Zahn, and Lynne Rhode.
- F. The **Safety Briefing** was given by Aaron Zahn, Managing Director/Chief Executive Officer.
- G. **Sunshine Law/Public Records Statement** – Lynne Rhode, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

**Agenda Item II – Comments / Presentations**

- A. **Comments from the Public** – All information for speakers on file.
  - **Jennifer Stokes:** JEA employee and PEA vice chair. Comments on Strategic Planning. Asked that Staff keeps the employees in mind during decision making.
  - **Cathleen Crowe:** JEA employee and President of AFSCME. Comments on Strategic Planning. Invited the SLT and Board of Directors to a union meeting to discuss their union's contribution to JEA.
  - **Ronnie Burris:** Business Manager of LIUNA Local 630 and JEA retiree. Comments on Strategic Planning. Asked that thought is put into decisions that are made and do whatever it takes to protect the employees.
  - **Jesse Ferraccio:** Vice President of IBEW Local 2358 and JEA employee. Comments on Strategic Planning. Asked that decisions made about the future of JEA's detriment of the employee and stated that they are more than willing to work with the SLT to protect the employees.
  - **Randy Hilton:** President of PEA and JEA employee. Comments on Strategic Planning.
- B. **Comments from Council Liaison** – **Councilman Danny Becton** stated that he is glad to be the liaison for the board. He also stated that JEA is a crossroad and it is unacceptable to ignore the facts that we must innovate. He is looking forward to this opportunity.

**Agenda Item III – Operations (Discussion/Action)**

- A. **Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On **motion** by Secretary Johnson and second by Mr. Howard, Appendix A and Appendix B were approved.

**Appendix A: Board Meeting Minutes May 28, 2019** – approved

**Appendix B: Approval of Bond Counsel** - approved

- B. **Monthly Reports and Updates** – The following monthly reports and updates are submitted to the Board as information only. These items require no explanation, discussion, presentation or action.

**Appendix C: Monthly Financial Statements** – received for information

**Appendix D: Monthly FY19 Communications & Engagement Calendar and Plan Update** – received for information

**Appendix E: Sole Source & Emergency Procurement/Procurement Appeals Board Report** – received for information

**Appendix F: Corporate Campus Update** – received for information

- C. **Monthly Financials and Operations Dashboard** – Melissa Dykes, President/COO discussed the details of financial dashboards, highlighting some of the metrics. JEA is in the first quartile of residential customer satisfaction in the JD Power Residential Index; improved to 28 of 142 metrics for residential customer satisfaction amongst National utilities. JEA is in the second quartile of business customer satisfaction index, therefore JEA will not meet that goal. The water pressure metric is not likely to be met as well. In addition, capital spending is on track. Also nitrogen into the river is doing well; the last 12 months have been the lowest in the history of JEA.
- D. **Strategic Planning** – Aaron Zahn, Managing Director/CEO introduced the presentation and the flow of presenters. Melissa Dykes, President/COO recapped the past presentations and Lynne Rhode, Chief Legal Officer read the disclaimer. Ms. Dykes stated that Scenario 2A shifts responsibility back to JEA but at the cost of operations. Ms. Dykes explained the sensitivity analysis and outlined the process and timeline of Scenario 2A. Highlighted the implementation plan located in the appendix.

Mr. Zahn stated that he went out to speak to customers and they are actively investing in alternative energy distribution.

Herschel Vinyard, Chief Administrative Officer presented Scenario 2B, the analysis on the constraints and the significant legal barriers. Mr. Vinyard explained what Public Policy is and the difficulties of competing in the private sector. Mr. Vinyard highlighted several laws that make it difficult for JEA to compete. Mr. Vinyard asked that the Board of Directors allow Staff to pursue the removal of legal barriers and allow Staff to come back with a granular strategy in a few months.

Ryan Wannemacher, Chief Financial Officer, presented Scenario 3. Mr. Wannemacher stated that Scenario 2A and 2B puts JEA on a controlled declined shrinkage. Mr. Wannemacher highlighted the options in Scenario 3. Scenario 3A would give ownerships to the customers, Scenario 3B would consider an IPO, and Scenario 3C would be private placement, Scenario 3D technology conversion, 3E oil and gas conversion, and Scenario 3F would be utility conversion. Mr. Wannemacher stated the first priority is the employee. Mr. Wannemacher provided a timeline and flow of a non-government structure. Mr. Wannemacher asked that the Board of Directors approve a minimum set of requirements that must be achieved by any investor for recapitalization. Kevin Hyde of Foley & Lardner joined the presentation to further explain the pension protection and provided two

examples, but stated that employees will be provided specific details on their situations.

Mr. Zahn, stated should the board approve Scenario 3 there would be a recommendation for retention payments and accelerated service, base rate freeze approval, an open and competitive process, and a commitment from the Board of Directors and management team to investors.

Lynne Rhode, Chief Legal Officer read Resolution 2019-06 and solicited a motion to pursue Scenario 2A and 2B and motion to adopt Resolution 2019-06. Ms. Rhode then read Resolutions 2019-07, 2019-08, and Resolution 2019-09 and solicited a motion to adopt 2019-07, 2019-08, and Resolution 2019-09.

Chair Green stated that the Board has reviewed the documents extensively. Scenarios felt very corporate, specifically Scenario 3 and felt the importance of the employees and the community. The board had an open discussion on all of the presentation. Mr. Zahn stated that the minimum requirements were deliberated by staff and business partners.

Motion was made and passed to amend Resolution 2019-07 number 4. On motion by Secretary Johnson and second by Vice Chair Newbill amended Resolution 2019-07 was approved unanimously.

#### **RESOLUTION 2019-07**

#### **A RESOLUTION AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO INVESTIGATE AND PURSUE SCENARIO 3: THE NON-TRADITIONAL UTILITY RESPONSE**

Resolution 2019-08 on motion by Vice Chair Newbill and second by Alan Howard was approved unanimously.

#### **RESOLUTION 2019-08**

#### **A RESOLUTION APPROVING THE REQUEST FOR INTRODUCTION OF PENSION REVISION LEGISLATION TO THE CITY COUNCIL UNDER SCENARIO 3 (THE NON-TRADITIONAL UTILITY RESPONSE) AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE INTRODUCTION OF THE LEGISLATION**

Resolution 2019-09 on motion by Vice Chair Newbill and second by Secretary Johnson was approved unanimously.

#### **RESOLUTION 2019-09**

#### **A RESOLUTION APPROVING EMPLOYEE PROTECTION AND RETENTION PROGRAM AND APPROVING CEO AND NON-CEO EXECUTIVE EMPLOYMENT AGREEMENTS UNDER SCENARIO 3 (THE NON-TRADITIONAL UTILITY RESPONSE) AND AUTHORIZING ACTION TO PURSUE IMPLEMENTATION OF SUCH PROGRAM AND EXECUTION OF SUCH AGREEMENTS**

#### **Agenda Item VI – Committee Report**

- A. **Total Compensation and Employee Benefits** – Jon Kendrick, Chief Human Resource Officer, presented the Total Compensation Strategy. The goal is to elevate the entire team by ensuring the compensation philosophy align with the guiding principles, encourage long-term culture value, establish a formal compensation policy to align behavior to the four corporate measures of value, and ensure policy promotes collaboration to drive

vision and mission. Ryan Wannemacher, Chief Financial Officer presented the Long-Term Performance Units Program and how they will be beneficial to both the employees and JEA.

Lynne Rhode, Chief Legal Officer read Resolution 2019-10. On motion by Alan Howard and second by Vice Chair Newbill Resolution 2019-10 was approved unanimously.

**RESOLUTION 2019-10**

**A RESOLUTION APPROVING LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION**

**Agenda Item VII – Other Business**

- A. **Old Business** – N/A
- B. **Other New Business** – Alan Howard thanked everyone for their time and the opportunity
- C. **Open Discussion** – None
- D. **Managing Director/CEO's Report** – Mr. Zahn extended gratitude to Lynne Rhode and the entire Executive Team for their efforts to get the material and presentations together. Mr. Zahn thanked the Board of Directors for their work as well.
- E. **Chair's Report** – Chair Green reiterated Mr. Zahn's message and also reiterated that there was no vote to sell JEA. The board gave leadership the direction to go back and pursue an unconstrained non-traditional response to make JEA better for the employees, customers, and community as a whole.

**Agenda Item VIII – Closing Considerations**

- A. **Announcements** – Next Board Meeting – August 27, 2019
- B. **Adjournment**

*With no further business claiming the attention of the Board, Chair Green adjourned the meeting at 12:00.*

APPROVED BY:

\_\_\_\_\_  
SECRETARY

DATE: \_\_\_\_\_

Board Meeting recorded by:

\_\_\_\_\_  
Madricka L. Jones, Executive Staff Assistant

**RESOLUTION 2019-10**

**A RESOLUTION APPROVING LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION**

**WHEREAS**, in accordance with Board Policy 2.7, the Compensation Committee directed JEA management in January 2019 to develop a compensation policy to align with talent market and guiding principles, JEA management presented to the Compensation Committee and the Compensation Committee approved in June 2019 the framework for a compensation plan, including a long-term incentive plan;

**WHEREAS**, at its June 2019 Board meeting, the Board approved the framework of JEA's long-term compensation plan and authorized JEA management to develop the plan and present it to the Board at the July 2019 Board meeting for final approval;

**WHEREAS**, the Board believes that it is in the best interest of JEA to adopt a long-term performance unit plan in connection with annual performance reviews and general operation of JEA; and

**WHEREAS**, the Board has reviewed the summary of the terms and conditions of the Long-Term Performance Unit Plan, which summary is attached hereto as Exhibit I (the "Long-Term Performance Plan Summary").

**BE IT RESOLVED**, by the Board that:

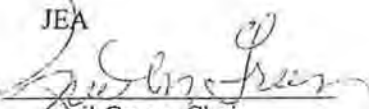
1. The Chief Executive Officer and Managing Director (the "CEO") or his designee shall have the authority to (i) implement a long-term performance unit plan (the "Long-Term Performance Unit Plan") on the terms and conditions set forth on the Long-Term Performance Plan Summary, (ii) execute with each actively employed eligible full-time employee, any full-time JEA employee as otherwise recommended by the CEO and approved by the Administrator of the Long Term Performance Unit Plan, and each actively employed eligible full-time attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA an agreement under the Long-Term Performance Unit Plan, (iii) in consultation with the Office of General Counsel, make technical and clerical amendments to the Long-Term Performance Unit Plan and/or the Form Long-Term Performance Agreement, all of which do not increase the financial obligations or liability of JEA under the Long-Term Performance Unit Plan and/or the Form Long-Term Performance Agreement, and (iv) take, or cause to be taken, any and all action and to prepare, execute and deliver, or cause to be prepared, executed and delivered, any and all documents that the CEO or his designee deems necessary or advisable to carry out the intent of this resolution.
2. The Chair of the Compensation Committee of the Board be, and hereby is, appointed as the Administrator of the Long-Term Performance Unit Plan with full power and authority to administer the Long-Term Performance Unit Plan in accordance with the terms

therewith.

3. The 2019 Redemption Price Schedule under the Long-Term Performance Unit Plan for the Performance Units to be purchased by Participants in January 2020 attached hereto as Exhibit 2 is hereby approved.
4. This resolution shall be effective immediately upon its adoption.

Dated this 23<sup>rd</sup> day of July 2019.

  
\_\_\_\_\_  
Secretary

JEA  
By:   
\_\_\_\_\_  
April Green, Chair

Form Approved:

  
\_\_\_\_\_  
Office of General Counsel

## RESOLUTION 2019-10 EXHIBIT 1

### Long-Term Performance Plan Summary

<b>Overview</b>	<p>Subject to the satisfaction of the conditions described below, each eligible employee may purchase a specified number of performance units from JEA on January 15th of each year. Eligible employees will be notified in and will execute the Long-Term Performance Unit Plan Agreement in Q4 of calendar year 2019 that they may purchase performance units and the first purchase date will be January 15, 2020.</p> <p>Each performance unit represents a potential right to receive a cash payment equal to the redemption price (as described below) for such unit.</p>
<b>Documentation</b>	<p>All eligible employees will be subject to a plan and will be required to sign an agreement with JEA.</p>
<b>Eligible Employees</b>	<p>All (i) full-time employees who are actively employed with JEA for at least three months prior to the purchase date and (ii) full-time attorneys from the Office of the General Counsel of the City of Jacksonville who are dedicated exclusively to JEA for at least three months prior to the purchase date are eligible to purchase performance units.</p> <p>Any exceptions to the above must be recommended by JEA's CEO and approved by the administrator (as described below).</p>
<b>Pool</b>	<p>A total of 100,000 performance units are available for purchase under the plan.</p>
<b>Purchase Price Payment</b>	<p>Each performance unit will have a purchase price of \$10.00.</p> <p>To pay the purchase price, an eligible employee will elect to defer a portion of his or her pay equal to the aggregate purchase price for the performance units.</p> <p>Each eligible employee may elect to defer his or her pay in a lump sum or equal installments during the payroll periods as selected by such employee and such employee's pay will be deferred at such time as such pay would otherwise have been paid but not for the deferral election.</p> <p>An eligible employee will elect to defer in the calendar year prior to the year in which the compensation is earned.</p>
<b>Performance Period</b>	<p>Each performance period will be a three-year period that is used to calculate the redemption price (if a Recapitalization Event occurs, the performance period will be truncated and will end on the closing date of such Recapitalization Event).</p>



<b>Redemption Price</b>	<p>An eligible employee will receive a cash payment equal to the redemption price for each performance unit that such employee purchases. The redemption price will include the purchase price paid by an eligible employee for such unit.</p> <p>The redemption price will increase by \$100.00 per performance unit for each Value Change Percentage increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per performance unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the redemption price will not be less than \$0.00 per performance unit.</p> <ul style="list-style-type: none"> <li>• The “Challenge Value Target” will be 110% for the first performance period and the “Threshold Value Target” will be 90% for the first performance period.</li> <li>• The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”</li> <li>• “Current Year Value” means, with respect to each performance period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such performance period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA’s customers during the 12-month period prior to the end of the performance period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (i) – (iii).</li> <li>• For the first performance period, “Base Year Value” is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA’s audited financial statements when available.</li> </ul> <p>JEA’s Chief Financial Officer will calculate the redemption price.</p> <p>The administrator will certify the redemption price as soon as practicable following the completion of JEA’s audit for the applicable performance period, but in no event later than 30 days thereafter (or, if a Recapitalization Event occurs, no later than 30 days following the closing date of such Recapitalization Event).</p>
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<p><b>Payments and Vesting Generally</b></p>	<p>The performance units will vest on the earlier to occur of (i) the first anniversary of the last day of the performance period and (ii) the date on which a Recapitalization Event occurs (the "Vesting Date"). Except as otherwise described herein, an eligible employee must be employed on the Vesting Date for the performance units to vest.</p> <p>Payments will be paid to an eligible employee no later than 30 days after the redemption price has been certified by the administrator as described above.</p>
<p><b>Termination of Employment</b></p>	<p>If an eligible employee experiences an involuntary termination of employment (as described below) prior to the applicable Vesting Date, such employee will receive a payment in respect of all of his performance units. Any amounts payable to a terminated eligible employee in respect of his performance units will be paid to such employee at the same time as the amounts would have been paid had there been no termination of employment.</p> <p>An involuntary termination means a termination of employment by JEA without cause or due to the eligible employee's death or disability.</p> <p>An eligible employee will forfeit his performance units and aggregate purchase price on a termination of employment that is not involuntary.</p>
<p><b>Retirement Eligible Employees</b></p>	<p>If an eligible employee becomes a retirement eligible employee (as described below) and retires, in each case, prior to the applicable Vesting Date, such employee's performance units will vest on the applicable Vesting Date.</p> <p>An eligible employee is retirement eligible if such employee has attained one of the retirement milestones as described in the General Employees Retirement Plan.</p>
<p><b>Recapitalization Event</b></p>	<p>"Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.</p>
<p><b>Conditions to Receipt</b></p>	<p>An eligible employee will receive the cash payment in respect of his performance units if: (i) he executes an agreement; (ii) the employee is continuously employment with JEA (except as set forth above); (iii) the employee executes and does not revoke a release of claims in favor of JEA and the City of Jacksonville; (iv) the employee complies with the covenants set forth below; and (v) the conditions in Section 215.425(3), Florida Statutes are satisfied.</p>

<p><b>Employee Covenants</b></p>	<p>Each eligible employee must (i) devote his best efforts to faithfully discharge his duties on behalf of JEA and not take any action that would be contrary to the best interests of JEA, (ii) not disclose confidential JEA information (except as required by applicable law or to perform his job duties) or (iii) not make any unauthorized public statements about, among others, JEA and government officials of the City of Jacksonville.</p> <p>If an eligible employee breaches or threatens to breach these covenants, such employee will forfeit his unvested performance units and JEA will not pay to such employee any amount in respect of his performance units (including any purchase price paid by such employee for the performance units) and/or such employee will promptly repay all or any portion of the cash payment previously paid to him in respect of his performance units, as applicable.</p>
<p><b>Administrator</b></p>	<p>The Chair of the Compensation Committee will be the administrator.</p>
<p><b>Miscellaneous</b></p>	<p>Any payments made to an eligible employee will be paid less applicable withholding taxes.</p> <p>The plan and agreements will be subject to Sections 409A and 457(f) of the Internal Revenue Code (the "Code") and will be construed and interpreted accordingly.</p> <p>The agreements will be governed by the laws of the State of Florida and subject to arbitration in Duval County in the State of Florida.</p> <p>If or as required, JEA will collectively bargain the plan and applicable agreements with unions representing covered bargaining unit employees of JEA.</p> <p>If any payments under the plan or an agreement to an eligible employee are subject to any excise tax, interest or penalties under the Code (the "Penalties"), JEA will pay to such employee an amount equal to the full amount of the Penalties. JEA will not pay to an eligible employee any amount in respect of Penalties caused by such employee's breach of his or her agreement or such employee's failure to comply with applicable law.</p>

**RESOLUTION 2019-10 EXHIBIT 2**

**Long-Term Performance Unit Plan – 2019 Redemption Price Schedule**

**SCHEDULE A**  
**2019 REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) "Base Year Value" means \$[AMOUNT].<sup>1</sup>

(b) "Challenge Value Target" means 110%.

(c) "Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (a), (b) and (c), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) "Value Change Percentage" means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) "Threshold Value Target" means 100%.

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

<sup>1</sup> For 2019, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.



**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [ ] day of [ ], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JE A"), and [ ] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

**1. Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

**2. Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that the Participant defers hereunder are unfunded and unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax

[ID NUMBER]

advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to the Participant the aggregate Purchase Price of such forfeited Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) Cooperation. The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) Confidentiality.

(i) *Protection of Information.* The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the

Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

**6. Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the



parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

7. **Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

8. **Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

9. **Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

10. **Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

11. **Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date written below.

**JEA**

By \_\_\_\_\_

Name: [●]

Title: [●]

**PARTICIPANT**

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

**JEA0360**

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name:	[•]
Participant First Name:	[•]
No. of Performance Units Available for Purchase (the "Available Performance Units"):	[•]
Purchase Price per Performance Unit:	\$10.00
No. of Performance Units Participant Purchases: (capped at the number of Available Performance Units):	_____
Aggregate Purchase Price: (\$10.00 x No. of Performance Units Participant Purchases)	_____

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_

Equal installments from pay to be paid over the next [NUMBER] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME    SIGNATURE    DATE

## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chairperson of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chairperson of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which a Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date and the Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 27th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 27th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 27, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. For the avoidance of doubt, (i) the Redemption Price shall include the Purchase Price per Performance Unit and the Purchase Price may be reduced to \$0 in accordance with the Redemption Price Schedule and (ii) if performance results in a percentage between the Challenge Value Target and the Threshold Value Target, then a Participant shall only be eligible to receive an amount equal to the Purchase Price paid by such Participant for his or her Performance Units.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the last day of the Performance Period.

**SECTION 3  
ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

**SECTION 4  
EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").



(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## SECTION 5 VESTING; REDEMPTION PRICE

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. Upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis (provided, however, that all the Performance Units have not previously been purchased by Participants).

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

## SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS

(a) Purchase of Performance Units. To purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than March 15th of the calendar year following the calendar year in which the applicable Performance Period ends.

**SECTION 7**  
**CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes (if applicable). Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units.

**SECTION 8**  
**AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan.

**SECTION 9**  
**MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and

457(f)”), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term “JEA” whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant’s estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding

arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the “AAA”) in accordance with the AAA’s then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the “Arbitrator”). Each party further agrees to pay its or his own arbitration costs, attorneys’ fees, and expenses, unless otherwise required by the AAA’s then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys’ fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant’s termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the “Penalties”), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant’s breach of this Plan or any Award Agreement or such Participant’s failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

*[Remainder of Page Intentionally Left Blank]*

**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

## MEMORANDUM

TO: Lawsikia Hodges, Esq.  
Jason Gabriel, Esq.

CC: Lynne Rhode, Esq.

FROM: Kevin E. Hyde

DATE: September 25, 2019

RE: JEA Performance Unit Plan

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This memorandum addresses the Long Term Performance Unit Plan (the "PUP" or the "Plan") approved by the JEA Board on July 23, 2019 and the application, if any, of various federal and state laws relating to securities and deferred compensation. We also comment on whether the PUP constitutes "extra compensation" under Florida law.

### Description of the PUP

The PUP allows eligible employees to defer compensation in order to purchase a specified number of performance units from JEA and redeem them for a cash payment equal to the redemption price. The PUP is entirely voluntary. Any eligible employee may decide to participate or decline.

Eligible employees include all full-time employees (including full-time attorneys from the Office of the General Counsel dedicated exclusively to JEA, appointed employees, and represented employees) actively employed with JEA for at least three months prior to the performance units purchase date. The eligibility of employees to participate in the program is dependent solely on their employment status and execution of and compliance with a performance plan participation agreement. To participate, the employee must agree in a performance plan participation agreement to comply with the following covenants: (i) devote his/her best efforts to faithfully discharge his/her duties on behalf of the JEA and not take any action that would be contrary to the best interests of the JEA and (ii) not disclose confidential JEA information except as required by law or to perform employment duties. A breach of these covenants would result in the forfeiture of unvested units except for a return of the aggregate purchase price for such units. The agreements regarding the Plan will be subject to sections 409A and 457(f) of the Internal Revenue Code and will be governed by the laws of Florida and subject to arbitration in Duval County.





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A pool of units will be allocated<sup>1</sup> amongst employees based on his/her position level and the most recent annual performance review. The units will be available for purchase at \$10.00 per unit on January 15th of the calendar year following the calendar year in which JEA's annual financial audit statement is completed. Unpurchased units will return to the pool. Eligible employees will pay the purchase price of the unit by electing to defer a portion of his/her salary (equal to the aggregate purchase price for the performance units) into an FDIC-insured savings account. At redemption, the employee will receive a cash payment in the amount of the redemption price that will include the purchase price paid per unit. JEA's Chief Financial Officer will calculate the redemption price, and it will be certified no later than 30 days following the completion of JEA's annual financial audit statement.

The calculation of the redemption price is dependent on JEA's current year value, which is defined as the sum of JEA's net position per JEA's annual audited financial statement, the aggregate consideration paid, distributed, credited, or otherwise provided to the City of Jacksonville during the 12-month period prior to the end of the performance period, and the aggregate consideration paid, distributed, credited, or otherwise provided to JEA's customers during the 12-month period prior to the end of the performance period. Depending on the increase or decrease of JEA's current year value, the redemption price for the units will increase or decrease. Payments made regarding the units will be paid less applicable withholding taxes.<sup>2</sup>

The employee must be actively employed on the vesting date for the units to vest. If an employee is involuntarily terminated (without cause or due to death or disability) prior to the vesting date, then the employee will receive a payment for the units at the same time as the amounts would have been paid had the employee not been terminated. If the employee's termination of employment is voluntary, then the employee forfeits the units. If an employee is retirement-eligible and retires prior to the vesting date, the units will vest on the normal vesting date.

1. The PUP Does Not require Registration Under the Securities Laws

As described above, the PUP is an opportunity for JEA employees to defer compensation, purchase units within the PUP, and realize gain, if any, if the enterprise value of JEA increases. The PUP is designed to allow employees to personally invest in the enterprise growth of JEA in the next three years (i.e. encourage employees to have "skin in the game" with respect to improving the health of the utility). JEA's performance will be measured on the change in JEA's net position during the performance period.

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<sup>1</sup> The allocation of performance units available to each employee for purchase will be directed by the JEA Compensation Committee Chair, who is the Administrator of the Plan.

<sup>2</sup> As a part of the JEA's Board's exploration of alternative scenarios to address the utility's fiscal challenges, JEA is also considering selling the utility. If that occurs, the performance period ends, the amount owed to the employee will be paid, and the Plan will be extinguished.



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A security may be considered any situation where individuals invest money in a common enterprise with the expectation that they would earn a profit solely through the efforts of someone other than themselves. However, since the performance units are being issued and sold by JEA, then the performance units are exempt from registration under both the federal and state securities laws. The units are exempt from registration since they are being issued by a public instrumentality of a state. Section 3(a)(2) of the Securities Act of 1933 and Section 517.051(1) of the Florida Statutes provide this exemption.

As long as the total subscription for the PUP does not exceed \$1,000,000.00,<sup>3</sup> the municipal securities disclosures required for offerings of \$1,000,000 or more as provided by Rule 15c2-12 of the Securities Exchange Act of 1934 will not be applicable.

2. The PUP is Akin to Deferred Compensation Plans Allowed by Florida Law

Florida law and the JEA Charter allows employees of a governmental unit to participate in a deferred compensation plan.

The relevant Florida statute, F.S. 112.215, states in part:

In accordance with a plan of deferred compensation which has been approved as herein provided, the state or any state agency, county, municipality, other political subdivision, or constitutional county officer may, by contract or a collective bargaining agreement, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of such approved plan and in such proportions as may be designated or directed under that plan, place such deferred compensation in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or such other investment products as may have been approved for the purposes of carrying out the objectives of such plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities. (F.S. 112.215(3)) (Emphasis added)

The statute further provides the basis for establishing the plan and criteria for approving the various accounts and investment accounts or vehicles. (F.S. 112.215(5-6)).

Article 21.07(j) of the JEA Charter specifically provides that "JEA shall have the option to establish an employee deferred compensation program separate from the city's employee deferred compensation program." Under this authority, the JEA 457 Deferred Compensation Plan was established in 2002 for the purpose of providing employees of JEA and employees of

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<sup>3</sup> As written, the PUP is scheduled to have 100,000 units at \$10.00 per unit.



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the (now former) St. Johns River Power Park System with a voluntary method deferring taxation on compensation until death, retirement or certain other events. See memo dated July 6, 2018 from Aaron Zahn to JEA Board and as approved by JEA Board on July 30, 2018.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. Specifically, the JEA Board has approved the PUP; JEA will seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5); and that the proceeds to the employees from the PUP, if any, will not be included in the employee's taxable income until proceeds are actually received (F.S. 112.215(6)(a)). Finally, the PUP does not impose any liability on JEA, "except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred." (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, "[t]his Plan is intended to constitute an 'unfunded' program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder." Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period. (Section 2(t) of the JEA Long-Term Performance Unit Plan).

If requested, we can provide a more detailed analysis but our initial review is that the PUP appears to be a permissible form of deferred compensation under F.S. 112.215.

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC insured account such as those currently used for other existing JEA deferred compensation plans.

### 3. JEA is Not Pledging Credit to Participating Employees

Article 7, Section 10 of the Florida Constitution prohibits JEA from becoming a "joint owner with, or stockholder of, or giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person." As indicated above, JEA is not giving or using its taxing power or credit to help any JEA employee who purchases a PUP with deferred compensation. The Florida Supreme Court has described the pledging of credit as follows:

As used in Article VII, section 10, "credit" means "the imposition of some new financial liability upon the State or a political subdivision which in effect results in the creation of a State or political subdivision for the benefits of private enterprises. This Court has explained that the lending of public credit means:



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[T]he assumption by the public body of some degree of direct or indirect obligation to pay a debt of the third party. Where there is no direct or indirect undertaking by the public body to pay the obligation from public funds, and no public property is placed in jeopardy by a default of the third party, there is no lending of public credit.

Under this definition, we conclude that the COP's in this case do not contemplate a pledge of the District's credit, and that only a public purpose, and not a paramount public purpose, need be shown.

*Miccouskee Tribe v. South Florida Water Management District*, 48 So.3d 811, 823 (Fla. 2010) (internal citations omitted).

As earlier explained, a participating employee only realizes a gain on the deferred compensation used to purchase the PUP if the Threshold Value Target set forth on the Redemption Price Schedule is attained during the applicable Performance Period, i.e. there is an increase in value of JEA itself. No public property is placed in jeopardy by default of the participating employee or any other third party.

Given that no credit is being pledged, Article VII, Section 10 requires only that a public purpose be met. The PUP's stated public purpose is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida; (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (Section 1(a) of the JEA Long-Term Performance Unit Plan.)"

The Florida Attorney General has opined that "if the expenditure primarily or substantially serves a public purpose, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, section 10. "AGO 2005-02. The AGO further stated that the determination of whether the expenditure of funds fulfills a public purpose is one that the legislative body, in this case the JEA Board, must make. *Id.* As noted above, the PUP specifies the public purpose, and the JEA Board has approved the PUP.

3. The PUP is Permissible under Florida Laws related to "Extra Compensation"

JEA's PUP gives employees the choice of purchasing units that can increase in value if the value of JEA increases and decrease in value if the value of JEA decreases. The Plan is voluntary and requires employees that wish to participate to buy-in by deferring their personal compensation to purchase the units and to execute an agreement pertaining to the Plan. As developed below, the Plan does not therefore constitute "extra compensation" under section 215.425, Florida Statutes.



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Section 215.425 provides that "no extra compensation shall be made to any [public employee] after the service has been rendered or the contract made." The intent behind this provision is that public employees should not receive gratuities for services that were already rendered. AGO 2005 07 ("The purpose of such a provision is to prevent payments in the nature of gratuities for past service, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service.").

We have reviewed the applicable legislative history of section 215.425 and have not identified anything suggesting that plans such as the PUP are, or are intended to be, prohibited by the statute. The provision applies principally in instances where public employees were to receive retroactive compensation for work already performed. *See* AGO 92-49 (holding that the Police Pension Board of Trustees could not pay a cost of living allowance to a retired police officer already receiving pension benefits for prior services); *see also* AGO 91-51 (holding that severance payments in lieu of notice violated the provision because the employee renders no service after termination and the payments were compensation for work already performed).

JEA's PUP plainly does not constitute "extra compensation" because the redemption payments are not compensation for the services that the employees render as part of their employment with JEA. Rather, the PUP allows all eligible employees to participate through a voluntary payment in enterprise creation at the risk of not receiving a return on the investment made to purchase the performance units. The PUP also does not serve to provide gratuities to the employees for their past service that they have been previously paid for and does not serve as a bonus program or incentive program to reward employees. Indeed, to participate in the Plan, JEA employees must opt-in at their sole discretion and expend their personal funds to purchase the units. The number of performance units available for purchase by each employee is directed by the Plan Administrator and is based on the employee's position level and annual performance review. The redemption payments for the units depend solely on the change in value of JEA. Thus, section 215.425 does not apply to the Plan, and the Plan does not constitute "extra compensation."

#### Conclusion

We appreciate the opportunity to review the PUP. Please call if there are any questions.

**M E M O R A N D U M**

**TO:** Lawsikia Hodges, Esq.  
Jason Gabriel, Esq.

**CC:** Lynne Rhode, Esq.

**FROM:** Kevin E. Hyde

**DATE:** October 21, 2019

**RE:** JEA Performance Unit Plan

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This memorandum addresses the Long Term Performance Unit Plan (the "PUP" or the "Plan") approved by the JEA Board on July 23, 2019 and laws relating to its implementation.

**Description of the PUP**

The PUP<sup>1</sup> allows eligible employees to defer compensation to purchase a specified number of performance units from JEA and redeem them in later years for a cash payment equal to the redemption price. Any eligible employee may decide to participate or decline.

Eligible employees include all full-time JEA employees (including full-time attorneys from the Office of the General Counsel dedicated exclusively to JEA, appointed employees, and represented employees) actively employed with JEA for at least three months prior to the performance units purchase date. The eligibility of employees to participate in the program depends solely on their employment status and execution of and compliance with a performance plan participation agreement (Exhibit 2). To participate, the employee must agree to comply with the following covenants: (i) devote his/her best efforts to faithfully discharge his/her duties on behalf of the JEA and not take any action that would be contrary to the best interests of the JEA.

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<sup>1</sup> Attached as Exhibit 1 is the JEA Long-Term Performance Unit Plan, the plan document. Exhibit 2 is the Long-Term Performance Unit Agreement, which an individual employee will sign.



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and (ii) not disclose confidential JEA information except as required by law or to perform employment duties. A breach of these covenants would result in the forfeiture of unvested units except for a return of the aggregate purchase price for such units. The agreements regarding the Plan will be subject to sections 409A and 457(f) of the Internal Revenue Code and will be governed by the laws of Florida and subject to arbitration in Duval County.

A pool of units will be allocated<sup>2</sup> amongst employees based on his/her position level and the most recent annual performance review. The units will be available for purchase at \$10.00 per unit in the first months of the calendar year following the calendar year in which JEA's annual financial audit statement is completed. Unpurchased units will return to the pool. Eligible employees will pay the purchase price of the unit by electing to defer a portion of his/her salary (equal to the aggregate purchase price for the performance units) into an FDIC-insured savings account. At redemption, the employee will receive a cash payment in the amount of the redemption price that will include the purchase price paid per unit. JEA's Chief Financial Officer will calculate the redemption price, and it will be certified by the Plan Administrator (the JEA Compensation Committee chair) no later than 30 days following the completion of JEA's annual financial audit statement.

The calculation of the redemption price is dependent on JEA's current year value, which is defined as the sum of JEA's net position per JEA's annual audited financial statement, the aggregate consideration paid, distributed, credited, or otherwise provided to the City of Jacksonville during the 12-month period prior to the end of the performance period, and the aggregate consideration paid, distributed, credited, or otherwise provided to JEA's customers during the 12-month period prior to the end of the performance period. Depending on the increase or decrease of JEA's current year value, the redemption price for the units will increase or decrease. Payments made regarding the units will be paid less applicable withholding taxes.<sup>3</sup>

The employee must be actively employed on the vesting date for the units to vest. If an employee is involuntarily terminated (without cause or due to death or disability) prior to the vesting date, then the employee will receive a payment for the units at the same time as the amounts would have been paid had the employee not been terminated. If the employee's termination of employment is voluntary, then the employee forfeits the units. If an employee is retirement-eligible and retires prior to the vesting date, the units will vest on the normal vesting date.

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<sup>2</sup> The allocation of performance units available to each employee for purchase will be directed by the JEA Compensation Committee Chair, who is the Administrator of the Plan.

<sup>3</sup> As a part of the JEA's Board's exploration of alternative scenarios to address the utility's fiscal challenges, JEA is also considering selling the utility. If that occurs, the performance period ends, the amount owed to the employee will become the obligations of the acquirer to be paid post-closing, and the PUP will be extinguished.

**Questions Related to PUP**

Since inception, a number of questions have been asked about the PUP. These questions are addressed below.

I. Does JEA have the authority to issue the PUP?

Article 21 of the City of Jacksonville Charter (the "Charter") provides plenary power to JEA to "manage, operate and promote the utilities system." (Charter at s. 21.04(a)). JEA may "enter into contracts with any person or entity, public or private, deemed necessary or desirable by JEA in connection with carrying out its powers and duties." (Charter at s. 21.04(e)) (Emphasis added). JEA may also "do all acts and deeds necessary, convenient or desirable, incidental to the exercise and performance of the powers and duties granted to JEA in this article." (Charter at s. 21.04(t)).

JEA's powers relating to employees is stated in Section 21.08 of the Charter:

All employees of the utilities system shall be employees of JEA and shall be subject to articles 16 and 17 unless otherwise provided by the council, which shall be and continue to be the legislative body as provided in section 447.203(10), Florida Statutes. JEA shall be fully responsible for the administration and operation of all utility services as set out in this article and in order to meet its administrative and operational responsibilities, JEA shall have **full and independent** authority to hire, transfer, promote, discipline, terminate and evaluate employees engaged to provide any and all of the utilities services for which it is responsible and accordingly, consistent with the provisions of article 17, JEA may establish employment policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment and take such other employment related action as needed to assure effective and efficient administration and operation of the utilities system. In order to effectively implement the foregoing, JEA shall perform all functions with regard to its own employees that are performed by the City department or division which oversees city employees in regard to personnel matters....(emphasis added).

Except for deferred compensation,<sup>4</sup> the Charter does not specifically state that JEA may establish terms of compensation. But compensation is an integral part of employment and by implication is included within the phrase "other terms and conditions of employment." JEA's "full and independent authority" over its employees is essentially meaningless if JEA cannot set the terms of compensation.

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<sup>4</sup> Section 21.09(j).





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The PUP is a form of deferred and long-term incentive compensation which is well within JEA's right to establish absent explicit and contrary authority. This inherent power is evident by Section 21.05 of the Charter:

The powers of JEA shall be construed liberally in favor of JEA. No listing of powers included in this article is intended to be exclusive or restrictive and the specific mention of, or failure to mention, particular powers in this article shall not be construed as limiting in any way the general powers of JEA as stated in Section 21.04. It is the intent of this article to grant to JEA full power and right to exercise all authority necessary for the effective operation and conduct of JEA. It is further intended that JEA should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which JEA is created. The fact that this article specifically states that JEA possesses a certain power does not mean that JEA must exercise such power unless this article specifically so requires. JEA's power to levy special assessments shall not be deemed to be the power to levy taxes.

The issue, then, is whether the PUP lends to the effective operation and conduct of JEA. The PUP and the individual Long-Term Performance Unit Agreement each contain the following recital stating the PUP's purpose:

JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework established by the Board in June 2019 that motivates Employees to drive the customer, community and environmental value of JEA.

The PUP further specifies its purpose in Section 1 (a) and (b):

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

Based on the plenary power granted to JEA, and the PUP's stated purposes, we conclude JEA has the authority to implement the PUP.

2. May JEA establish who is eligible to purchase a PUP?

All JEA employees are eligible to participate in the PUP. "Employee" means:

"Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date. (JEA Long-Term Performance Unit Plan at Section 2(k). (PUP at Section 2(k)).

The Charter provides the General Counsel may "employ, supervise and terminate assistant counsels to assist with the efficient provisions of legal services for the City's independent agencies." (Charter at s. 7.01)). "The general counsel shall appoint assistant counsels and fix their compensation subject to the approval of the mayor." (Charter at s. 7.07)). Nothing in these provisions prohibit an assistant counsel assigned to JEA from participating in the PUP, provided that the General Counsel has authorized it.

3. Does the PUP Violate Article 21.09 of the Charter?

Article 21.09 of the Jacksonville City Charter contains the following provision related to the award of contracts by JEA:

**Section 21.09. - Awards of contracts.**

- (a) JEA shall not be subject to the provisions of Chapter 126, Ordinance Code of the City of Jacksonville, as the same may be amended from time to time, however, JEA in entering into any contracts relating to the construction, reconstruction, repair, operation or maintenance of the utilities system or the purchase of supplies, equipment, machinery and materials for the utilities system or the contracting or otherwise purchasing for any advisory, professional or any other services may establish such rules, regulations or procedures as it may deem desirable or necessary in connection therewith. In the absence of such specific authority, rules, regulations or procedures, JEA shall follow the provisions of Chapter 126 of the Ordinance Code of the City of Jacksonville, as the same may be amended from time to time. JEA shall have the right to reject any and all bids, in whole or in part, in the best interests of JEA. Nothing in this chapter shall be construed to limit the power of JEA to construct, repair, or improve the utilities system, or any part thereof, or any addition, betterment or extension thereto, directly by the officers, agents, and employees of JEA, or otherwise by contract. JEA is authorized to implement and to take all actions necessary to administer a purchasing and procurement program directed to Minority Business Enterprises including, but not limited to, prime contractors, subcontractors, consultants,

subconsultants, and suppliers. Any such Minority Business Enterprise program shall be implemented by JEA to remedy discrimination or the present effects of past discrimination, if any, suffered by Minority Business Enterprises in the business community in the area served by JEA. For purposes of this chapter, the term "Minority Business Enterprise" shall be defined by JEA and shall include, at a minimum, those business entities that are legitimately owned, operated and controlled by persons who have been shown to have been discriminated against or who suffer from the present effects of past discriminations, if any, in the business community in the area served by JEA. Such program shall be used to redress and remedy discrimination or the present effects of past discrimination, if any, as may be determined by JEA, and which are shown to have been suffered by Minority Business Enterprises, in the business community in the area served by JEA.

- (b) No member of JEA or officer or employee thereof shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with JEA for any matter, cause or thing whatsoever in which such member shall have a financial interest or by reason whereof any liability or indebtedness shall in any way be created against JEA. If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against JEA.

Section 21.09 relates to procurement, not employee compensation. Section 21.09(a) clearly relates to those contracts where a competitive procurement process must be used. ("JEA shall follow the provisions of Charter 126...."). This type of process is not used in employee matters.<sup>5</sup> When read together, sections 21 (a) and (b) contemplate and relate to an award of contracts to vendors or suppliers to JEA rather than to employment or compensation agreements. This is evident by a number of factors.

First, the PUP is not awarded to employees or subject to any procurement process. The PUP is a voluntary benefit program in which an employee may or may not participate. To participate, the employee must purchase the PUP on the same terms as any other participant. JEA is not selecting or awarding the right to participate in the PUP. The Plan Administrator or designee determines the number of PUPs an individual may purchase.

Second, if Section 21.09(b) precluded the PUP (as some form of impermissible contract between employees and JEA), it would also preclude other forms of contractual indebtedness such as (a) individual employment agreements providing for compensation except for services previously performed; (b) pension obligation to JEA employees, namely Unfunded Actual Award Liability; and (c) deferred compensation. Each of these agreements give JEA employees a "financial interest" in JEA and a potential indebtedness of JEA. Allowing these items, but

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<sup>5</sup> Section 21.08 (JEA may "enter into negotiations with employee organization.")



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prohibiting the PUP would be inconsistent with Charter provisions (previously discussed) allowing JEA to establish terms and conditions of employment.

Third, the PUP requires an employee to invest deferred compensation into the PUP. An indebtedness is only created above the original investment if the Net Position Value is correspondingly increased.

4. Do some PUP participants have an advantage over others in deciding whether to participate?

The PUP is available only to a defined group of individuals – JEA employees and certain attorneys assigned to JEA. Thus, the PUP is not open to the “public.” Some have questioned whether certain individuals within the eligible group will have an impermissible advantage over others due to position held or access to information. The answer is “no.”

Because the PUP involves only transactions between JEA, on the one hand, and employees and attorneys of JEA, all of whom are “insiders,” on the other, the PUP raises no insider trading concerns. Insider trading under the securities laws requires a transaction with an “outsider” who is disadvantaged in a transaction with an insider due to lack of information, and no such outsiders are involved in the PUP.

Apart from insider trading concerns, it is important for securities law purposes that all of the PUP participants be provided with all material financial information about JEA and all material information about how the PUP payments will be calculated when they make their Deferral Elections, so that they are able to make an informed investment election. We understand that this requirement will be addressed as follows:

- Each participant will receive a copy of the PUP document itself, which outlines the conditions of an employee’s participation. Except for the precise number of PUPs made available to a particular individual, the terms are the same for all employees.
- Schedule A provides employees information as to how the PUP value is calculated. The “Value Change Percentage”, as discussed in Schedule A, determines the increase or decrease of the Redemption Price. That determination is based on JEA’s audited financial statements and the aggregate consideration paid, distributed, credited or otherwise provided to the City and to JEA customers during the “Performance Period,” all of which are public records.
- JEA intends to provide employees extensive information, including risk factors and hypothetical projections, during the enrollment period to assist employees with deciding whether to purchase one or more PUP(s). Each employee will receive the same information.



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- A representative of JEA's HR department will be available to answer questions from employees and employees will be strongly encouraged to obtain their own financial and legal counsel to advise on the Plan should they chose to do so.

There is also a concern over potential inequities among individual participants if some employees have access to information that others do not. So long as all material information relating to the PUP value calculation is disclosed to all participants, they have sufficient information to make a fully informed decision concerning their Deferral Election, and the fact that some participants have access to additional information does not impact the fairness of the other participants' Deferral Elections. To the extent there is concern that some participants may gain access to additional material information relating to the PUP value calculation, JEA may avoid such concerns over inequity by (a) requiring those participants to elect to decide whether to participate in the PUP prior to receiving that material information or (b) excluding those participants from the PUP.

The PUP mitigates any remaining risk from these concerns by limiting the amounts that may be invested and allowing only future deferred compensation to be invested, (thus preventing an employee from investing (or jeopardizing) additional personal monies or obtaining money from any other source to purchase the PUP).

5. Does the PUP comply with the Florida Code of Ethics for Public Officers and Employees?

JEA employees eligible for the PUP are covered by F.S. 112.311, the Florida Code of Ethics for Public Officers and Employees. See F.S. 112.312(2) defining "agency" to include a "municipal government entity of this state." The prohibitions discussed below relate to employees of covered agencies.

It is important to evaluate the purpose of the PUP in reviewing the applicable ethics laws. The PUP clearly states its purpose:

The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (PUP at Section 1a).

Nothing in the stated purpose or the actuality of the PUP creates a conflict between the participating employee and JEA or the customers JEA serves. Indeed, participating employees only stand to benefit if the value of JEA increases.

The Florida Code of Ethics for Public Officers and Employees makes it clear that the applicable laws are designed to prevent conflicts between the personal interests of employees and the public. The law also states that governmental agencies (e.g. JEA) may take measures to retain



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employees and that the code of ethics should not be a barrier from doing so. F.S. 112.311 specifies this intent:

1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part. (Emphasis added)

Nothing in the PUP is prohibited by the legislative intent expressed in F.S. 112.311. Indeed, the PUP promotes the legislative intent of recruiting and retaining governmental employees. Contrary to creating a conflict of interest, the PUP aligns the interest of employees and JEA, creating long-term value for JEA and its customers.



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Additionally, there is very limited appellate case law interpreting F.S. 112.311.<sup>6</sup> But, certain cases and Attorney General Opinions provide further guidance, though not arising from potential compensation vehicles such as the PUP. The opinions underscore the intent behind the statute and the ills the statute is designed to prevent.

First, a conflict must be substantial to be prohibited. AGO 1973-215 (“the personal investment in an enterprise that is prohibited by the act is one that will create a ‘substantial conflict’ between his private interest and the public interest”). See also AGO 1980-71 (“Thus, we do not believe that the Code of Ethics should be interpreted to prohibit the most remote possibilities of conflicts of interest, but rather to prohibit those relationship which are in substantial conflict with the proper discharge of duties in the public interest.”)

Second, the Code of Ethics is designed to prevent individuals from acting against the interest of their agency or the public. “A primary objective of the Code of Ethics is that governmental officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public.” *Zerweck v. State*, 409 So.2d 57, 60 (Fla. 4<sup>th</sup> DCA 1982). Contrary to acting against the interest of JEA, the PUP is designed to encourage employees to personally invest in JEA and work to increase its value. Only if this occurs does the PUP gain value and the employee stand to benefit. Thus, the interests of JEA employees and JEA itself are strictly aligned.

Likewise, the PUP does not violate the more specific provisions of Chapter 112. Specifically:

- a. The PUP is not a Prohibited Gift

To participate in the PUP the employee must do a “Deferral Election.” A “Deferral Election” means:

“Deferral Election” means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year. (PUP at Section 2(h)). (Emphasis added)

An employee who purchases a PUP is not receiving a “gift” as defined in F.S. 112. F.S. 112.311(b)1 states that a “gift” does not include “salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the donee’s employment, business, or service as an officer or director of a corporation or organization.” The participating employee is deferring a part

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<sup>6</sup> The statute was enacted in 1974. Legislative history is only available in the state library. We have not yet been able to access that legislative history.



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of his or her salary to purchase the PUP. As such, the restrictions of F.S. 112.313(2) prohibiting a public officer from soliciting or accepting a gift do not apply.<sup>7</sup>

b. The PUP is not Unauthorized Compensation.

Florida Statute 112.313(4) prohibits a public officer from accepting unauthorized compensation if the public officer knew or reasonably should have known that “it was given to influence a vote or action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.” This section does not apply to the PUP. First, nothing is “given” to the participating employee. The PUP is a form of deferred compensation which has been duly authorized and adopted by the JEA Board. Employees choose how much, if any, of their earned compensation to defer for the purchase of allotted Plan units. Moreover, the PUP is offered to employees generally and not any individual specifically. Participation is purely voluntary. Thus, the PUP cannot be said to influence any individual or particular action. If anything, the PUP is designed to promote retention across all levels of JEA employees and increased or improved performance.

c. The PUP Does Not Confer a Special Benefit to a Particular Employee.

All JEA employees, as well as defined representatives of the Office of General Counsel, are eligible to purchase a PUP. This class is similar to JEA employees who are eligible to participate in the JEA deferred compensation plan, i.e. it is a benefit incidental to their employment. It is not a special privilege, benefit or exemption solely for a particular individual or one which a particular individual can secure for himself. Thus, the PUP is not prohibited by F.S. 112.313(6) (prohibits a public employee from using an official position to secure a special privilege, benefit or exemption for himself.)

d. A Participating Employee Does Not Misuse a Public Position

Section. 112.313(6) prohibits misuse of public position. That statute provides:

No public officer, employee of an agency, or local government attorney shall *corruptly* use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit or exemption for himself, herself, or others. The section shall not be construed to conflict with s. 104.31. (Emphasis added)

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<sup>7</sup> This conclusion is further strengthened by the definition of gift within F.S. 112.312(12)(a). A gift “for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee’s behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee’s benefit or by any other means, for which equal or greater consideration is not given within 90 days...”





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The PUP is available to all employees who may decide whether or not to participate and is incidental to their employment (e.g. a form of deferred compensation). No individual is able to secure something not available to other JEA employees. It is also important to note that the PUP was developed at the instruction of the JEA Board, authorized by it, and will be administered under Board auspices and the redemption price certified by the Board. Further, an independent auditor will certify all values and financial results that will substantiate the value of the PUP. No individual can affect or create a benefit which is not approved or authorized by the Board. And, no JEA Board member can participate in the PUP. Thus, there is complete independence of participants from the creation and authorization of the PUP and certification of values related to the PUP.

To establish a violation of s. 112.313(6), the following elements must be proven by clear and convincing evidence:

“(a) the employee used or attempted to use his official position; (2) to secure a special privilege, benefit or exemption for himself or another and (3) acted corruptly in doing so, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission, which is inconsistent with the proper performance of his public duties. Corruptly is statutorily defined as being done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from act or omission of a public servant which is inconsistent with the proper performance of his or her duties. To satisfy this statutory element, proof must be adduced that Siplin [the Respondent/Appellant] acted with reasonable notice that [his or her] conduct was inconsistent with the proper performance of his or her public duties and would be a violation of the law of the code of ethics. *Siplin v. Commission on Ethics*, 59 So.3d 150, 151-152 (Fla. App. 5<sup>th</sup> Dist. 2011) (internal citations omitted).

Employees eligible to participate in the PUP are not receiving compensation inconsistent with the proper performance of their duties. Indeed, the PUP is based on the employee properly performing their duties and incentivizing them to do so. Moreover, all eligible participants are properly advised of the conditions of eligibility to participate in the PUP and its terms. The JEA Board has approved the PUP and the employee does not have notice that the PUP is inconsistent with performing his or her duties. Consequently, the PUP, and those who participate in it, do not violate s. 112.313(6).

6. Must the PUP Be Registered under the Securities Laws?

The PUP is exempt from registration under the securities laws. As described above, the PUP is an opportunity for JEA employees to defer compensation, purchase units within the PUP, and realize gain, if any, if the enterprise value of JEA increases. The PUP is designed to allow employees to personally invest in the enterprise growth of JEA in the next three years (i.e. encourage employees to have "skin in the game" with respect to improving the health of the utility).

JEA's performance will be measured on the change in JEA's net position during the performance period.

A security may be considered any situation where individuals invest money in a common enterprise with the expectation to earn a profit solely through the efforts of someone other than themselves. Employees must remain employed to receive benefits under the PUP. The employees' continued effort is required. Moreover, since the performance units are being issued and sold by JEA, then the performance units are exempt from registration under both the federal and state securities laws. The units are exempt from registration since they are being issued by a public instrumentality of a state. Section 3(a)(2) of the Securities Act of 1933 and Section 517.051(1) of the Florida Statutes provide this exemption.

As long as the total subscription for the PUP does not exceed \$1,000,000,<sup>8</sup> the municipal securities disclosures required for offerings of \$1,000,000 or more as provided by Rule 15c2-12 of the Securities Exchange Act of 1934 will not be applicable.

7. Is the PUP a Deferred Compensation Plan Allowed by Florida Law?

Florida law and the JEA Charter allow employees of a governmental unit to participate in a deferred compensation plan.

The relevant Florida statute, F.S. 112.215, states in part:

In accordance with a plan of deferred compensation which has been approved as herein provided, the state or any state agency, county, municipality, other political subdivision, or constitutional county officer may, by contract or a collective bargaining agreement, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of such approved plan and in such proportions as may be designated or directed under that plan, place such deferred compensation in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or such other investment products as may have been approved for the purposes of carrying out the objectives of such plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities. (F.S. 112.215(3)) (Emphasis added)

The statute further provides the basis for establishing the plan and criteria for approving the various accounts and investment accounts or vehicles. (F.S. 112.215(5-6)).

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<sup>8</sup> As written, the PUP is scheduled to have 100,000 units at \$10.00 per unit.



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Article 21.07(j) of the JEA Charter specifically provides that “JEA shall have the option to establish an employee deferred compensation program separate from the city’s employee deferred compensation program.” Under this authority, the JEA 457 Deferred Compensation Plan was established in 2002 for the purpose of providing employees of JEA and employees of the (now former) St. Johns River Power Park System with a voluntary method deferring taxation on compensation until death, retirement or certain other events. See memo dated July 6, 2018 from Aaron Zahn to JEA Board and as approved by JEA Board on July 30, 2018.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. If JEA desires to treat the PUP as a deferred compensation plan pursuant to §112.215, the JEA Board must approve the PUP (it has); as required JEA will seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5) and (6)(b)); and that the proceeds to the employees from the PUP, if any, will not be included in the employee’s taxable income until proceeds are actually received (F.S. 112.215(6)(a)). Finally, the PUP does not impose any liability on JEA, “except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred.” (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, “[t]his Plan is intended to constitute an ‘unfunded’ program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA’s obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.” Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period (Section 2(t) of the JEA Long-Term Performance Unit Plan).

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC- insured account such as those currently used for other existing JEA deferred compensation plans.

8. Is JEA Pledging Credit to Participating Employees?

Article 7, Section 10 of the Florida Constitution prohibits JEA from becoming a “joint owner with, or stockholder of, or giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person.” As indicated above, JEA is not giving or using its taxing power or credit to help any JEA employee who purchases a PUP with deferred compensation. The Florida Supreme Court has described the pledging of credit as follows:

As used in Article VII, section 10, “credit” means “the imposition of some new financial liability upon the State or a political subdivision which in effect results in the creation of a State or political subdivision for the benefits of private enterprises. This Court has explained that the lending of public credit means:

[T]he assumption by the public body of some degree of direct or indirect obligation to pay a debt of the third party. Where there is no direct or indirect undertaking by the public body to pay the obligation from public funds, and no public property is placed in jeopardy by a default of the third party, there is no lending of public credit.

Under this definition, we conclude that the COP's in this case do not contemplate a pledge of the District's credit, and that only a public purpose, and not a paramount public purpose, need be shown. *Miccouskee Tribe v. South Florida Water Management District*, 48 So.3d 811, 823 (Fla. 2010) (internal citations omitted).

Further, as previously stated, any amount owed to employees under the PUP will become the obligation of the acquirer to be paid post-closing.

As earlier explained, a participating employee only realizes a gain on the deferred compensation used to purchase the PUP if the Threshold Value Target set forth on the Redemption Price Schedule is attained during the applicable Performance Period, i.e. there is an increase in value of JEA itself. No public property is placed in jeopardy by default of the participating employee or any other third party.

Given that no credit is being pledged, Article VII, Section 10 requires only that a public purpose be met. The PUP's stated public purpose is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida; (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (Section 1(a) of the JEA Long-Term Performance Unit Plan)."

The Florida Attorney General has opined that "if the expenditure primarily or substantially serves a public purpose, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, section 10." AGO 2005-02. The AGO further stated that the determination of whether the expenditure of funds fulfills a public purpose is one that the legislative body, in this case the JEA Board, must make. *Id.* As noted above, the PUP specifies the public purpose, and the JEA Board has approved the PUP.

9. Is the PUP permissible under Florida Laws related to "Extra Compensation?"

The PUP gives employees the choice of purchasing units that can increase in value if the value of JEA increases and decrease in value if the value of JEA decreases. The Plan is voluntary and requires employees that wish to participate to buy-in by deferring their personal compensation to purchase the units and to execute an agreement pertaining to the Plan. As developed below, the Plan does not therefore constitute "extra compensation" under section 215.425, Florida Statutes.



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Section 215.425 provides that "no extra compensation shall be made to any [public employee] after the service has been rendered or the contract made." The intent behind this provision is that public employees should not receive gratuities for services that were already rendered. AGO 2005-07 ("The purpose of such a provision is to prevent payments in the nature of gratuities for past service, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service.").

We have reviewed the applicable legislative history of section 215.425 and have not identified anything suggesting that plans such as the PUP are, or are intended to be, prohibited by the statute. The provision applies principally in instances where public employees were to receive retroactive compensation for work already performed. *See* AGO 92-49 (holding that the Police Pension Board of Trustees could not pay a cost of living allowance to a retired police officer already receiving pension benefits for prior services); *see also* AGO 91-51 (holding that severance payments in lieu of notice violated the provision because the employee renders no service after termination and the payments were compensation for work already performed).

JEA's PUP plainly does not constitute "extra compensation" because the redemption payments are not compensation for the services that the employees render as part of their employment with JEA. Rather, the PUP allows all eligible employees to participate through a voluntary payment in enterprise creation at the risk of not receiving a return on the investment made to purchase the performance units. The PUP also does not serve to provide gratuities to the employees for their past service that they have been previously paid for and does not serve as a bonus program or incentive program to reward employees. Indeed, to participate in the Plan, JEA employees must opt-in at their sole discretion and expend their personal funds to purchase the units. The number of performance units available for purchase by each employee is directed by the Plan Administrator and is based on the employee's position level and annual performance review. The redemption payments for the units depend solely on the change in value of JEA. Thus, section 215.425 does not apply to the Plan, and the Plan does not constitute "extra compensation."

#### CONCLUSION

We appreciate the opportunity to review the PUP. Please call if there are any questions.

[INSERT JEA LOGO]

**INVITATION TO PARTICIPATE IN THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

Dear [NAME],

As a new benefit to JEA employees, we are delighted to let you know that you are eligible to participate in the JEA Long-Term Performance Unit Plan (the “**Plan**”). The Plan was approved by JEA’s Board of Directors as part of the long-term compensation framework and is available starting in 2020.

***How the Plan Works***

The Plan allows you to purchase performance units from JEA referred to as “PUPs.” The purchase price of each PUP is \$10.00 and is paid by deferring a portion of your pay earned in 2020 equal to the aggregate purchase price of the PUPs you wish to purchase. The number of PUPs available to you to purchase is set forth in the cover letter to the Plan and your Long-Term Performance Unit Agreement provided to you.<sup>1</sup> For example, if JEA allocates you five PUPs and you wish to purchase all five PUPs, the aggregate purchase price to be deferred from your pay earned would be equal to \$50.00 (\$10.00 x five PUPs). When the PUPs vest, subject to the satisfaction of certain conditions, you are eligible to receive a cash payment in consideration for the PUPs you purchased. The amount of the cash payment is calculated based on the attainment of specified corporate performance metrics and includes the aggregate purchase price you paid for your PUPs. For additional information on how the Plan works, please refer to the frequently asked questions on Tab A of this invitation booklet.

***Risks Associated with Participating in the Plan***

As described above, in order to purchase PUPs under the Plan, you must pay a purchase price of \$10.00 per PUP. As it is possible that you may forfeit the entire amount of the purchase price under certain circumstances (for example, if your employment with JEA is terminated for cause), you should carefully consider whether to purchase the PUPs. In considering whether to purchase the PUPs, you should review the risks described on Tab B of this invitation booklet and the financial information contained in Tab C of this invitation booklet.

***Instructions and Additional Information***

If you wish to participate in the Plan and purchase the PUPs, please review this invitation booklet carefully and follow the instructions set forth on Tab D of this invitation booklet. All required forms and materials must be postmarked by no later than [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase PUPs and participate in the Plan.<sup>2</sup>

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<sup>1</sup> JEA to confirm whether there will be a separate cover letter to the Plan and Long-Term Performance Unit Agreement.

<sup>2</sup> JEA to provide the postmark date.

For further information concerning the Plan, please contact [NAME], [TITLE] at JEA, via email at [EMAIL ADDRESS].<sup>3</sup>

This is an exciting time for JEA!

Sincerely,

Aaron Zahn  
Managing Director & Chief Executive Officer

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<sup>3</sup> JEA to provide the name, title and email address of the JEA representative.

## TABLE OF CONTENTS

	<b>Page</b>
Questions and Answers About the JEA Long-Term Performance Unit Plan.....	A-1
Risk Factors To Be Considered Before Purchasing the Performance Units Under the JEA Long-Term Performance Unit Plan.....	B-1
Financial Statements .....	C-1
Instructions for Participating in the Plan .....	D-1
JEA Long-Term Performance Unit Plan .....	E-1
JEA Long-Term Performance Unit Agreement.....	E-1



## TAB A

### QUESTIONS AND ANSWERS ABOUT THE JEA LONG-TERM PERFORMANCE UNIT PLAN

#### INTRODUCTION<sup>4</sup>

Below are a number of frequently asked questions (“FAQs”) regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

Where the context so requires, references to “JEA” refer to JEA, its affiliates, assigns, subsidiaries and successors.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR PARTICIPATION IN THE PLAN.**

#### GENERAL PLAN PROVISIONS

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Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA and share in the financial [health]<sup>5</sup> of JEA.

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Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA (including any full-time OGC attorney) who has been employed by JEA for at least three months prior to the Purchase Date (as described in Q&A 3) is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

Any exceptions to the above eligibility requirements must be recommended by JEA’s Chief Executive Officer (the “CEO”) and approved by the Chair of the Compensation Committee (the “Committee Chair”) of the Board of Directors of JEA (the “Board”).

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<sup>4</sup> JEA to confirm whether all the references to “performance units” should be changed to “PUPs.” This was not reflected in the hand mark-up received from JEA.

<sup>5</sup> JEA to confirm whether this should instead refer to “success.”

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Q3: How does the Plan work?

A3: Each eligible employee may purchase a specified number of performance units (the “**Performance Units**”) as set forth in the employee’s Long-Term Performance Unit Agreement from JEA on January 15 of each year (the “**Purchase Date**”)⁶ by electing to defer a portion of the employee’s pay equal to the aggregate purchase price (the “**Purchase Price**”) for the Performance Units that the employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

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Q4: Who administers the Plan?

A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions the Committee Chair deems necessary or advisable for the administration of the Plan. All decisions, interpretations, and other actions of the Committee Chair will be final and binding.

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Q5: How many Performance Units are reserved under the Plan?

A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan. However, only 30,000 Performance Units will be available for purchase by eligible employees on the Purchase Date.

#### **ALLOCATION OF PERFORMANCE UNITS**

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Q6: What is a Performance Unit?

A6: Each Performance Unit represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

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Q7: How are Performance Units allocated under the Plan?

A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement.

The Committee Chair may delegate the Committee Chair’s authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees

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<sup>6</sup> To discuss the Purchase Date with JEA, including whether the Purchase Date should occur over multiple pay periods. Section 2(q) of the Plan specifies that the first Purchase Date will occur January 15, 2020.

(other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

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Q8: How many Performance Units must I purchase to participate in the Plan?

A8: You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated.

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

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Q9: How is the Purchase Price determined?

A9: Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

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Q10: Will I be required to pay the Purchase Price for my Performance Units?

A10: Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Agreement will be equal to \$40.00 (\$10.00 x four Performance Units).

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Q11: How do I pay the Purchase Price for my Performance Units?

A11: To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you.

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019. If you do not make this election by December 31, 2019, you will not be eligible to purchase Performance Units on January 15, 2020.

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Q12: Under what circumstances will I forfeit the Purchase Price that I pay for my Performance Units?

A12: If prior to the Vesting Date (as described in Q&A 13) your employment with JEA is terminated for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, you will forfeit the entire amount of the Purchase

Price that you paid for the Performance Units that have not vested as of the date of your termination or voluntary termination, as applicable, of employment.

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Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the “**Vesting Date**”). Except as otherwise described in Q&A 18, you must be employed with JEA on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price for vested Performance Units.

JEA will pay the Redemption Price to you for your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

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Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the “**Performance Period**”).

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the “**2020/2023 Performance Period**”), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each “Value Change Percentage” increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the “**Redemption Price**”).

- For the 2020/2023 Performance Period, the “Challenge Value Target” will be 110% and the “Threshold Value Target” will be 90%.
- The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”
- “Current Year Value” means, with respect to the Performance Period, the sum of (a) JEA’s Net Position, as shown on JEA’s audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the closing date

of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA's customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) – (c).

- For the 2020/2023 Performance Period, “Base Year Value” is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA’s audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>7</sup>

**Example:** [To come]<sup>8</sup>

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Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

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Q16: Who will calculate the Redemption Price?

A16: JEA’s Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA’s audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

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Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions include as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D;

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<sup>7</sup> To discuss with JEA whether the Purchase Price will be refunded to a participant even if the performance metrics are not attained. There is a substantial risk of forfeiture on a termination for cause or a voluntary termination of employment.

<sup>8</sup> JEA to provide.

- (b) except as described in Q&A 18, you must be continuously employed with JEA;
- (c) you must execute and not revoke a release of claims in favor of JEA and the City of Jacksonville (JEA will notify you when it is time for you to execute the release); and
- (d) you must comply with the covenants set forth in your Long-Term Performance Unit Agreement (the “**Agreement**”).

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Q18: What happens to my Performance Units and the Purchase Price that I paid upon an involuntary termination of employment with JEA?

A18: If you experience an involuntary termination of employment prior to the applicable Vesting Date for your Performance Units, you will still be paid the Redemption Price for all of your Performance Units. Any Redemption Price payable to you as a terminated employee for your Performance Units will be paid to you at the same time as the amounts would have been paid had you not experienced an involuntary termination of employment.

An involuntary termination of employment means a termination of employment by JEA without cause (as described in Q&A 20) or due to your death or disability (as defined in the Plan).<sup>9</sup>

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Q19: What happens to my Performance Units and the Purchase Price that I paid upon a termination of employment with JEA for cause or a voluntary termination of employment?

A19: If you experience a termination of employment for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, in each case, prior to the applicable Vesting Date for your Performance Units, you will forfeit both the Performance Units to the extent invested and the Purchase Price that you paid for such unvested Performance Units.

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Q20: What is a termination of employment for “cause”?

A20: Under the Plan, “cause” generally means:

- (a) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement, or
- (b) if you have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import): (i) you have been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, any felony under applicable law or any crime involving dishonesty or moral

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<sup>9</sup> JEA to clarify what is meant by the request to include a “geographic trigger.”

turpitude; (ii) you have engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence that would reasonably be expected to result in a material injury to JEA; (iii) you willfully fail to perform your duties to JEA and/or willfully fail to comply with lawful directives of the Board; (iv) you materially breach any term of any contract to which you and JEA is a party; or (v) you materially breach any term of the Plan and/or your Long-Term Performance Unit Agreement.

With respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of “cause” is curable, JEA will provide written notice to you of the event within 30 days of JEA learning of the occurrence of such event, and such cause event must remain uncured 15 days after JEA has provided such written notice and any termination of your employment for “cause” with respect to clause (iii), (iv) or (v) must occur no later than 30 days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of “cause” is inconsistent with a definition of “cause” (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the “**Civil Service Rules**”), the definition of “cause” (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, will control.

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Q21: What happens if I am retirement eligible and retire before the applicable Vesting Date?

A21: If you become a retirement eligible employee (as described below) and retire, in each case, prior to the applicable Vesting Date for your Performance Units, your Performance Units will vest on the applicable Vesting Date.

You are retirement eligible if you have attained one of the retirement milestones as described in the General Employees Retirement Plan.

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Q22: What happens if my designation changes from appointed to civil service?

A22: If at any time from when you are notified by JEA of your eligibility to participate in the Plan and ending on the last day of the Performance Period, your designation changes from appointed to civil service (whether or not such change is voluntary), the level at which you participate in the Plan will be adjusted to reflect such change.

If such change occurs (a) at any time prior to the Purchase Date, the number of Performance Units that you will be eligible to purchase will be reduced to a number of Performance Units that is equal to the number of Performance Units you would have been eligible to purchase had you been civil service on the date on which you were notified of your eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, you will forfeit a number of Performance Units such that you will have purchased a number of Performance Units that is equal to the maximum number of Performance Units you would have been eligible to purchase had you been civil service on the Purchase Date (it being understood that such number of forfeited

Performance Units may be zero) and JEA will refund to you the aggregate Purchase Price for such forfeited Performance Units.

## **RECAPITALIZATION EVENT**

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Q23: What is a Recapitalization Event?

A23: A "Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (a) unencumbered cash proceeds to the City of Jacksonville of at least \$3,000,000,000 or (b) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.

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Q24: What happens to my Performance Units upon a Recapitalization Event?

A24: On the closing date of a Recapitalization Event, your Performance Units will vest and you will receive the applicable Redemption Price for your Performance Units. The Redemption Price will be paid in cash no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 16.

## **AMENDMENTS OF THE PLAN**

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Q25: May the Board amend the Plan?

A25: Yes, the Board may amend the Plan at any time. However, no amendment to the Plan may impair the rights of participants in the Plan without such participants' written consent. You will be provided any details of any amendment that would affect you as soon as reasonably practicable.

## **MISCELLANEOUS**

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Q26: Has the Plan been collectively bargained?<sup>10</sup>

A26: Yes, the Plan has been collectively bargained with the applicable union representatives.

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Q27: How should I respond if someone asks about my Plan benefits or JEA's financial status?

A27: All inquiries from persons other than your legal, financial and/or tax advisors relating to the value of your Performance Units, the Plan or JEA's financial status (including questions from the press, prospective JEA investors, JEA customers or vendors, prospective JEA

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<sup>10</sup> Foley to confirm whether this Q&A can be deleted.



hires and current co-workers) should be directed to the JEA's Chief Financial Officer via email at [wannrf@jca.com](mailto:wannrf@jca.com).

**TAB B**

**RISK FACTORS TO BE CONSIDERED BEFORE PURCHASING THE  
PERFORMANCE UNITS UNDER  
THE JEA LONG-TERM PERFORMANCE UNIT PLAN**

The occurrence of any of the following risks could materially and adversely affect JEA's business, operating results and financial condition. In addition, risks and uncertainties that are not presently known to us or that we currently believe are immaterial may also impair JEA's business and operations. If any of these risks occur, the value of your Performance Units could decline and you may lose all or part of your Purchase Price.

**The list of risk factors below does not purport to be a complete enumeration or explanation of the risks involved in purchasing the Performance Units under the Plan. You should carefully evaluate all of the information in this invitation booklet, the Plan and your Long-Term Performance Unit Agreement and consult with your own legal, tax and/or financial advisers before deciding whether to purchase Performance Units and pay the Purchase Price under the Plan.**

**There are a number of factors that may impact JEA's business and financial conditions.**

The Redemption Price of the Performance Units will be subject to the future performance of JEA and, accordingly, before purchasing the Performance Units, you should carefully consider the risk factors described in JEA's Electric System and Water & Sewer System Annual Disclosure Reports (the "Annual Reports") filed with the Municipal Securities Rulemaking Board on its EMMA website and on [www.jea.com](http://www.jea.com) under the "Financial Reports" section (About > Investor Relations > Financial Reports > Annual Disclosure Reports), which are incorporated by reference into this invitation booklet, together with the other information incorporated by reference herein or provided in this invitation booklet (including the risks set forth below).

**The issues and associated risks and uncertainties discussed in the Annual Disclosure Reports that are incorporated herein by reference are not the only ones JEA may face. Additional issues may arise or become material as the energy, water and wastewater industries evolve. The risks and uncertainties associated with those additional issues could impair JEA's businesses in the future.**

The Redemption Price of the Performance Units in the future may be higher or lower than the Purchase Price that you paid for the Performance Units due to changes in JEA's operating performance or prospects and other factors, including broad market fluctuations. Some specific factors that may have a significant effect on the Redemption Price of your Performance Units include:

- JEA has a history of losses, and may not achieve or maintain profitability in the future;
- climate change, or legal, regulatory or market measures to address climate change, may negatively affect JEA's business, operations and/or financial performance;

- natural disasters, including, but not limited to, hurricanes and/or fires, could destroy JEA's facilities and equipment;
- actual or anticipated fluctuations in JEA's operating results or future prospectus;
- factors outside of JEA's control, including modifications to JEA's book value;
- strategic actions by other industry participants, such as acquisitions or restructurings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to JEA's business;
- JEA may be subject to legal proceedings and litigation, which are costly and may subject JEA to significant liability and increased costs of doing business;
- changes in accounting standards, policies, guidance, interpretations or principles; and
- adverse conditions in the financial markets or general economic conditions, including but not limited to, those resulting from war, incidents of terrorism and responses to such events.

**There is no duty to update this invitation booklet.**

JEA has no obligation to update the information contained in this invitation booklet. Accordingly, you should bear in mind that there may have been material changes in the affairs of JEA since the date of this invitation booklet, and it is up to you to review JEA's publicly available reports and information.

The information and expressions of opinion set forth herein or included herein by specific reference are subject to change without notice, and neither the delivery of this invitation booklet, nor the Plan nor your Long-Term Performance Unit Agreement shall, under any circumstances, create the implication that there has been no change in the affairs of JEA since the date hereof and thereof.

**The Performance Units are not transferable and there is no market available for sale of the Performance Units.**

You may not transfer, sell, pledge or otherwise dispose of your Performance Units (other than by will or the laws of descent or distribution) and there is no market to sell the Performance Units.

\* \* \*

**THE PERFORMANCE UNITS ARE NOT EQUITY OR SECURITIES OF JEA, NOR ARE THEY INTENDED TO BE TREATED AS SUCH AND ANY REPRESENTATION BY JEA OR ITS AGENTS TO THE CONTRARY SHOULD NOT BE RELIED UPON.**

**TAB C**

**FINANCIAL STATEMENTS**

You can access and view JEA's financial statements, including the unaudited Quarterly Analysis of Financial Performance for the quarter ended June 30, 2019, through this link:<sup>11</sup>

[https://www.jea.com/About/Investor\\_Relations/Financial\\_Reports/](https://www.jea.com/About/Investor_Relations/Financial_Reports/)

Please contact [NAME], [TITLE] at [EMAIL ADDRESS] if you have trouble viewing or accessing the financial statements.<sup>12</sup>

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<sup>11</sup> To be updated prior to distribution to participants, as necessary.

<sup>12</sup> JEA to provide the name, title and email address of the JEA representative.

TAB D

**INSTRUCTIONS FOR PARTICIPATING IN THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

To purchase Performance Units and participate in the Plan:

- You must sign and return your Long-Term Performance Unit Agreement enclosed with this invitation booklet; and
- You must complete, sign and return the Purchase of Performance Units and Deferral Election attached as Schedule I to your Long-Term Performance Unit Agreement.

The documents listed above must be returned to [NAME], [TITLE], at [Foley/Pillsbury],<sup>13</sup> at [ADDRESS], or at [EMAIL ADDRESS].

**All required forms and materials must be postmarked by no later [DATE], 2019. If your required forms and materials are postmarked later than [DATE], 2019, your election will not be processed and you will not be eligible to purchase Performance Units and participate in the Plan.<sup>14</sup>**

<sup>13</sup> JEA to confirm whether Foley or Pillsbury will receive the documents.

<sup>14</sup> JEA to provide the postmark date.

**TAB E**

**JEA LONG-TERM PERFORMANCE UNIT PLAN**

[To be attached]

**TAB F**

**JEA LONG-TERM PERFORMANCE UNIT AGREEMENT**

[To be attached]

[OGC Letterhead]

October \_\_, 2019

The Florida Commission on Ethics  
325 John Knox Road  
Building E, Suite 200  
Tallahassee, Florida 32303

RE: Request for Advisory Opinion

Dear Commissioners:

I write on behalf of JEA (formerly known as the "Jacksonville Electric Authority") to request an informal advisory opinion regarding a matter of importance to JEA and, critically, to the approximately 2,000 JEA employees who provide dedicated service to JEA and its customers. JEA is an independent agency of the City of Jacksonville and is subject to the jurisdiction of the Jacksonville City Charter, ordinances and, of course, state laws and regulations. Pursuant to section 112.322(3)(a), Florida Statutes, JEA employees are public employees that are entitled to request an advisory opinion from the Commission to establish the standard of public duty pursuant to Florida ethics laws.<sup>1</sup>

Over the past few months, the Board of JEA has been exploring multiple scenarios of operation and investment to ensure that JEA customers and Northeast Florida receives the most cost-effective and efficient electric, wastewater, and water utility services. This exploration is necessary due to the rapidly evolving utility industry and declining sales resulting from energy efficiency measures taken by its customers. This fiscal and technological shift has necessitated development of a number of initiatives designed to improve and optimize the fiscal health of the utility and promote employee retention.

In order to proactively engage and retain employees in this evolving and challenging financial landscape, the JEA Board on July 23, 2019 passed Resolution 2019-10, approving a Long Term Performance Unit Plan (the "PUP" or the "Plan"). The PUP is designed to allow employees to benefit from the enterprise growth of JEA in the next three years. JEA's performance will be measured on the change in JEA's net position during the performance period.

Attached is a copy of Resolution 2019-10 and Exhibits 1 and 2 to that resolution. Exhibits 1 and 2 provide a detailed summary of the PUP and Redemption Price Schedule for the PUP. Also attached is the Long Term Performance Unit Plan and Form of Long Term Performance Unit Agreement.

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<sup>1</sup> JEA is established as a "body politic and corporate," an independent authority of the City of Jacksonville pursuant to Laws of Florida 78-538, 80-515, 92-341 and Section 21.01 of the Charter of the City of Jacksonville, Florida.



In summary, and as detailed below, the PUP provides full-time JEA employees an opportunity to defer compensation in order to purchase units at \$10.00 per unit and later redeem them for an amount dependent on JEA's current year value. Participation in the Plan is voluntary, and eligibility is dependent upon employment status. Benefits like the Plan are commonplace in the corporate world, where employees invest in the success of a company, but are less so in government. The Office of General Counsel of the City of Jacksonville (the "OGC") and JEA Special Counsel (selected by the OGC) have assisted throughout the development and drafting of the PUP and associated PUP Agreement and confirmed the JEA Board's authority to pass Resolution 2019-10. While, as outlined herein, we believe the PUP complies with Florida ethics laws, given the absence of available case law or advisory opinions directly on point, JEA requests respectfully an informal advisory opinion confirming that (1) the PUP comports with section 112.313, Florida Statutes, and does not constitute the solicitation or acceptance of a gift or unauthorized compensation and (2) that the PUP does not violate any other ethics laws deemed to be implicated.<sup>2</sup>

*A. The Long-Term Performance Plan:*

The PUP allows eligible employees to defer compensation in order to purchase a specified number of performance units from JEA and redeem them for a cash payment equal to the redemption price. The PUP is entirely voluntary. Any eligible employee may decide to participate or decline.

Eligible employees include all full-time employees (including full-time attorneys from the Office of the General Counsel dedicated exclusively to JEA, appointed employees, and represented employees) actively employed with JEA for at least three months prior to the performance unit purchase date. The eligibility of employees to participate in the program is dependent solely on their employment status and execution of and compliance with a performance plan participation agreement. To participate, the employee must agree in a performance plan participation agreement to comply with the following covenants: (i) devote his/her best efforts to faithfully discharge his/her duties on behalf of the JEA and not take any action that would be contrary to the best interests of the JEA and (ii) not disclose confidential JEA information except as required by law or to perform employment duties. A breach of these covenants would result in the forfeiture of unvested units except for a return of the aggregate purchase price for such units. The agreements regarding the Plan will be subject to sections 409A and 457(f) of the Internal Revenue Code and will be governed by the laws of Florida and subject to arbitration in Duval County.

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<sup>2</sup> On October 1, 2019, JEA requested an opinion from the Florida Attorney General that the Plan complies with F.S. 215.425 (related to "extra compensation" for employees).

A pool of units will be allocated<sup>3</sup> amongst employees based on his/her position level and the most recent annual performance review. The units will be available for purchase at \$10.00 per unit in the early months of the calendar year following the calendar year in which JEA's annual financial audit statement is completed. Unpurchased units will return to the pool. Eligible employees will pay the purchase price of the unit by electing to defer a portion of his/her salary (equal to the aggregate purchase price for the performance units) into an FDIC-insured savings account. At redemption, the employee will receive a cash payment in the amount of the redemption price that will include the purchase price paid per unit. JEA's Chief Financial Officer will calculate the redemption price, and it will be certified no later than 30 days following the completion of JEA's annual financial audit statement. It is important to note that the PUP was developed at the instruction of the JEA Board, authorized by it, and will be administered under Board auspices and the redemption price certified by the Board. Further, an independent auditor will certify all values and financial results that will substantiate the value of the PUP.

The calculation of the redemption price is dependent on JEA's current year value, which is defined as the sum of JEA's net position per JEA's annual audited financial statement, the aggregate consideration paid, distributed, credited, or otherwise provided to the City of Jacksonville during the 12-month period prior to the end of the performance period, and the aggregate consideration paid, distributed, credited, or otherwise provided to JEA's customers during the 12-month period prior to the end of the performance period. Depending on the increase or decrease of JEA's current year value, the redemption price for the units will increase or decrease. Payments made regarding the units will be paid less applicable withholding taxes.<sup>4</sup>

The employee must be actively employed on the vesting date for the units to vest. If an employee is involuntarily terminated (without cause or due to death or disability) prior to the vesting date, then the employee will receive a payment for the units at the same time as the amounts would have been paid had the employee not been terminated. If the employee's termination of employment is voluntary, then the employee forfeits the units. If an employee is retirement-eligible and retires prior to the vesting date, the units will vest on the normal vesting date.

*B. Questions:*

As described above, while it appears clear that the PUP is permissible under Florida ethics laws, in an abundance of caution we are requesting an opinion from the Commission to confirm:

1. Whether the PUP comports with section 112.313, Florida Statutes, and does not constitute the solicitation or acceptance of a gift or unauthorized compensation.
2. Whether the PUP violates other Florida ethics laws, if any, deemed applicable to employee participation in enterprise value creation.

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<sup>3</sup> The allocation of performance units available to each employee for purchase will be directed by the JEA Compensation Committee Chair, who is the Administrator of the Plan.

<sup>4</sup> As a part of the JEA's Board's exploration of alternative scenarios to address the utility's fiscal challenges, JEA is also considering selling the utility. If that occurs, the performance period ends, the amount owed to the employee will become the obligations of the acquirer to be paid post-closing and the PUP will be extinguished.

C. *The Plan does not constitute the Solicitation or Acceptance of a Gift or Unauthorized Compensation under Section 112.313, Florida Statutes*

The Plan gives employees the choice of purchasing units that can increase in value if the value of JEA increases and decrease in value if the value of JEA decreases. The Plan is voluntary and requires employees that wish to participate to buy-in by deferring their personal compensation to purchase the units and to execute an agreement pertaining to the Plan. The PUP does not violate Florida ethics laws for public employees because it does not constitute the unlawful solicitation or acceptance of a gift or unauthorized compensation. In addition, the PUP directly aligns with the intent of the Legislature in ensuring that government entities have mechanisms to recruit and retain those citizens best qualified to serve.

The PUP clearly states its purpose:

The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (PUP at Section 1a).

Nothing in the stated purpose or the actuality of the PUP creates a conflict between the participating employee and JEA or the customers JEA serves. Indeed, participating employees only stand to benefit if the value of JEA increases.

The Legislature enacted chapter 112, Florida Statutes, to create a code of ethics for public officers and employees. The Legislature's intent in promulgating a code of ethics was to ensure that public employees be independent and impartial, to prevent conflicts of interest, and to protect the integrity of the governmental process. § 112.311, Fla. Stat.<sup>5</sup> In addition, the Legislature specifically sought to ensure that the code of ethics be designed so "as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve." § 112.311(2), Fla. Stat. The code does not deny public employees the opportunities available to all other citizens to acquire private economic interests unless a conflict with the responsibility of such public officials cannot be avoided. *Id.* Thus, the code of ethics serves to protect the integrity of government while also facilitating the recruitment and retention of "those citizens best qualified to serve." § 112.311(3), (4), Fla. Stat.

In furthering such purposes, the Legislature sought to prevent public employees from engaging in conduct that would create the opportunity for improper influence or a conflict between the employees' private and public interests. *See* Chapter 67-469, Laws of Florida (The Legislature's first iteration of the bill prohibited the acceptance of gifts that would improperly influence an employee in the discharge of his official duties and personal investments that created a substantial conflict between an employee's private and public interests). In section

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<sup>5</sup> A conflict must be substantial to be prohibited. AGO 1973-215 ("the personal investment in an enterprise that is prohibited by the act is one that will create a 'substantial conflict' between his private interest and the public interest"). *See also* AGO 1980-71 ("Thus, we do not believe that the Code of Ethics should be interpreted to prohibit the most remote possibilities of conflicts of interest, but rather to prohibit those relationship which are in substantial conflict with the proper discharge of duties in the public interest.")

112.313(2), Florida Statutes, the code of ethics prohibits public employees from soliciting or accepting “anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgement of the [public employee] would be influenced thereby.” A “gift” is defined as real property, the use of real property, tangible or intangible personal property, the use of tangible or intangible personal property, a preferential rate or terms on a debt, loan, goods, or services, forgiveness of an indebtedness, transportation, food or beverage, membership dues, tickets and entrance fees, plants and flowers, other personal services, and similar services or things having attributable value. § 112.213(12)(a), Fla. Stat. “Gifts” do not include salary, benefits, fees, commissions, gifts, or expenses associated with employment, contributions to political parties or campaign-related personal services, an honorarium, an award, an honorary membership, use of public facilities or public properties made available for a public purpose, and transportation for official governmental business. § 112.213(12)(b), Fla. Stat.

The Commission has previously held that to establish a violation of section 112.313(2), the following elements must be established: (i) Respondent is a public employee; (ii) Respondent “solicited or accepted something of value to him or her, including a gift, loan, reward, promise of future employment, favor, or service”; (iii) the solicitation or acceptance “must have been based upon an understanding that the Respondent’s vote, official action or judgement would be influenced thereby.” *In re: Danny Howell*, 2007 FL COMM. ETHICS LEXIS 77, \*50 (Sep. 12, 2007). The term “understanding” in the statute is used to denote “a mutual agreement not formally entered into but in some degree binding on each side.” *In re: Rudy Maloy*, 2003 FL COMM. ETHICS LEXIS 24, \*40-41 (Apr. 25, 2003) (quoting Merriam-Webster Online Dictionary). Accordingly, “there must be a meeting of the minds between the public officer who receives (or is requesting) the gift and the person who confers (or is being asked for) the gift pursuant to which each understands that the gift is being given (or solicited) for the purpose of influencing some official action of the recipient.” *Id.* at \*41.

Furthermore, section 112.313(4) provides that a public employee may not “accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.” Section 112.313(4) requires the same inquiry as section 112.313(2) except that when the compensation, payment, or thing of value was accepted, the Respondent must have either: (i) “[known] that it was given to influence a vote or other action in which the Respondent was expected to participate in an official capacity; or (ii) “with the exercise of reasonable care, should have known that it was given to influence a vote or other action in which the Respondent was expected to participate in an official capacity.” *In re: Danny Howell* at \*44.

The Plan plainly does not violate Florida’s code of ethics for public employees. The PUP does not fall under the definition of a gift because it requires employees to expend their personal funds to purchase the units. Furthermore, participation in the PUP serves solely as an opportunity for employees to help improve the health of the utility. It is not premised on an understanding that participation serves to influence a vote or official action. Rather, the PUP allows employees to participate in enterprise value creation at the risk of not receiving a return on the investment made to purchase the performance units. This is the opposite of what the Code of Ethics is

designed to prevent. "A primary objective of the Code of Ethics is that governmental officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public." *Zerweck v. State*, 409 So.2d 57, 60 (Fla. 4<sup>th</sup> DCA 1982). Contrary to acting against the interest of JEA, the PUP is designed to encourage employees to personally invest in JEA, and work to increase its value. Only if this occurs does the PUP gain value and the employee stand to benefit. Thus, the interests of JEA employees and JEA itself are strictly aligned.

In sum, the Plan is directly aligned with the Legislature's intent to ensure that the government can recruit and retain employees that are best qualified to serve. JEA's PUP will serve as a mechanism to recruit and retain qualified employees.

Finally, s. 112.313(6) is not implicated. That statute provides:

No public officer, employee of an agency, or local government attorney shall *corruptly* use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit or exemption for himself, herself, or others. The section shall not be construed to conflict with s. 104.31. (Emphasis added)

The PUP is available to all employees who may decide whether or not to participate and is incidental to their employment (e.g. a form of deferred compensation). No individual is able to secure something not available to other JEA employees. As previously stated, it is important to note that the PUP was developed at the instruction of the JEA Board, authorized by it, and will be administered under Board auspices and certified by the Board. Further, an independent auditor will certify all values and financial results that will substantiate the value of the PUP. No individual can affect or create a benefit which is not approved or authorized by the Board. And, no JEA Board member can participate in the PUP. Thus, there is complete independence being the creation and authorization of the PUP, and certification of values related to the PUP.

To establish a violation of s. 112.313(6), the following elements must be proven by clear and convincing evidence:

"(a) the employee used or attempted to use his official position; (2) to secure a special privilege, benefit or exemption for himself or another and (3) acted corruptly in doing so, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission, which is inconsistent with the proper performance of his public duties. Corruptly is statutorily defined as being done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from act or omission of a public servant which is inconsistent with the proper performance of his or her duties. To satisfy this statutory element, proof must be adduced that Siplin [the Respondent/Appellant] acted with reasonable notice that [his or her] conduct was inconsistent with the proper performance of his or her public duties and would be a violation of the law of the code of ethics. *Siplin v. Commission on Ethics*, 59 So.3d 150, 151-152 (Fla. App. 5<sup>th</sup> Dist. 2011) (internal citations omitted).

Employees eligible to participate in the PUP are not receiving compensation inconsistent with the proper performance of their duties. Indeed, the PUP is based on the employee properly performing their duties and incentivizing them to do so. Moreover, all eligible participants are properly advised of the conditions of eligibility to participate in the PUP and its terms. The JEA Board has approved the PUP and the employee does not have notice that the PUP is inconsistent performing his or her duties. Consequently, the PUP, and those who participate in it, do not violate s. 112.313(6).

*D. No Other Laws are Implicated*

As to Question 2, we seek the guidance of the Commission to determine whether any other Florida ethics laws of which we currently are not aware are implicated. Our legal research has not identified any statutes or ethics laws prohibiting the Plan. We appreciate your assistance with this matter. Please let us know if you need any additional information.

Sincerely,

Lynne C. Rhode



**Rhode, Lynne C. (City of Jacksonville)**

---

**From:** KHyde@foley.com  
**Sent:** Thursday, October 3, 2019 11:49 AM  
**To:** Rhode, Lynne C. (City of Jacksonville)  
**Cc:** crodriguez@foley.com  
**Subject:** Letter to Attorney General Ashley Moody  
**Attachments:** 2019-10-01 - Final Letter to The Honorable Ashley Moody (SIGNED) 4833-3472-6056 v.1.pdf

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Attached is a copy of the letter delivered to the office of Attorney General Ashley Moody on October 10, 2019. Foley & Lardner reviewed this letter and agrees with its analysis and content. Please call me if you have any questions.

-Kevin E. Hyde

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October 1, 2019

\*BOARD CERTIFIED CITY, COUNTY  
AND LOCAL GOVERNMENT LAW

The Honorable Ashley Moody  
Attorney General, State of Florida  
The Capitol PLO1  
Tallahassee, Florida 32399-1050

RE: Request for Opinion

Dear General Moody:

Pursuant to Section 16.01(3), Florida Statutes, JEA (formerly known as the "Jacksonville Electric Authority") requests respectfully an official opinion and legal advice regarding a matter of importance to JEA and, critically, to the approximately 2000 JEA employees who provide dedicated service to JEA and its customers. JEA is an independent agency of the City of Jacksonville and is subject to the jurisdiction of the Jacksonville City Charter, ordinances and, of course, state laws and regulations. Pursuant to section 16.01(3), Florida Statutes, JEA constitutes a "unit of local government" entitled to request an official opinion in writing on a question of law.<sup>1</sup>

Over the past few months, the Board and Senior Leadership Team of JEA have been exploring multiple scenarios of operation and investment to ensure that JEA customers and Northeast Florida receive the most cost-effective and efficient electric, wastewater, and water utility services. This exploration is necessary due to the rapidly evolving utility industry and declining sales resulting from energy efficiency measures taken by its customers. This fiscal and

<sup>1</sup> JEA is established as a "body politic and corporate," an independent authority of the City of Jacksonville pursuant to Laws of Florida 78-538, 80-515, 92-341 and Section 21.01 of the Charter of the City of Jacksonville, Florida. JEA is a unit of local government within the meaning of F.S. 16.01(3). The Florida Attorney General has previously issued advisory opinions at the request of the General Counsel of JEA. See AGO 92-43.

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JEA0422

technological shift has necessitated development of a number of initiatives designed to improve and optimize the fiscal health of the utility and promote employee retention

In order to proactively engage and retain employees in this evolving and challenging financial landscape, the JEA Board on July 23, 2019 passed Resolution 2019-10, approving a Long Term Performance Unit Plan (the "PUP" or the "Plan"). The PUP is designed to allow employees to benefit from the enterprise growth of JEA in the next three years. JEA's performance will be measured on the change in JEA's net position during the performance period.

Attached is a copy of Resolution 2019-10 and Exhibits 1 and 2 to that resolution. Exhibits 1 and 2 provide a detailed summary of the PUP and Redemption Price Schedule for the PUP. Also attached is the Long Term Performance Unit Plan and Form of Long Term Performance Unit Agreement.

In summary, and as detailed below, the PUP provides full-time JEA employees an opportunity to defer compensation in order to purchase units at \$10.00 per unit and later redeem them for an amount dependent on JEA's current year value. Participation in the Plan is voluntary, and eligibility is dependent upon employment status. Benefits like the Plan are commonplace in the corporate world, where employees benefit from for the success of a company, but are less so in government. The Office of General Counsel of the City of Jacksonville (the "OGC") and JEA Special Counsel (selected by the OGC) have assisted throughout the development and drafting of the PUP and associated PUP Agreement, and have confirmed the JEA Board's authority to pass Resolution 2019-10. While, as outlined herein, we believe the PUP complies with Florida law, given the absence of available case law or advisory opinions directly on point, JEA requests respectfully an opinion confirming that the PUP is not subject to section 215.425, Florida Statutes; and, if it is, that the PUP is not prohibited by section 215.425.<sup>2</sup>

*A. The Long-Term Performance Plan:*

The PUP allows eligible employees to defer compensation in order to purchase a specified number of performance units from JEA and redeem them for a cash payment equal to the redemption price. The PUP is entirely voluntary. Any eligible employee may decide to participate or decline.

Eligible employees include all full-time employees (including full-time attorneys from the Office of the General Counsel dedicated exclusively to JEA, appointed employees, and represented employees) actively employed with JEA for at least three months prior to the performance units purchase date. The eligibility of employees to participate in the program is dependent solely on their employment status and execution of and compliance with a performance plan participation agreement. To participate, the employee must agree in a performance plan participation agreement to comply with the following covenants: (i) devote his/her best efforts to faithfully discharge his/her duties on behalf of the JEA and not take any

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<sup>2</sup> While JEA has not identified any other Florida Statutes implicated by the Plan, JEA intends to seek similar guidance from the Florida Commission on Ethics.

action that would be contrary to the best interests of the JEA and (ii) not disclose confidential JEA information except as required by law or to perform employment duties. A breach of these covenants would result in the forfeiture of unvested units except for a return of the aggregate purchase price for such units. The agreements regarding the Plan will be subject to sections 409A and 457(f) of the Internal Revenue Code and will be governed by the laws of Florida and subject to arbitration in Duval County.

A pool of units will be allocated<sup>3</sup> amongst employees based on his/her position level and the most recent annual performance review. The units will be available for purchase at \$10.00 per unit on January 15th of the calendar year following the calendar year in which JEA's annual financial audit statement is completed. Unpurchased units will return to the pool. Eligible employees will pay the purchase price of the unit by electing to defer a portion of his/her salary (equal to the aggregate purchase price for the performance units) into an FDIC-insured savings account. At redemption, the employee will receive a cash payment in the amount of the redemption price that will include the purchase price paid per unit. JEA's Chief Financial Officer will calculate the redemption price, and it will be certified no later than 30 days following the completion of JEA's annual financial audit statement.

The calculation of the redemption price is dependent on JEA's current year value, which is defined as the sum of JEA's net position per JEA's annual audited financial statement, the aggregate consideration paid, distributed, credited, or otherwise provided to the City of Jacksonville during the 12-month period prior to the end of the performance period, and the aggregate consideration paid, distributed, credited, or otherwise provided to JEA's customers during the 12-month period prior to the end of the performance period. Depending on the increase or decrease of JEA's current year value, the redemption price for the units will increase or decrease. Payments made regarding the units will be paid less applicable withholding taxes.<sup>4</sup>

The employee must be actively employed on the vesting date for the units to vest. If an employee is involuntarily terminated (without cause or due to death or disability) prior to the vesting date, then the employee will receive a payment for the units at the same time as the amounts would have been paid had the employee not been terminated. If the employee's termination of employment is voluntary, then the employee forfeits the units. If an employee is retirement-eligible and retires prior to the vesting date, the units will vest on the normal vesting date.

*B. The Plan does not Violate Section 215.425, Florida Statutes*

JEA's PUP gives employees the choice of purchasing units that can increase in value if the value of JEA increases and decrease in value if the value of JEA decreases. The Plan is voluntary and requires employees that wish to participate to buy-in by deferring their personal compensation to purchase the units and to execute an agreement pertaining to the Plan. As

<sup>3</sup> The allocation of performance units available to each employee for purchase will be directed by the JEA Compensation Committee Chair, who is the Administrator of the Plan.

<sup>4</sup> As a part of the JEA's Board's exploration of alternative scenarios to address the utility's fiscal challenges, JEA is also considering selling the utility. If that occurs, the performance period ends, the amount owed to the employee will be paid by the Purchaser, and the Plan will be extinguished.

developed below, the Plan does not therefore constitute "extra compensation" under section 215.425, Florida Statutes.

Section 215.425 provides that "no extra compensation shall be made to any [public employee] after the service has been rendered or the contract made." The intent behind this provision is that public employees should not receive gratuities for services that were already rendered. AGO 2005-07 ("The purpose of such a provision is to prevent payments in the nature of gratuities for past service, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service.").

We have reviewed the applicable legislative history of section 215.425 and have not identified anything suggesting that plans such as the PUP are, or are intended to be, prohibited by the statute. Moreover, the consistent theme of prior Opinions from your Office – which are consistent with the clear intent of the statute – is that the provision applies principally in instances where public employees were to receive retroactive compensation for work already performed. *See* AGO 92-49 (holding that the Police Pension Board of Trustees could not pay a cost of living allowance to a retired police officer already receiving pension benefits for prior services); *see also* AGO 91-51 (holding that severance payments in lieu of notice violated the provision because the employee renders no service after termination and the payments were compensation for work already performed).

JEA's PUP plainly does not constitute "extra compensation" because the redemption payments are not compensation for the services that the employees render as part of their employment with JEA. Rather, the PUP is a benefit that allows all eligible employees to participate through a voluntary payment in enterprise creation at the risk of not receiving a return on the investment made to purchase the performance units. The PUP also does not serve to provide gratuities to the employees for their past service that they have been previously paid for and does not serve as a bonus program or incentive program to reward employees. Indeed, to participate in the Plan, JEA employees must opt-in at their sole discretion and expend their personal funds to purchase the units. The number of performance units available for purchase by each employee is directed by the Plan Administrator and is based on the employee's position level and annual performance review. The redemption payments for the units depend solely on the change in value of JEA. Thus, section 215.425 does not apply to the Plan, and the Plan does not constitute "extra compensation."

### C. Conclusion

In sum, while it appears clear based on our research that the PUP is permissible under Florida law, given the potential significance of the Plan to both JEA and its approximately 2000 employees, we seek guidance from your Office to confirm that the PUP is lawful. Particularly, whether section 215.425, Florida Statutes, is applicable to the PUP and, if so, whether the PUP comports with section 215.425.

JEA appreciates greatly your attention to and assistance with this matter. Please advise if you or your Office have any question or would like additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynne Rhode", written over a horizontal line.

Lynne Rhode  
VP and Chief Legal Officer  
JEA Office of General Counsel,  
City of Jacksonville





Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131 | tel 212.858.1000 | fax 212.858.1500

**PRIVILEGED & CONFIDENTIAL**

To: Office of General Counsel of the City of Jacksonville, Florida  
From: Pillsbury Winthrop Shaw Pittman LLP  
Date: November 4, 2019  
Re: Tax and Securities Considerations Applicable to JEA Long-Term Performance Unit Plan

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**A. Background**

JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), sponsors the JEA Long-Term Performance Unit Plan, effective July 23, 2019 (the “Plan”). As requested by the Office of General Counsel of the City of Jacksonville, this memorandum summarizes the basic terms, vesting conditions, and payment provisions applicable to performance units available for allocation to eligible employees under the Plan, and summarizes the relevant federal tax consequences of the Plan under the Internal Revenue Code of 1986, as amended (the “Code”), and related guidance as well as the relevant federal and state securities consequences of the Plan.<sup>1</sup>

**B. Plan Summary**

**1. Basic Plan Terms**

Under the Plan, (i) employees of JEA and its affiliates, assigns, subsidiaries and successors (the “JEA Group”) who have been employed by the JEA Group for at least three months prior to the Purchase Date (as defined below) and (ii) full-time attorneys of the Office of General Counsel of the City of Jacksonville who are dedicated exclusively to JEA for at least three months prior to the Purchase Date are eligible to be allocated a number of Performance Units (as defined below) by JEA for purchase at a price of \$10 per Performance Unit. The Plan is administered by the Chairperson of the Compensation Committee of the Board of Directors of JEA (the “Administrator”).<sup>2</sup>

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<sup>1</sup> This memorandum is based on the version of the Plan that is current through the date of this memorandum.

<sup>2</sup> Following a Recapitalization Event (as defined below), the Administrator may be such other entity designated in the definitive agreement providing for such Recapitalization Event.



Each performance unit is a bookkeeping entry that represents a potential right to receive a cash payment in the future based on attainment of specified performance metrics (the “Performance Units”). The aggregate number of Performance Units that may be purchased by eligible employees under the Plan is 100,000 Performance Units. Participation in the Plan is not mandatory and eligible employees who purchase Performance Units under the Plan are referred to in this memorandum as “Participants.”

To purchase Performance Units, an eligible employee must pay the purchase price for the Performance Units the employee wishes to purchase by electing to defer a portion of his or her pay equal to the aggregate purchase price of the Performance Units the employee wishes to purchase. To defer a portion of his or her pay, the employee must complete an election notice (a “Deferral Election”) and file it with the Administrator by no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. Eligible employees may elect to defer their pay earned in the calendar year after the Deferral Election is made over one or two payroll periods.

Before the end of 2019, eligible employees will be allocated up to 35,000 Performance Units for purchase under the Plan. An eligible employee who wishes to purchase all or some of the Performance Units allocated to him or her must complete the Deferral Election by December 31, 2019 and elect to defer pay earned in 2020. The purchase date of the Performance Units will be January 27, 2020.

## 2. Vesting of Performance Units

Under the Plan, the Performance Units are subject to a time-based vesting component and a performance-based vesting component, in each case measured over a three-year performance period (the “Performance Period”) that ends on the earlier to occur of (i) the third anniversary of the Purchase Date<sup>3</sup> (which is January 27, 2023 with respect to Performance Units purchased on January 27, 2020) and (ii) the date on which a Recapitalization Event<sup>4</sup> occurs.

The time-based vesting component is satisfied if a Participant remains employed with any member of the JEA Group through the end of the applicable Performance Period. However, the time-based vesting component is deemed to be satisfied if, prior to the end of the applicable Performance Period, the Participant’s employment is terminated due to an involuntary termination or due to the Participant’s retirement after the Participant attains one of the retirement milestones described in JEA’s General Employees Retirement Plan. An involuntary termination of employment occurs if the Participant’s employment is terminated (i) by any member of the JEA Group without “cause” (as defined in the Plan) or (ii) due to the Participant’s death or “disability” (as defined in the Plan).

<sup>3</sup> The “Purchase Date” for Performance Units under the Plan is each January 27th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed, beginning with January 27, 2020.

<sup>4</sup> The Plan defines a “Recapitalization Event” as the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least \$3,000,000,000 or (ii) at least 50% of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.

If a Participant's employment is terminated prior to the end of the applicable Performance Period for any reason other than due to an involuntary termination or retirement, the Participant forfeits his or her Performance Units. In such a case, the applicable purchase price paid by the Participant in respect of the forfeited Performance Units is refunded to the Participant, provided that, if the Participant's employment is terminated by any member of the JEA Group for cause or the Participant voluntarily resigns from employment with the JEA Group for any reason (other than due to retirement), the applicable purchase price is not refunded to the Participant. As such, there exists the possibility for a Participant to forfeit completely the amount of pay deferred by the Participant under the Plan for failure to satisfy the time-based vesting component.<sup>5</sup>

The performance-based vesting component is satisfied if, as of the end of the applicable Performance Period, JEA realizes a percentage increase in its enterprise value (taking into account its net position reflected on its financial statements, the aggregate consideration paid by JEA to the City of Jacksonville during the 12-month period prior to the end of the applicable Performance Period and the aggregate consideration paid by JEA to its customers during the 12-month period prior to the end of the applicable Performance Period) as compared to its enterprise value at the beginning of the applicable Performance Period, as more fully described on Schedule A to the Plan (the "Redemption Price Schedule"). If JEA realizes a percentage increase in its enterprise value in excess of a specific target change in value percentage and the Participant has satisfied the time-based vesting component, the Participant is eligible to receive a cash payment in respect of his or her vested Performance Units. If, however, the change in value percentage does not meet or exceed a specific threshold value percentage, the Redemption Price (including the purchase price paid for the Performance Units) may potentially be reduced to \$0, as more fully described on the Redemption Price Schedule and in the definition of "Redemption Price", and the Participant may receive no cash payment in respect of his or her Performance Units (this is true even if the Participant satisfies the time-based vesting component).<sup>6</sup> As such, there exists the possibility for a Participant to forfeit completely the amount of pay deferred by the Participant under the Plan for failure to satisfy the performance-based vesting component.

### 3. Payment for Vested Performance Units

Assuming satisfaction of both the time-based vesting component and the performance-based vesting component, on the applicable payment date, each Participant will receive an amount equal to the number of his or her vested Performance Units as of the end of the applicable Performance Period multiplied by the "Redemption Price"<sup>7</sup> per Performance Unit. The

<sup>5</sup> Participants may also forfeit all or a portion of their allocated or purchased Performance Units (with the applicable purchase price refunded to them) if they incur a change in their civil service status during the applicable Performance Period, as more fully described in the Plan.

<sup>6</sup> If performance results in a percentage increase between the specific threshold value percentage and the specific target change in value percentage, a Participant will only be eligible to receive an amount equal to the purchase price paid for the Performance Units.

<sup>7</sup> The "Redemption Price" means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the Redemption Price Schedule. As described more fully on the Redemption Price Schedule, the Redemption Price will increase by \$100.00 per Performance Unit for each "value change percentage" increase of 1.00% in excess of the "challenge value target" and will decrease by \$0.50 per Performance Unit for each "value change percentage" decrease of 1.00% below the "threshold value target" (as such terms are defined in the Plan), but in no event will the Redemption Price per Performance Unit be less than \$0.

Administrator will certify performance within 30 days following the completion of the applicable Performance Period (or, in the case of a Recapitalization Event, within 30 days following the occurrence of such Recapitalization Event) and payment will be made to the Participants no later than March 15th of the calendar year following the calendar year in which the applicable Performance Period ends.

The Plan provides that, in the event of a Recapitalization Event, the Plan and any Award Agreements thereunder will be assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA), and that, upon such assumption, the rights and obligations of JEA under the Plan and any applicable Award Agreements will become the rights and obligations of such successor. This means that payment of the Redemption Price under the Plan will be made by JEA's successor in a Recapitalization Event.

Payment is further conditioned on the Participant (i) executing and not revoking a general release of claims in favor of the JEA Group prior to the applicable payment date, and (ii) complying with the restrictive covenants set forth in the Participant's award agreement under the Plan (the "Award Agreement").

#### 4. Tax Reimbursement Payment

The Plan provides that, in the event any payments under the Plan and/or any Award Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), a member of the JEA Group will pay to such Participant an amount equal to the full amount of the Penalties so that such Participant is in the same economic position the Participant would have been if the Penalties did not apply. However, the JEA Group is under no obligation to make a Participant whole for the Penalties if they relate to the Participant's breach of the Plan or any Award Agreement or such Participant's failure to comply with his or her legal obligations.

### C. Summary of Federal Tax Consequences

#### 1. Code Section 457

Code Section 457 governs deferred compensation plans of "eligible employers" (i.e., state and local governments and tax-exempt organizations)<sup>8</sup> such as JEA. As described above, the Plan is a deferred compensation plan as Participants may elect to defer a portion of their compensation as payment for the Performance Units. Under Code Section 457, a deferred compensation plan of an eligible employer is either an "eligible deferred compensation plan"<sup>9</sup> or a plan that is not an eligible deferred compensation plan (referred to as an "ineligible deferred compensation plan").<sup>10</sup> A plan is an eligible deferred compensation plan if the amount that can be deferred under the plan for the applicable taxable year is limited to the lesser of (i) \$19,000 (indexed for inflation) and (ii) 100% of the participant's includible compensation.<sup>11</sup> As Participants in the Plan are not limited to

<sup>8</sup> See Code §457(e)(1).

<sup>9</sup> See Code §457(b).

<sup>10</sup> See Code §457(f).

<sup>11</sup> See Code §457(b)(2)(A).

a maximum deferral of \$19,000 per year, the Plan would not be treated as an eligible deferred compensation plan under Code Section 457(b) and, instead, it would be treated as an ineligible deferred compensation plan under Code Section 457(f).

Amounts (and earnings thereon) deferred under an ineligible deferred compensation plan are includable in the gross income of a plan participant for the first taxable year in which the compensation is not subject to a substantial risk of forfeiture, unless an exemption applies.<sup>12</sup> In other words, amounts payable under an ineligible deferred compensation plan are taxable when they become vested, even if not actually paid until a later date. However, in 2016 the Internal Revenue Service (the “IRS”) published proposed regulations under Code Section 457(f) (the “Proposed 457(f) Regulations”)<sup>13</sup> which provide that deferred compensation plans that satisfy the short-term deferral exemption (the “STD Exemption”) under Code Section 409A<sup>14</sup> are generally not considered ineligible deferred compensation plans under Code Section 457(f).<sup>15</sup>

Code Section 409A contains a comprehensive set of rules regarding the taxation of nonqualified deferred compensation plans, but it does not regulate the payment of compensation where there is no delay, or only a minimal delay, between the time an amount is vested and the time the compensation is paid. Under Code Section 409A, the delay is considered minimal if a service provider actually or constructively receives payment of an amount during the first taxable year in which the amount is no longer subject to a substantial risk of forfeiture (“SROF”) or on or before the 15th day of the third month following the end of the taxable year in which the payment is no longer subject to a SROF (i.e., the short-term deferral period). Therefore, a payment is excluded from the application of Code Section 409A and Code Section 457(f) under the STD Exemption if (i) the right to the payment is subject to a condition constituting a SROF and (ii) the payment is paid within the short-term deferral period following the lapse of the SROF.<sup>16</sup> A SROF exists if the entitlement to the compensation is conditioned on the performance of substantial future services or the occurrence of a condition related to the purpose of the compensation and the possibility of forfeiture is substantial. Where there are two conditions that would constitute a SROF, the SROF lapses on the satisfaction of the later of the two conditions.

In the case of the Plan, there are two conditions that would constitute a SROF:<sup>17</sup> (i) the time-based vesting component (i.e., the performance of substantial future services) and (ii) the performance-based vesting component (i.e., the occurrence of a condition related to a purpose of the compensation), with vesting of the Performance Units occurring on the satisfaction of the performance-based vesting component as the later of the two conditions that will be satisfied. While there exists the possibility under the Plan for a Participant to retain his or her Performance Units if he or she experiences an involuntary termination of employment or retires from employment prior to the end of the applicable Performance Period, the deferred purchase price and

<sup>12</sup> See Code §457(f).

<sup>13</sup> See Section V, “Proposed Applicability Dates,” in the preamble to the Proposed 457(f) Regulations, which provides that, until the IRS adopts the Proposed 457(f) Regulations as final, taxpayers may rely on the Proposed 457(f) Regulations.

<sup>14</sup> See Treas. Reg. §1.409A-1(b)(4)(i)(A).

<sup>15</sup> See Prop. Treas. Reg. §1.457-12(d)(2).

<sup>16</sup> Treas. Reg. §1.409A-1(b)(4).

<sup>17</sup> See Prop. Treas. Reg. §1.457-12(e)(1).

the Performance Units are still subject to a SROF due to the fact that the Performance Units could ultimately be redeemed for \$0 if the threshold value percentage is not attained during the applicable Performance Period.

Additionally, because payments in respect of vested Performance Units under the Plan will be made in all events by no later than March 15th of the calendar year following the calendar year in which the SROF has lapsed (as described under "Payment for Vested Performance Units" above), payment of the Redemption Price will be made within the short-term deferral period.

Accordingly, the Plan satisfies the requirements of the STD Exemption under Code Section 409A and the Proposed 457(f) Regulations and, therefore, it should not constitute an ineligible deferred compensation plan under Code Section 457(f) and payment of the deferred purchase price and the Redemption Price should be taxable to Participants only when paid to them.

## 2. Code Section 409A

In addition to being subject to Code Section 457(f), ineligible deferred compensation plans are subject to the requirements of Code Section 409A<sup>18</sup> governing the taxation of nonqualified deferred compensation plans, unless an exemption applies. The tax rules define a nonqualified deferred compensation plan broadly as any plan that provides for the deferral of compensation.<sup>19</sup> A "deferral of compensation" occurs where a service provider has a legally binding right during a taxable year to compensation that, under the terms of the plan and the relevant facts and circumstances, is or may be payable to the service provider in a later taxable year.<sup>20</sup>

If compensation is not exempt from, and does not comply with, the requirements of Code Section 409A, all compensation deferred under the applicable plan for the taxable year and all preceding taxable years is includable in the gross income of the service provider for the taxable year in which the compensation is no longer subject to a SROF (as described above). In addition, the service provider has to pay an additional 20% tax plus a potential premium interest tax on the compensation amount.<sup>21</sup>

However, compensation that satisfies the STD Exemption is not considered nonqualified deferred compensation subject to Code Section 409A. As discussed above, payments under the Plan are structured to comply with the STD Exemption under Code Section 409A and, therefore, should not be subject to the requirements of Code Section 409A.

## 3. Code Section 4960

Code Section 4960 imposes on an employer an excise tax equal to the corporate tax rate (currently 21%) on the sum of (i) remuneration<sup>22</sup> in excess of \$1 million paid by an applicable tax-

<sup>18</sup> See Prop. Treas. Reg. §1.457-12(d)(5)(i).

<sup>19</sup> See Treas. Reg. §1.409A-1(a)(1); Treas. Reg. §1.409A-1(c)(1).

<sup>20</sup> See Treas. Reg. §1.409A-1(b).

<sup>21</sup> See Code §409A(a)(1).

<sup>22</sup> See Code §4960(c)(3) and Section D. of IRS Notice 2019-9, which provide that "remuneration" is generally defined as wages under Code §3401(a) (i.e., wages subject to federal income tax withholding), but excluding (i) any excess

exempt organization (an “ATEO”) or a related organization<sup>23</sup> for the taxable year with respect to the employment of a covered employee<sup>24</sup> and (ii) any excess parachute payments<sup>25</sup> paid by an ATEO or a related organization to a covered employee. Under Code Section 4960, the employer is the common law employer (as generally determined for federal tax purposes).<sup>26</sup>

Code Section 4960 applies to payments made by ATEOs, which, in relevant part, are defined to include any organization which, for the taxable year, has income excluded from tax under Code Section 115(1).<sup>27</sup> We understand from JEA that JEA is exempt from taxation under Code Section 115(1), although we have not independently verified this. As such, assuming that JEA is indeed exempt from taxation under Code Section 115(1), JEA would likely be considered an ATEO that is subject to Code Section 4960. In this respect, payments under the Plan to covered employees that exceed \$1 million or that constitute excess parachute payments may be subject to the 21% excise tax under Code Section 4960.

One possibility for excluding the application of Code Section 4960 may be to assert that JEA is exempt from tax under the doctrine of implied statutory immunity.<sup>28</sup> Under this doctrine, the income of a State, a political subdivision of a State or an integral part of a State or political

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parachute payment under Code §4960 (parachute payments that are not excess parachute payments are not excluded), (ii) designated Roth contributions under Code §402A(c), (iii) certain retirement benefits (see Code §3401(a)(12)) or certain directors’ fees (see IRS Rev. Rul. 57-246), and (iv) certain remuneration for medical services (see Code §4960(c)(3)(B)), but including amounts required to be included in gross income under Code §457(f).

<sup>23</sup> See Code §4960(c)(4)(B), which provides that, a person or governmental entity will be treated as related to an ATEO if such person or governmental entity: (i) controls, or is controlled by, the organization, (ii) is controlled by one or more persons which control the organization, (iii) is a supported organization (as defined in Code §509(f)(3)) during the taxable year with respect to the organization, (iv) is a supporting organization described in Code §509(a)(3) during the taxable year with respect to the organization, or (v) in the case of an organization which is a voluntary employees’ beneficiary association described in Code §501(c)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

<sup>24</sup> See Code §4960(c)(2), which provides that a “covered employee” means an employee (including any former employee) of an ATEO if the employee (i) is one of the five highest compensated employees of the organization for the taxable year, or (ii) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016. There is no minimum compensation threshold for an employee to be treated as a covered employee.

<sup>25</sup> See Code §4960(c)(5), which provides that an “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment. For these purposes, “parachute payment” means a compensatory payment to a covered employee that is contingent on such employee’s separation from employment, and the aggregate present value of the compensatory payments to such employee which are contingent on his or her separation equals or exceeds three times the base amount. The “base amount” means the employee’s average annual compensation paid or treated as paid by the organization during the five taxable years immediately preceding the year in which the separation occurs (or the average annual compensation over the actual number of years of service with the organization, if fewer than five).

<sup>26</sup> See IRS Notice 2019-9, which provides interim guidance under Code §4960; however, until the Department of the Treasury and the IRS issue final guidance, taxpayers may rely on good faith, reasonable interpretations of Code §4960.

<sup>27</sup> See Code §4960(c)(1).

<sup>28</sup> Case law has established that JEA is entitled to sovereign immunity treatment. See *Fluid Dynamics Holdings, LLC v. Jacksonville Electric Authority*, No. 18-11082 (11th Cir. 2018).

subdivision (often referred to as a “governmental unit”) is generally not taxable unless there is a specific statutory authorization for taxing the income. However, at least in the context of a governmental entity that is exempt from tax under Code Section 501(c)(3), it appears that such entity would first need to relinquish its Code Section 501(c)(3) status for Code Section 4960 not to apply on the basis of the doctrine of implied statutory immunity, and in such a case, such entity may still be liable for the excise tax under Code Section 4960 as a “related organization” under Code Section 4960(c)(4)(B).<sup>29</sup> As such, if JEA were to assert that it was not subject to Code Section 4960 on the basis of the doctrine of implied statutory immunity, it may be the case that JEA would first have to relinquish its tax-exempt status under Code Section 115(1), although this is not clear from the relevant guidance. The only way to gain certainty on this issue would be for JEA to apply for a private letter ruling (“PLR”) with the IRS.

Another possibility for excluding the application of Code Section 4960 in the context of a Recapitalization Event may be to demonstrate that the payments are not made by an ATEO or a related organization. If the Recapitalization Event is structured as a sale of JEA’s assets and payments under the Plan are made by the purchaser of the assets following the consummation of the Recapitalization Event, then the payments would be made at a time when JEA is no longer an ATEO. This approach may prove unsuccessful, however, on account of the successor employer rules. Under these rules, any purchaser of JEA may be treated as a successor common-law employer and, therefore, subject to Code Section 4960. Moreover, payments under the Plan may need to be included in the pre-closing tax period (i.e., when JEA is an ATEO) because the payments are based on the sale of JEA. Further research (and possibly an IRS PLR) may be needed to gain greater certainty on this issue, but that is beyond the scope of this memorandum.

#### 4. Code Section 280G

Under the golden parachute tax rules of Code Section 280G, a corporation may lose the right to take an income tax deduction with respect to certain compensatory payments made to a disqualified individual that are contingent upon a change in control of the corporation (these payments are referred to as “parachute payments”<sup>30</sup>). JEA qualifies as a corporation for these purposes.<sup>31</sup> A “disqualified individual” is any officer or top 1% employee when ranked by pay.<sup>32</sup> Code Section 4999 imposes on the recipient of a parachute payment a non-deductible 20% excise tax, which excise tax is in addition to the payment of any regular income and employment tax that may apply to the payment. A payment is generally treated as contingent on a change in control if

<sup>29</sup> See IRS Notice 2019-9, Q&A-5 and Q&A-6.

<sup>30</sup> The definition of “parachute payments” for purposes of Code §280G differs from that of Code §4960, which defines parachute payments as compensatory payments that are contingent on a separation from employment.

<sup>31</sup> See Treas. Reg. Section 301.7701-2(b)(1) defines a “corporation” as “[a] business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic”. JEA was created pursuant to Article 21 of the Charter of the City of Jacksonville, Florida, which would be a “State statute” because the Charter is pursuant to the Laws of Florida. JEA’s charter notes that it is a “body politic.”

<sup>32</sup> See Treas. Reg. §1.280G-1 Q/A 15. A disqualified individual also includes a 1% stockholder, which does not apply in JEA’s case unless JEA is reorganized to have stockholders.

the payment would not, in fact, have been made had no change in control occurred.<sup>33</sup> A payment made pursuant to an agreement entered into within one year before the date of a change in control is presumed to be contingent on the change in control, unless the contrary is established by clear and convincing evidence. This memorandum assumes that, for purposes of Code Section 280G, a Recapitalization Event would constitute a change in control and the payment of the Redemption Price in respect of the Performance Units under the Plan would be a payment contingent on a change in control.

Under Code Section 280G, a payment is a “parachute payment” only if the total amount of the contingent compensatory payments made to the service provider in connection with the change in control equals or exceeds three times the disqualified individual’s base amount.<sup>34</sup> For these purposes, the “base amount” is the average annual compensation paid or treated as paid by the corporation during the five taxable years immediately preceding the year in which the change in control occurs (or the average annual compensation over the actual number of years of service with the corporation undergoing a change of control, if fewer than five).<sup>35</sup> If the total payments to a disqualified individual are less than three times the individual’s base amount (his or her “parachute threshold”), the payments to that disqualified individual are not subject to the loss of tax deduction under Code Section 280G or the excise tax under Code Section 4999. In contrast, if a disqualified individual’s total parachute payments equal or exceed his or her parachute threshold, then both the loss of the tax deduction and the excise tax apply to the extent such parachute payments exceed the disqualified individual’s base amount. In other words, if the parachute threshold is equaled or exceeded, then the loss of tax deduction and the excise tax apply to all parachute payments to the extent they exceed the base amount, and not just to the extent they exceed the parachute threshold.

Unless an exception applies, JEA may be subject to Code Section 280G, which could result in JEA (or its successor in a Recapitalization Event) losing its tax deduction on payments made under the Plan (to the extent a tax deduction would otherwise have been available to JEA or its successor) and being obligated under the Plan to gross up Participants for excise taxes incurred by them as a result of the application of Code Sections 280G and 4999. In general, the following payments are not treated as parachute payments for purposes of Code Section 280G:<sup>36</sup>

- Payments made by a corporation that would qualify as a “small business corporation” immediately before the change in control (even if no election is in effect on the date of the

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<sup>33</sup> See Treas. Reg. §1.280G-1 Q/A 22. A payment that would in fact have been made had no change in control occurred is treated as contingent on a change in control if the change in control accelerates the time at which the payment is made. As the occurrence of the Recapitalization Event will accelerate payment timing under the Plan, payments to participants under the Plan would likely be treated as contingent on a change in control.

<sup>34</sup> See Treas. Reg. §1.280G-1 Q/A 2.

<sup>35</sup> See Treas. Reg. §1.280G-1 Q/A 34.

<sup>36</sup> See Treas. Reg. §1.280G-1 Q/A 5(a)(1), (2), (4) and (5), respectively.



change in control). To qualify as a small business corporation, a corporation must have fewer than 100 shareholders, no entity shareholders, and only one class of stock.<sup>37</sup>

- Payments made by non-publicly traded corporations where the payments are approved by more than 75% of the voting power of the corporation (in accordance with the relevant shareholder approval requirements under Code Section 280G<sup>38</sup>).
- Payments made by a corporation which is exempt from tax under Code Section 501(c)(3), provided that such corporation is exempt from tax under that section immediately before and immediately after the change in control.
- Payments made by a corporation that a taxpayer demonstrates by clear and convincing evidence based on all the facts and circumstances are reasonable compensation for services rendered after a change in control.<sup>39</sup> Whether compensation is reasonable depends on, among other factors, the nature of the services rendered, the disqualified individual's historical compensation and the compensation of individuals who perform similar services outside of the change in control context.<sup>40</sup>

Since JEA does not have shareholders, JEA would likely not be able to utilize the shareholder approval exception described in the second bullet above. However, in an IRS PLR,<sup>41</sup> the IRS held that the approval of parachute payments by a bankruptcy court's order could satisfy the Code Section 280G shareholder approval requirements because the creditors' committee and the bankruptcy judge represented the shareholders' interests and the shareholders were not otherwise eligible to approve the payments. Whether some other non-shareholder approval mechanism (e.g., approval by the citizens of the City of Jacksonville) might be available to JEA would likely require a PLR from the IRS. Also, as we understand that JEA is not exempt from tax under Code Section 501(c)(3) (rather, as discussed, JEA is exempt under Code Section 115(1)), JEA would not be able to qualify for the exception described in the third bullet above. However, to the extent that JEA can qualify as a small business corporation, JEA should be able to rely on the exemption under the first bullet above. Again, to gain greater certainty as to whether JEA is exempt from the application of Code Section 280G, JEA would need to seek a PLR from the IRS or, in the case of reasonable compensation analysis under the fourth bullet above, commission a study by a third-party valuation firm (such as an accounting firm) to evaluate whether some or all of the compensation is reasonable.

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<sup>37</sup> See Code §1361(b)(1). Note, for purposes of Code §280G, the term "small business corporation" is determined without regard to Code §1361(b)(1)(C).

<sup>38</sup> See Treas. Reg. §1.280G-1 Q/A 7.

<sup>39</sup> See Treas. Reg. §1.280G-1 Q/A 9.

<sup>40</sup> See Treas. Reg. §1.280G-1 Q/A 40.

<sup>41</sup> See PLR 200212013. Note, a PLR can only be relied on by the taxpayer to whom it is issued, but it can be indicative of the IRS's position as to the subject matter of the PLR.

#### **D. Summary of Federal and State Securities Laws**

Because JEA is not a publicly traded entity and because the Performance Units are not securities (rather, as discussed above, they are contractual rights to receive cash payments), there should be no consequences for the Plan under applicable federal or state securities laws.



November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

JEA0438

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer


Cc:  
JEA Board of Directors

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MEMORANDUM

TO: JEA FILE

FROM: Jason R. Gabriel, General Counsel 

RE: JEA Long Term Performance Unit Plan (the "PUP")

DATE: November 12, 2019

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The JEA Long Term Performance Unit Plan, approved by the JEA Board on July 23, 2019 (the "PUP"), was proposed by JEA as a voluntary employee benefit program designed as a deferred compensation plan that would have allowed full-time JEA employees to personally invest in the growth of JEA in the next three years. It was developed by JEA in consultation with and reliance on outside special legal counsel (Foley & Lardner and Pillsbury Winthrop Shaw & Pittman).

At the time of Board approval on July 23, 2019, the PUP was understood by OGC in general, conceptual terms as an employee incentive program. Since enrollment in the PUP would not take place until December 2019 with possible subsequent implementation of the plan in January 2020, OGC was assured by JEA that it had the few months from the time of the Board meeting on July 23, 2019 to the enrollment date to learn of the details of the plan, review outside counsel's findings as to the validity and legality of the plan, and to independently research and provide OGC's position on the plan at the conclusion of that process.

Because of how unique this suggestion was to the government sector, it was important to OGC to conduct its own research with respect to the validity and legality of the plan under federal, state, and local law, with a special emphasis on what is permitted, required, or prohibited under the Charter. Through the course of several conferences and meetings between outside counsel for JEA, OGC attorneys, and JEA management, OGC researched and conferred on the issues related to the plan.

This internal review resulted in a final determination by OGC and a recommendation to JEA that the proposed PUP, in its current form, would not be authorized under the City Charter, and had outstanding issues and unanswered questions related to state, local, and federal law. In addition, because ultimately it is City funds that are in question, *at a minimum*, Council approval would be required for the plan to be implemented. I expressed this legal position in several conversations with JEA. OGC's review and discussions occurred during the months of September, October and into the beginning of November. OGC's final position as to the PUP prompted the need for a formal meeting with outside counsel and JEA to discuss the outstanding legal issues prior to any further implementation of the plan.

Document Number: 1325479

JEA0440

Accordingly, on November 5, 2019, I met with Aaron Zahn and Herschel Vineyard from JEA, Lawsikia Hodges and Lynne Rhode from OGC, Kevin Hyde (special legal counsel with Foley & Lardner), Steve Amdur and Jessica Lutrin by phone (special legal counsel with Pillsbury Winthrop Shaw & Pittman), to discuss OGC's issues with the PUP; to note and categorize the current legal deficiencies with the plan, and to outline minimum requirements necessary to continue with any sort of employee incentive plan or deferred compensation plan. The main purpose of the meeting was to review these ultimate legal concerns regarding the PUP, that though were brought up in some form or another to JEA over the course of the preceding several weeks, needed to be officially dealt with in the appropriate manner.

On that date, the following concerns were brought up by OGC and discussed with JEA: Upon our review, the PUP is seemingly *akin* to an employee stock option plan, and for similar size *private* multi-billion dollar corporations, employee programs like the PUP may be the norm. However, the PUP would be unique to the public sector and founded on the fundamental principle that a governmental entity, such as JEA, may underwrite and offer for sale a portion of JEA's value as an "investment product" pursuant to Section 112.215, *Florida Statutes*. This fundamental PUP principle is not only a novel concept to our Consolidated Government but is also novel to government concepts and principles in general. Further, in addition to the more fundamental issues associated with the PUP, there were other issues cited, including allowing non-JEA employees in the plan and various potential adverse tax consequences.

Accordingly, we advised that the current plan should be officially dissolved. Should JEA insist on pursuing some version of the PUP as currently proposed in the future, the following minimum prerequisites must be met:

- 1) City Council review and approval (via legislation) authorizing JEA to sell a portion of JEA's value as an "investment product" under Section 112.215, Florida Statutes;
- 2) An opinion in accordance with Section 112.215, Florida Statutes from an appropriate federal agency or agencies (i.e., Internal Revenue Service (IRS)) stating that any compensation deferred under the PUP would not be included in a participating employee's taxable income under federal or state law until it is actually received;
- 3) An opinion from the IRS indicating that JEA, as a governmental entity, will incur no negative or adverse tax consequences or penalties under the PUP;
- 4) Removal of any PUP requirement that directly or indirectly obligates JEA to pay any excise tax, interest or penalties under the IRS Code incurred by a participating employee under the PUP;
- 5) Removal of any non-JEA employees as participants in the PUP; and
- 6) Any other applicable requirements under state and federal law necessary to implement and administer the PUP.

Based on this advice from our office, I was informed that JEA would not proceed with the PUP.

On November 12, 2019, the JEA CEO sent a letter to me informing me officially that JEA was "postponing indefinitely" the PUP. On that same date I, in turn, sent JEA a letter reiterating that there were outstanding legal issues with the plan as currently structured.

GC-#1325603 (pdf)

Document Number: 1325479

JEA0441

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE

JASON R. GABRIEL\*  
GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING  
117 WEST DUVAL STREET, SUITE 480  
JACKSONVILLE, FLORIDA 32202

KAREN M. CHASTAIN  
DERREL Q. CHATMON  
ARIEL P. COOK  
JULIA B. DAVIS  
STEPHEN M. DURDEN  
SHANNON K. ELLER  
CRAIG D. FEISER  
GILBERT L. FELTEL, JR.  
LOREE L. FRENCH  
CHRISTOPHER GARRETT  
KYLE GAVIN  
SEAN B. GRANAT  
SUSAN C. GRANDIN  
KATY A. HARRIS  
MIRIAM R. HILL  
LAWSIKIA J. HODGES  
SONYA HARRELL HOENER  
PAIGE HOBBS JOHNSTON  
RITA M. MAIRS

BRETT G. MERENESS  
JAMES R. MCCAIN, JR.  
WENDY L. MUMMAW  
KELLY H. PAPA  
KORT PARDE  
JACOB J. PAYNE  
TIFFINY DOUGLAS PINKSTAFF  
JON R. PHILLIPS  
CHERRY SHAW POLLOCK  
STEPHEN J. POWELL  
LYNNE C. RHODE  
ASHLEY B. RUTHERFORD  
JOHN C. SAWYER, JR.  
MARGARET M. SIDMAN  
JASON R. TEAL  
ADINA TEODORESCU  
KEALEY WEST  
STANLEY M. WESTON  
GABY YOUNG

\*BOARD CERTIFIED CITY, COUNTY  
AND LOCAL GOVERNMENT LAW

November 12, 2019

Aaron F. Zahn  
Managing Director & CEO  
JEA  
21 W. Church Street, 19<sup>th</sup> Floor  
Jacksonville, FL 32202.

RE: JEA Long Term Performance Unit Plan (the "PUP")

Dear Aaron:

I greatly appreciate you meeting with our office last week and providing us with additional information and insight regarding the JEA Long Term Performance Unit Plan approved by the JEA Board on July 23, 2019 (the "PUP"). As you indicated, the PUP was proposed as a voluntary employee benefit program akin to a deferred compensation plan under Florida law that would have allowed full-time JEA employees to personally invest in the enterprise growth of JEA in the next three years. In theory, under the PUP, employees would have been encouraged to have "skin in the game" by deferring their compensation to purchase a performance unit and later redeeming such performance unit for an amount based on JEA's current year value (i.e., the redemption price). At the employee's investment risk, the redemption price for a performance unit at the end of the PUP performance period could have been zero, or more than ten times the employee's initial investment amount. You also advised that the primary purpose of the PUP was to incentivize employees to drive and increase JEA's customer, community and environmental value.

First, I laud you, the JEA senior leadership team, and the JEA Board for your efforts to find outside-the-box ways to increase JEA's value and motivate JEA employees to do their best work for JEA. I also appreciate the extensive time and effort that specialized outside counsel has dedicated to analyzing the PUP in order to achieve the Board's directive. The plan would be a novel approach to accomplishing the Board's goals in the public sector, but as currently structured contains outstanding issues under the City Charter and other law. That is not to say that



Aaron F. Zahn  
November 12, 2019  
Page 2

an appropriate plan under Section 215.425, Florida Statutes could not be designed and implemented. It is unnecessary, however, to go into any suggested restructure or outstanding issues at this time due to my understanding that JEA leadership, in consultation with the Chair and our office, has decided to postpone indefinitely the implementation of the PUP.

We appreciate the opportunity to have performed a detailed review of the plan and its documents. Our office continues to stand ready to assist you, JEA leadership and JEA Board should it decide in the future to move forward with an employee incentive plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason R. Gabriel". The signature is fluid and cursive, with the first name "Jason" and last name "Gabriel" clearly distinguishable.

Jason R. Gabriel  
General Counsel

cc: Herschel Vinyard, Chief Administrative Officer  
Lynne C. Rhode, Chief Legal Officer

GC-1319864 (.doc)

GC-1320996 (.pdf)

**JEA0443**



**MEMORANDUM**

<b>Date:</b>	November 18, 2019
<b>To:</b>	All Council Members
<b>From:</b>	Kyle S. Billy, Council Auditor
<b>Subject:</b>	JEA Performance Unit Plan

---

This memorandum is about the JEA “Long-term Performance Unit Plan” (Plan) approved by the JEA Board on July 23, 2019. The Plan concerns me due to its significant potential cost to JEA and the potential reduction of proceeds to the City from a Recapitalization Event.

Members of my staff and I met with JEA officials on October 31, 2019, to discuss the proposed Plan. This discussion was based on the resolution approved by the JEA Board on July 23, 2019, and other documents (drafts of the JEA Long-Term Performance Unit Plan and the Long-Term Performance Unit Agreement) received on August 14, 2019, and on questions submitted by my office on August 9, 2019. During the meeting on October 31, 2019, JEA officials indicated that there had been some changes to the documents based on our initial set of questions. They also indicated that there could be additional changes made in the future based on our discussions at that meeting. Later that day, we sent JEA a summary of outstanding and additional questions. Included in the list were questions asking for a legal opinion on whether the Plan requires City Council approval and whether it is required to be collectively bargained. While waiting for responses to our questions, I prepared to issue a memo notifying City Council of my concerns due to the timing of the rollout of the Plan (JEA planned to distribute the Plan agreements to employees in December and sell the first Performance Units in January of 2020.) However, on November 13, 2019, I received a copy of a letter from JEA’s Managing Director and CEO to the City’s General Counsel (see Attachment A) stating that implementation of the Plan has been postponed indefinitely. While the postponement alleviates my immediate concerns, the Plan has not been formally rescinded by the JEA Board. That is why I am still issuing this memo. Below is information about the Plan and support for why the Plan should be formally rescinded or amended by the JEA Board.

**PURPOSE OF THE PLAN**

The stated purpose of the Performance Unit Plan is to “provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.” The purpose further states “JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.”

## **HOW DOES THE PLAN WORK?**

Employees may purchase Performance Units for \$10 each through payroll deduction and then, after the three-year Performance Period, JEA will pay each Participant of the plan the Redemption Price per Performance Unit. The JEA Board has authorized a pool of 100,000 Performance Units.

As seen on Schedule A to JEA's Long-Term Performance Unit Plan (See Attachment B), the Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target (10% increase over the Base Year Value for the performance period) and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Base Year Value for the performance period. The scenarios below show JEA's minimum cost, maximum cost, cost based on recent financial performance, cost based on JEA projections, and cost based on various Recapitalization Event scenarios.

**Minimum Cost: Zero.** The minimum cost is zero because the Redemption Price may be equal to or less than the Purchase Price.

**Maximum Cost: Unlimited.** The maximum cost is unlimited because there is no cap on the value of a Performance Unit.

**Cost Based on Recent Financial Performance: \$101,350,000.** Based on the Fiscal Year 2018 audited financial statements (Current Year Value) compared to the Fiscal Year 2015 audited financial statements (Base Year Value), the Redemption Price of a Performance Unit would be \$1,023.50. If 100,000 Performance Units had been issued for this period, the net cost to JEA would be \$101,350,000 (\$102,350,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on JEA Projections: \$15,778,000.** Based on Fiscal Year 2019 unaudited financial statements and Fiscal Year 2022 forecasted amounts provided by JEA's Chief Financial Officer, the Redemption Price of a Performance Unit would be \$167.78. If 100,000 Performance Units are issued for this period, the net cost to JEA would be \$15,778,000 (\$16,778,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on Various Recapitalization Event Scenarios:** We ran additional calculations to demonstrate the possible costs of the Plan if a Recapitalization Event occurs.

(A)	(B)	(C)	(D)	(E)	(F)
<b>Net Proceeds to City Before Payment of Performance Units</b>	<b>Purchase Price Per Performance Unit</b>	<b>Increase in Value Per Performance Unit</b>	<b>Redemption Price (B + C)</b>	<b>Total Payout on 100,000 Performance Units (D * 100,000 Units)</b>	<b>Net Proceeds to City After Payment of Performance Units (A - E)</b>
\$3 billion	\$10	\$0	\$10	\$1.0 million	\$3.0 billion
\$4 billion	\$10	\$3,140	\$3,150	\$315.0 million	\$3.7 billion
\$5 billion	\$10	\$6,356	\$6,366	\$636.6 million	\$4.4 billion

## **OVERALL WEAKNESSES AND CONCERNS**

In addition to estimating the potential cost of the Plan, we also reviewed the Plan for weaknesses and concerns and have compiled the following list:

1. The Performance Unit Plan has not been vetted and approved by City Council.
2. There is no cap to the value of a Performance Unit.
3. The Challenge Value Target is too easy to achieve. (Looking at JEA's audited financial statements for the past ten years (2019 is based on unaudited financial statements), we determined that JEA has hit this target in 9 out of the past 10 three-year periods. See Attachment C).
4. The value of a Performance Unit is affected by changes in rates.
5. The value of a Performance Unit is affected by newly adopted Governmental Accounting Standards and changes in accounting policies which are not tied to the actual performance of JEA. Changes like these can cause significant fluctuations. Examples include:
  - a. Accounting Standards Change: The Fiscal Year 2014 financial statements were restated for comparison purposes for Fiscal Year 2015 to show the unfunded pension liability. The change resulted in a decrease in the Net Position of \$352,105,000 for Fiscal Year 2014.
  - b. Accounting Policy Change: The Fiscal Year 2015 financial statements included a change in accounting policy which had a net positive change of \$151,490,000 in Net Position for Fiscal Year 2015.
6. The value of a Performance Unit would be affected by the sale of JEA assets such as real estate or JEA's fiber network. (Real estate is recorded in the financial statements at historical cost. Therefore, the sale of the SJRPP site or any other JEA real estate not held for investment purposes would increase the value of the Performance Units.)
7. The value of a Performance Unit would increase due to developer contributions or even contributions from the City. (For example, when developers complete a subdivision, they may deed over the utility infrastructure to JEA. This would increase the value of the Performance Units. If the City donated assets to JEA, it would increase the value of the Performance Units.)
8. The value of a Performance Unit would be affected by in-kind contributions from JEA to the City (e.g. nitrogen credits).
9. The Plan is not limited strictly to JEA employees. The Plan specifically includes "each actively employed eligible attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA." In addition, the CEO can recommend and the Plan Administrator (Chair of JEA Compensation Committee) can approve participants that are not JEA employees.
10. The Plan Administrator has the ability to delegate any or all responsibilities to any member of JEA's senior executive management. (This could create a conflict of interest and should be reviewed by the City Ethics Officer.)
11. JEA's CFO, who is eligible to participate in the Plan, is responsible for calculating the Redemption Price.
12. If any payments under the plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the full amount of the penalties. (This could further increase the cost of the plan.)

## **WEAKNESSES AND CONCERNS THAT APPLY TO A RECAPITALIZATION EVENT**

1. The value of a Performance Unit can increase significantly due to a Recapitalization Event. (If 100,000 Performance Units were sold as authorized, over \$300 million would be distributed to the holders of Performance Units for every billion dollars in proceeds over \$3 billion that the City receives.)
2. There is no prohibition in the Plan to offering Performance Units to employees after an ITN award has been made and the value of a Performance Unit is known, should a Recapitalization Event occur.

## **OVERALL CONCLUSION**

The Plan is potentially a very costly use of JEA resources that would be magnified by a Recapitalization Event. Regarding a Recapitalization Event, the City Council should keep in mind that plans have already been approved by the JEA Board to help retain and protect employees, including guaranteeing to the employees three years of substantially comparable compensation and benefits in effect at the Closing Date, providing an additional year's pay spread over two years, and providing a pension for years of service not worked by employees who are not eligible for retirement at the time of a Recapitalization Event. Although JEA leadership has decided to postpone indefinitely the implementation of the Plan, the JEA Board has not taken action to formally rescind the Plan or modify it to correct its weaknesses.

## **RECOMMENDATION**

I recommend that you request that the JEA Board take action to formally rescind the Performance Unit Plan or make the following changes to the Plan.

1. If the Plan is not rescinded, the City Council should request a legal opinion as to whether the Plan requires City Council approval.
2. Put a cap on the maximum redemption value of a Performance Unit and a cap on the overall payout of the Plan.
3. Increase the Challenge Value Target.
4. Exclude the following from impacting the value of a Performance Unit.
  - a. Recapitalization Event
  - b. Change in rates charged by JEA
  - c. Newly adopted accounting standards and changes in accounting policy
  - d. Sales of JEA assets
  - e. City contributions to JEA
  - f. Developer contributions to JEA
  - g. In-kind contributions from JEA to the City (e.g. nitrogen credits)
5. Prohibit the delegation of Plan responsibilities to those eligible to participate in the Plan.
6. Limit Plan participation to JEA employees.
7. Require JEA's external auditor to calculate or certify the Redemption Price for Performance Units.
8. Eliminate the provisions whereby if any payments under the Plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the excise tax, interest, or penalties.

**Attachments:**

Attachment A - Letter from Aaron Zahn to Jason Gabriel

Attachment B - Schedule A to JEA Long-Term Performance Unit Plan

Attachment C - Graph Depicting the Value Change Percentage Compared to the Challenge Value Target Percentage

CC: JEA Board of Directors

Aaron Zahn, Managing Director and Chief Executive Officer, JEA

Ryan Wannemacher, Chief Financial Officer, JEA

Herschel Vinyard, Chief Administrative Officer, JEA

Sherry Hall, Chief Government Affairs Officer, JEA

## Attachment A

21 West Church Street  
Jacksonville, Florida 32202-3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors



## Attachment B

### SCHEDULE A [YEAR] REDEMPTION PRICE SCHEDULE

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

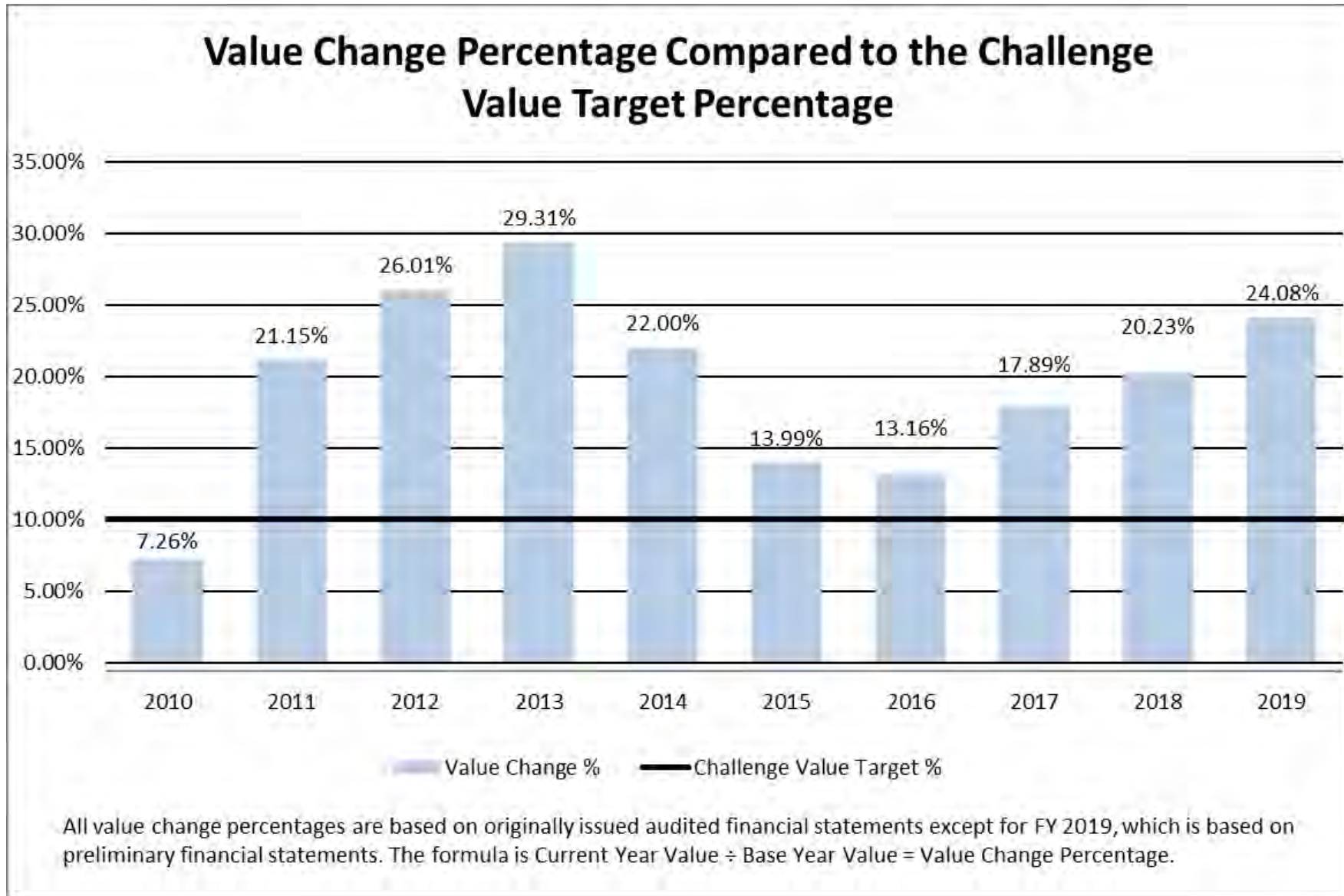
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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

### Attachment C







**OFFICE OF THE CITY COUNCIL**

117 WEST DUVAL STREET, SUITE 425  
4<sup>TH</sup> FLOOR, CITY HALL  
JACKSONVILLE, FLORIDA 32202

December 5, 2019

Mr. Aaron Zahn  
Chief Executive Officer, JEA  
21 W. Church Street  
Jacksonville, FL 32202

Dear Mr. Zahn,

Over the last several months, JEA has been engaged in an Invitation to Negotiate (“ITN”) process through which JEA is entertaining a recapitalization event, commonly understood as offering JEA up for sale. During the course of the ITN process, JEA has encountered a series of public relations problems undermining the public’s trust in the fairness, transparency, and necessity of the ITN process. In particular, JEA’s entertaining of a Long Term Performance Unit Plan (“PUP Plan”) sparked a degree of outrage unique in our community’s history. From a distance, it appears the PUP Plan could have been intended to enrich JEA employees and executives at the expense of JEA rate-payers and the people of Jacksonville generally should a recapitalization occur. In order to restore trust, a full vetting of the PUP Plan is required.

It is clear from listening to our colleagues on the Jacksonville City Council, they would like a full and entirely thorough review of the PUP Plan. Their and our outrage is palpable. Likewise, we have spoken with Mayor Lenny Curry, and he too encouraged us to fully vet and review the PUP Plan in an open and transparent process. Thus, the purpose of this letter is to: (1) Inform you we are noticing a meeting for December 16, 2019, at 1:00 PM at Jacksonville City Hall to thoroughly examine the PUP Plan (the official Notice of which this letter is attached); (2) Request you provide for said meeting persons with the most knowledge of the PUP Plan; and (3) Request from you all documents related to the PUP Plan be produced to us not later than close of business on Wednesday, December 11, 2019.

With respect to persons to be present at said meeting, we would appreciate your appearance or that of your designee(s) with the most knowledge of the PUP Plan including, but not limited to, persons who can speak to: (1) The origin of the PUP Plan; (2) The development of the PUP Plan; (3) All persons associated with the PUP Plan and their roles in its development; (4) The drafters of any documents related to the PUP Plan or produced in response to the documents requests below; (5) Communications related to the PUP Plan with other authorities, including but not limited to, the Office of General Council, the Jacksonville City Council Auditor, and/or the Florida State Attorney General; (6) Presentation of the PUP Plan to the JEA Board; and (7) Any decisions related to implementation, expansion, and/or termination of the PUP Plan.

In addition to providing knowledgeable persons to discuss the PUP Plan at our noticed meeting, we also request the production of documents not later than close of business on Wednesday, December 11, 2019. When gathering and producing these documents, please understand we make this request under Florida Public Records Law and the oversight authority of the Jacksonville City Council over any City entity, including JEA. Thus, the assertion of any privilege will not apply. However, should you nonetheless assert a privilege, please provide a privilege log explaining the privilege asserted and the document withheld with sufficient clarity so it may be properly identified and any

**JEA0453**



**OFFICE OF THE CITY COUNCIL**

117 WEST DUVAL STREET, SUITE 425  
4<sup>TH</sup> FLOOR, CITY HALL  
JACKSONVILLE, FLORIDA 32202

assertion be challenged. Likewise, please produce any documents as they are covered in the usual course of business or you may organize and label them to correspond with the categories in this request. These requests shall encompass all items within your possession, custody, or control. If there is any confusion regarding any request, please feel free to respond to us so we may clarify, but in any event, please review all definitions with the widest possible meaning. Finally, while responding to these requests, please utilize the following definition of "Document" found in the footnote<sup>[1]</sup>.

In accordance with the requirements above, please provide the following documents:

1. All documents related to the PUP Plan;
2. All documents related to the development of the PUP Plan;
3. All documents related to communications with other authorities related to the PUP Plan, including but not limited to, the Office of General Council, the Jacksonville City Council Auditor, and the Florida State Attorney General;
4. All documents related to the presentation of the PUP Plan to the JEA Board;
5. All documents related to the implementation, expansion, and/or termination of the PUP Plan.
6. All documents regarding the cost and/or value of the PUP Plan; and
7. All documents related to any communications regarding the PUP Plan.

Thank you for your cooperation regarding this matter. While we fully expect and encourage your full cooperation, we hereby reserve all rights, privileges, and/or recourses related to the above mentioned matter.

Regards,

/s/ Rory Diamond

Rory Diamond

/s/ Ron Salem

**JEA0454**



## OFFICE OF THE CITY COUNCIL

117 WEST DUVAL STREET, SUITE 425  
4<sup>TH</sup> FLOOR, CITY HALL  
JACKSONVILLE, FLORIDA 32202

Ronald Salem

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<sup>[1]</sup>"Document" means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term "control" as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

**JEA0455**



## Rondinelli, Mellissa

---

**From:** Conner, Makenzi  
**Sent:** Friday, December 13, 2019 1:09 PM  
**To:** Rondinelli, Mellissa  
**Subject:** FW: PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA - updated with JEA projections.xlsx;  
ATT00001.htm

Please include this email and the attachments.

Thank You,

*Makenzi Conner*

Makenzi Conner  
Executive Council Assistant  
District 13  
Office of City Council  
117 W. Duval Street, Suite 425  
Jacksonville, FL 32202  
(904) 255-5152  
[mconner@coj.net](mailto:mconner@coj.net)

---

**From:** Reber, Heather  
**Sent:** Friday, December 13, 2019 12:50 PM  
**To:** Diamond, Rory  
**Subject:** Fwd: PUP Sample Calculation

Begin forwarded message:

**From:** "Wannemacher, Ryan F. - Chief Financial Officer" <[wannrf@jea.com](mailto:wannrf@jea.com)>  
**Date:** November 13, 2019 at 5:19:21 PM EST  
**Subject:** RE: PUP Sample Calculation

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kim,

Attached is the updated spreadsheet. Your methodology is correct. I went ahead and filled in the table with FY2019 unaudited and our projected FY2022 numbers so you can see how we are looking at it.

There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan



Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

---

**From:** [Taylor, Kim](#)  
**Sent:** Wednesday, November 13, 2019 3:21 PM  
**To:** [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**Cc:** [Billy, Kyle](#); [Peterson, Phillip](#); [Rodda, Jeffrey](#); [Parks, Brian](#); [Reber, Heather](#); [Hall, Sherry L.](#); [Vinyard, Herschel T. - Chief Administrative Officer](#)  
**Subject:** RE: PUP Sample Calculation

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,  
Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

---

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
**Subject:** PUP Sample Calculation

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488

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For JEA

Category	Base Year Value	Current Year Value
Performance Period	2019	2022
Net position	2,976,663,000	3,350,788,657
City Contribution	132,802,000	121,794,000
Customer Credits	-	-
<b>Current/Base Year Total Value</b>	<b>\$ 3,109,465,000</b>	<b>\$ 3,472,582,657</b>

Value Change Percentage	111.68%
Challenge Value Target	110.00%
Target Value Threshold	100.00%
Percentage Above Challenge Value Target	1.68%

<b>Value per Performance Unit</b>	<b>\$ 167.78</b>
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**Billy, Kyle**

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**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Wednesday, August 14, 2019 5:19 PM  
**To:** Rodda, Jeffrey; Crawford, Juli E. - Director Financial Planning & Analysis; Orfano, Joseph E. - Treasurer  
**Cc:** Peterson, Phillip; Billy, Kyle  
**Subject:** RE: Performance Unit Plan (PUP) Questions  
**Attachments:** scan\_rhodlc\_2019-08-14-13-24-00.pdf; scan\_rhodlc\_2019-08-14-13-21-11.pdf

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Jeff,

Attached are the latest drafts of the plan documents and award agreement that was approved by the board. This will answer many of these questions.

As we are still working on a number of other pressing items, can we circle up in a few weeks on any additional questions you may have after reviewing these documents?

I appreciate it.

Thank you,  
Ryan

**From:** Rodda, Jeffrey <JRodda@coj.net>  
**Sent:** Friday, August 9, 2019 12:38 PM  
**To:** Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
**Cc:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>  
**Subject:** Performance Unit Plan (PUP) Questions

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Juli,

I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor  
 Office of the Council Auditor  
 117 West Duval Street  
 Suite 200  
 Jacksonville, Florida 32202  
 Office: 904-255-5477  
 Direct: 904-255-5487  
 Fax: 904-255-5478  
 E-Mail: [jrodda@coj.net](mailto:jrodda@coj.net)

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**Billy, Kyle**

---

**From:** Rodda, Jeffrey  
**Sent:** Wednesday, October 30, 2019 2:43 PM  
**To:** Wannemacher, Ryan F. (wannrf@jea.com); Hall, Sherry  
**Cc:** Billy, Kyle; Reber, Heather; Taylor, Kim; Peterson, Phillip  
**Subject:** Questions for PUPs.

Ryan,

You have these from before, but I am sending them again just in case.

Here are our questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
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22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

Regards,

Jeff Rodda

Public Accounts Auditor  
Office of the Council Auditor  
117 West Duval Street  
Suite 200



Jacksonville, Florida 32202  
Office: 904-255-5477  
Direct: 904-255-5487  
Fax: 904-255-5478  
E-Mail: [jrodda@coj.net](mailto:jrodda@coj.net)

**Billy, Kyle**

---

**From:** Reber, Heather  
**Sent:** Thursday, October 31, 2019 3:13 PM  
**To:** wannrf@jea.com; Hall, Sherry; vinyht@jea.com  
**Cc:** Billy, Kyle; Taylor, Kim; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian  
**Subject:** PUP Meeting  
**Attachments:** Additional Questions and Inital Concerns on the PUP.docx

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Additional Questions:**

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of \$808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the \$10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
  - a. Will the "In-kind" contributions be included in any of the redemption price schedule calculations?
  - b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
  - c. What will happen to forfeited Performance Units?
  - d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

**Council Auditor's Office**  
**Questions and Concerns on the Performance Unit Plan**

**Concerns:**

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.



**Billy, Kyle**

---

**From:** Taylor, Kim  
**Sent:** Wednesday, November 06, 2019 2:23 PM  
**To:** wannrf@jea.com; Hall, Sherry; vinyht@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather  
**Subject:** RE: PUP Meeting

Good Afternoon,

I just wanted to follow up on our questions regarding the PUPs. Can you please give us a status update on when you anticipate we will get responses. Thank you.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Reber, Heather  
**Sent:** Thursday, October 31, 2019 3:13 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com); Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
**Cc:** Billy, Kyle; Taylor, Kim; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian  
**Subject:** PUP Meeting

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486



**Billy, Kyle**

---

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** wannrf@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; vinyht@jea.com  
**Subject:** PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA.XLSX

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478



**For JEA**

<b>Category</b>	<b>Base Year Value</b>	<b>Current Year Value</b>
Performance Period	2014-15	2017-18
Net position	2,166,909,000	2,755,309,000
City Contribution	111,688,000	116,620,000
Customer Credits	110,000,000	-
<b>Current/Base Year Total Value</b>	<b>\$ 2,388,597,000</b>	<b>\$ 2,871,929,000</b>

Value Change Percentage	120.23%
Challenge Value Target	110.00%
Target Value Threshold	100.00%
Percentage Above Challenge Value Target	10.23%

<b>Value per Performance Unit</b>	<b>\$ 1,023.50</b>
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**Billy, Kyle**

---

**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Wednesday, November 13, 2019 11:41 AM  
**To:** Rodda, Jeffrey; Billy, Kyle; Reber, Heather; Peterson, Phillip; Taylor, Kim  
**Cc:** Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** Performance Units  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

All,

We have decided to not move forward with the implementation of the performance units at this time.

Please see the attached letter from Aaron.

Thank you,  
Ryan

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-----  
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JEA0470

21 West Church Street  
Jacksonville, Florida 32202-3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

JEA0471

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors



**Billy, Kyle**

---

**From:** Taylor, Kim  
**Sent:** Wednesday, November 13, 2019 3:22 PM  
**To:** wannrf@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; vinyht@jea.com  
**Subject:** RE: PUP Sample Calculation

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,  
Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
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Ph: (904) 255-5488  
Fax (904) 255-5478



**Billy, Kyle**

---

**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Wednesday, November 13, 2019 5:18 PM  
**To:** Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA - updated with JEA projections.xlsx

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kim,

Attached is the updated spreadsheet. Your methodology is correct. I went ahead and filled in the table with FY2019 unaudited and our projected FY2022 numbers so you can see how we are looking at it.

There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Taylor, Kim  
**Sent:** Wednesday, November 13, 2019 3:21 PM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry L.; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

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Thank you,



Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
**Subject:** PUP Sample Calculation

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For JEA

Category	Base Year Value	Current Year Value
Performance Period	2019	2022
Net position	2,976,663,000	3,350,788,657
City Contribution	132,802,000	121,794,000
Customer Credits	-	-
<b>Current/Base Year Total Value</b>	<b>\$ 3,109,465,000</b>	<b>\$ 3,472,582,657</b>

Value Change Percentage	111.68%
Challenge Value Target	110.00%
Target Value Threshold	100.00%
Percentage Above Challenge Value Target	1.68%

<b>Value per Performance Unit</b>	<b>\$ 167.78</b>
-----------------------------------	------------------



**Billy, Kyle**

---

**From:** Reber, Heather  
**Sent:** Thursday, November 14, 2019 11:45 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA - updated with JEA projections.xlsx

Ryan,

Thanks for looking at our calculation and correcting our formula. I have a few questions concerning the calculation/methodology, if a recap event was to occur. Would the proceeds to the City be used to calculate the Current Year Value? Let's say that the net proceeds to the City would be \$4B or \$5B, then as part of the calculation would the customer rebates of \$400M would be added back in? See attached calculation as an example.

Heather Reber, C.P.A.

**From:** Wannemacher, Ryan F. - Chief Financial Officer [<mailto:wannrf@jea.com>]  
**Sent:** Wednesday, November 13, 2019 5:18 PM  
**To:** Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

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There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Taylor, Kim  
**Sent:** Wednesday, November 13, 2019 3:21 PM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry L.; Vinyard, Herschel T. - Chief

Administrative Officer

**Subject:** RE: PUP Sample Calculation

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Kim

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Assistant Council Auditor  
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Ph: (904) 255-5488  
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**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
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Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

For JEA

Category	Base Year Value	Current Year Value	Current Year Value	Current Year Value
Performance Period	2019	2022	2022	2022
Net position	2,976,663,000	3,000,000,000	4,000,000,000	5,000,000,000
City Contribution	132,802,000			
Customer Credits	-	400,000,000	400,000,000	400,000,000
<b>nt/Base Year Total Value</b>	<b>\$ 3,109,465,000</b>	<b>\$ 3,400,000,000</b>	<b>\$ 4,400,000,000</b>	<b>\$ 5,400,000,000</b>

Value Change Percentage	109.34%	141.50%	173.66%
Challenge Value Target	110.00%	110.00%	110.00%
Target Value Threshold	100.00%	100.00%	100.00%
Percentage Above Challenge Value Target	-0.66%	31.50%	63.66%

<b>Value per Performance Unit</b>	<b>\$ -</b>	<b>\$ 3,150.34</b>	<b>\$ 6,366.33</b>
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**Billy, Kyle**

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**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Thursday, November 14, 2019 1:48 PM  
**To:** Reber, Heather; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Heather,

As noted in my previous email, you have been notified that this was a DRAFT plan that is not being finalized or implemented. In addition, as Aaron's letter noted, as a long-term incentive plan it would be moot in any recapitalization scenario. No other questions or answers are necessary at this time.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Reber, Heather  
**Sent:** Thursday, November 14, 2019 11:46 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry L.; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan,

Thanks for looking at our calculation and correcting our formula. I have a few questions concerning the calculation/methodology, if a recap event was to occur. Would the proceeds to the City be used to calculate the Current Year Value? Let's say that the net proceeds to the City would be \$4B or \$5B, then as part of the calculation would the customer rebates of \$400M would be added back in? See attached calculation as an example.

Heather Reber, C.P.A.



**From:** Wannemacher, Ryan F. - Chief Financial Officer [mailto:wannrf@jea.com]

**Sent:** Wednesday, November 13, 2019 5:18 PM

**To:** Taylor, Kim

**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer

**Subject:** RE: PUP Sample Calculation

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kim,

Attached is the updated spreadsheet. Your methodology is correct. I went ahead and filled in the table with FY2019 unaudited and our projected FY2022 numbers so you can see how we are looking at it.

There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Taylor, Kim

**Sent:** Wednesday, November 13, 2019 3:21 PM

**To:** Wannemacher, Ryan F. - Chief Financial Officer

**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry L.; Vinyard, Herschel T. - Chief Administrative Officer

**Subject:** RE: PUP Sample Calculation

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,  
Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville

Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** wannrf@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; vinyht@jea.com  
**Subject:** PUP Sample Calculation

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

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21 West Church Street  
Jacksonville, Florida 32202-3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

JEA0483

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors



**Billy, Kyle**

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**From:** Billy, Kyle  
**Sent:** Monday, November 18, 2019 11:53 AM  
**To:** CAUDIT  
**Subject:** Notice of Release of Memorandum on JEA Performance Unit Plan  
**Attachments:** Memorandum on JEA Performance Unit Plan to Council Members - Final.pdf

Good Morning,

The attached Memorandum on JEA Performance Unit Plan was released on November 18, 2019. A copy of the report is attached for your convenience. Please contact me if you have any questions.

Kyle Billy, C.P.A.  
Council Auditor  
City of Jacksonville  
(904) 255-5500

**OFFICE OF THE COUNCIL AUDITOR**  
Suite 200, St. James Building



**MEMORANDUM**

<b>Date:</b>	November 18, 2019
<b>To:</b>	All Council Members
<b>From:</b>	Kyle S. Billy, Council Auditor
<b>Subject:</b>	JEA Performance Unit Plan

This memorandum is about the JEA "Long-term Performance Unit Plan" (Plan) approved by the JEA Board on July 23, 2019. The Plan concerns me due to its significant potential cost to JEA and the potential reduction of proceeds to the City from a Recapitalization Event.

Members of my staff and I met with JEA officials on October 31, 2019, to discuss the proposed Plan. This discussion was based on the resolution approved by the JEA Board on July 23, 2019, and other documents (drafts of the JEA Long-Term Performance Unit Plan and the Long-Term Performance Unit Agreement) received on August 14, 2019, and on questions submitted by my office on August 9, 2019. During the meeting on October 31, 2019, JEA officials indicated that there had been some changes to the documents based on our initial set of questions. They also indicated that there could be additional changes made in the future based on our discussions at that meeting. Later that day, we sent JEA a summary of outstanding and additional questions. Included in the list were questions asking for a legal opinion on whether the Plan requires City Council approval and whether it is required to be collectively bargained. While waiting for responses to our questions, I prepared to issue a memo notifying City Council of my concerns due to the timing of the rollout of the Plan (JEA planned to distribute the Plan agreements to employees in December and sell the first Performance Units in January of 2020.) However, on November 13, 2019, I received a copy of a letter from JEA's Managing Director and CEO to the City's General Counsel (see Attachment A) stating that implementation of the Plan has been postponed indefinitely. While the postponement alleviates my immediate concerns, the Plan has not been formally rescinded by the JEA Board. That is why I am still issuing this memo. Below is information about the Plan and support for why the Plan should be formally rescinded or amended by the JEA Board.

**PURPOSE OF THE PLAN**

The stated purpose of the Performance Unit Plan is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville." The purpose further states "JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville."

### **HOW DOES THE PLAN WORK?**

Employees may purchase Performance Units for \$10 each through payroll deduction and then, after the three-year Performance Period, JEA will pay each Participant of the plan the Redemption Price per Performance Unit. The JEA Board has authorized a pool of 100,000 Performance Units.

As seen on Schedule A to JEA's Long-Term Performance Unit Plan (See Attachment B), the Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target (10% increase over the Base Year Value for the performance period) and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Base Year Value for the performance period. The scenarios below show JEA's minimum cost, maximum cost, cost based on recent financial performance, cost based on JEA projections, and cost based on various Recapitalization Event scenarios.

**Minimum Cost: Zero.** The minimum cost is zero because the Redemption Price may be equal to or less than the Purchase Price.

**Maximum Cost: Unlimited.** The maximum cost is unlimited because there is no cap on the value of a Performance Unit.

**Cost Based on Recent Financial Performance: \$101,350,000.** Based on the Fiscal Year 2018 audited financial statements (Current Year Value) compared to the Fiscal Year 2015 audited financial statements (Base Year Value), the Redemption Price of a Performance Unit would be \$1,023.50. If 100,000 Performance Units had been issued for this period, the net cost to JEA would be \$101,350,000 (\$102,350,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on JEA Projections: \$15,778,000.** Based on Fiscal Year 2019 unaudited financial statements and Fiscal Year 2022 forecasted amounts provided by JEA's Chief Financial Officer, the Redemption Price of a Performance Unit would be \$167.78. If 100,000 Performance Units are issued for this period, the net cost to JEA would be \$15,778,000 (\$16,778,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on Various Recapitalization Event Scenarios:** We ran additional calculations to demonstrate the possible costs of the Plan if a Recapitalization Event occurs.

(A)	(B)	(C)	(D)	(E)	(F)
Net Proceeds to City Before Payment of Performance Units	Purchase Price Per Performance Unit	Increase in Value Per Performance Unit	Redemption Price (B + C)	Total Payout on 100,000 Performance Units (D * 100,000 Units)	Net Proceeds to City After Payment of Performance Units (A - E)
\$3 billion	\$10	\$0	\$10	\$1.0 million	\$3.0 billion
\$4 billion	\$10	\$3,140	\$3,150	\$315.0 million	\$3.7 billion
\$5 billion	\$10	\$6,356	\$6,366	\$636.6 million	\$4.4 billion



## **OVERALL WEAKNESSES AND CONCERNS**

In addition to estimating the potential cost of the Plan, we also reviewed the Plan for weaknesses and concerns and have compiled the following list:

1. The Performance Unit Plan has not been vetted and approved by City Council.
2. There is no cap to the value of a Performance Unit.
3. The Challenge Value Target is too easy to achieve. (Looking at JEA's audited financial statements for the past ten years (2019 is based on unaudited financial statements), we determined that JEA has hit this target in 9 out of the past 10 three-year periods. See Attachment C).
4. The value of a Performance Unit is affected by changes in rates.
5. The value of a Performance Unit is affected by newly adopted Governmental Accounting Standards and changes in accounting policies which are not tied to the actual performance of JEA. Changes like these can cause significant fluctuations. Examples include:
  - a. Accounting Standards Change: The Fiscal Year 2014 financial statements were restated for comparison purposes for Fiscal Year 2015 to show the unfunded pension liability. The change resulted in a decrease in the Net Position of \$352,105,000 for Fiscal Year 2014.
  - b. Accounting Policy Change: The Fiscal Year 2015 financial statements included a change in accounting policy which had a net positive change of \$151,490,000 in Net Position for Fiscal Year 2015.
6. The value of a Performance Unit would be affected by the sale of JEA assets such as real estate or JEA's fiber network. (Real estate is recorded in the financial statements at historical cost. Therefore, the sale of the SJRPP site or any other JEA real estate not held for investment purposes would increase the value of the Performance Units.)
7. The value of a Performance Unit would increase due to developer contributions or even contributions from the City. (For example, when developers complete a subdivision, they may deed over the utility infrastructure to JEA. This would increase the value of the Performance Units. If the City donated assets to JEA, it would increase the value of the Performance Units.)
8. The value of a Performance Unit would be affected by in-kind contributions from JEA to the City (e.g. nitrogen credits).
9. The Plan is not limited strictly to JEA employees. The Plan specifically includes "each actively employed eligible attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA." In addition, the CEO can recommend and the Plan Administrator (Chair of JEA Compensation Committee) can approve participants that are not JEA employees.
10. The Plan Administrator has the ability to delegate any or all responsibilities to any member of JEA's senior executive management. (This could create a conflict of interest and should be reviewed by the City Ethics Officer.)
11. JEA's CFO, who is eligible to participate in the Plan, is responsible for calculating the Redemption Price.
12. If any payments under the plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the full amount of the penalties. (This could further increase the cost of the plan.)

### **WEAKNESSES AND CONCERNS THAT APPLY TO A RECAPITALIZATION EVENT**

1. The value of a Performance Unit can increase significantly due to a Recapitalization Event. (If 100,000 Performance Units were sold as authorized, over \$300 million would be distributed to the holders of Performance Units for every billion dollars in proceeds over \$3 billion that the City receives.)
2. There is no prohibition in the Plan to offering Performance Units to employees after an ITN award has been made and the value of a Performance Unit is known, should a Recapitalization Event occur.

### **OVERALL CONCLUSION**

The Plan is potentially a very costly use of JEA resources that would be magnified by a Recapitalization Event. Regarding a Recapitalization Event, the City Council should keep in mind that plans have already been approved by the JEA Board to help retain and protect employees, including guaranteeing to the employees three years of substantially comparable compensation and benefits in effect at the Closing Date, providing an additional year's pay spread over two years, and providing a pension for years of service not worked by employees who are not eligible for retirement at the time of a Recapitalization Event. Although JEA leadership has decided to postpone indefinitely the implementation of the Plan, the JEA Board has not taken action to formally rescind the Plan or modify it to correct its weaknesses.

### **RECOMMENDATION**

I recommend that you request that the JEA Board take action to formally rescind the Performance Unit Plan or make the following changes to the Plan.

1. If the Plan is not rescinded, the City Council should request a legal opinion as to whether the Plan requires City Council approval.
2. Put a cap on the maximum redemption value of a Performance Unit and a cap on the overall payout of the Plan.
3. Increase the Challenge Value Target.
4. Exclude the following from impacting the value of a Performance Unit.
  - a. Recapitalization Event
  - b. Change in rates charged by JEA
  - c. Newly adopted accounting standards and changes in accounting policy
  - d. Sales of JEA assets
  - e. City contributions to JEA
  - f. Developer contributions to JEA
  - g. In-kind contributions from JEA to the City (e.g. nitrogen credits)
5. Prohibit the delegation of Plan responsibilities to those eligible to participate in the Plan.
6. Limit Plan participation to JEA employees.
7. Require JEA's external auditor to calculate or certify the Redemption Price for Performance Units.
8. Eliminate the provisions whereby if any payments under the Plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the excise tax, interest, or penalties.

**Attachments:**

Attachment A - Letter from Aaron Zahn to Jason Gabriel

Attachment B - Schedule A to JEA Long-Term Performance Unit Plan

Attachment C - Graph Depicting the Value Change Percentage Compared to the Challenge Value Target Percentage

CC: JEA Board of Directors

Aaron Zahn, Managing Director and Chief Executive Officer, JEA

Ryan Wannemacher, Chief Financial Officer, JEA

Herschel Vinyard, Chief Administrative Officer, JEA

Sherry Hall, Chief Government Affairs Officer, JEA

## Attachment A

21 West Church Street  
Jacksonville, Florida 32202-3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

JEA0491

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors

## Attachment B

### SCHEDULE A [YEAR] REDEMPTION PRICE SCHEDULE

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

- (a) "Base Year Value" means \$[AMOUNT].<sup>1</sup>
- (b) "Challenge Value Target" means [PERCENT].<sup>2</sup>
- (c) "Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.
- (d) "Value Change Percentage" means a percentage equal to the Current Year Value divided by the Base Year Value.
- (e) "Threshold Value Target" means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

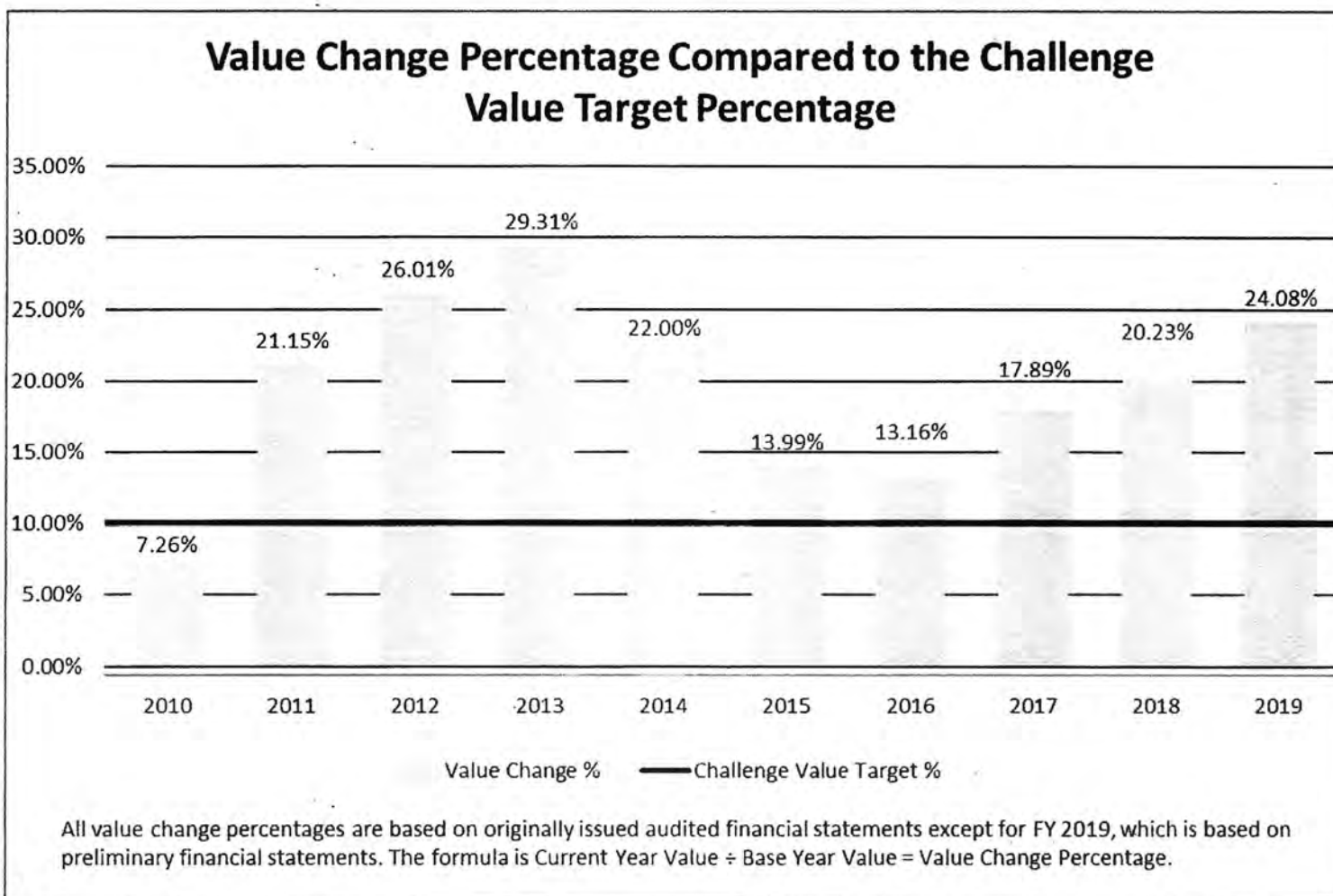
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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

Attachment C



**Billy, Kyle**

---

**From:** Jones, Madricka L. - Executive Staff Assistant <joneml@jea.com>  
**Sent:** Monday, November 18, 2019 2:46 PM  
**To:** Billy, Kyle  
**Cc:** Hall, Sherry  
**Subject:** Letter from Board Chair April Green  
**Attachments:** Letter from Board Chair April Green.pdf

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good afternoon,

Please see the attached letter from JEA Board of Directors Chair April Green.

Kind regards,

**Madricka Jones**

Executive Staff Assistant to  
Aaron Zahn, Managing Director/CEO and  
JEA Board of Directors  
Direct: (904) 665-7784  
Mobile: (904) 502-1602  
Fax: (904) 665-4238



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21 West Church Street  
Jacksonville, Florida 32202-3139

FROM: April Green, JEA Board Chair  
TO: Kyle S. Billy, Council Auditor  
CC: JEA Board, Jacksonville City Council  
Attachment: Aaron Zahn Letter



RE: PUPs Already Planned for JEA Agenda on December 17 Meeting

In regard to your memo dated today, November 18, 2019, we were already planning to address the indefinite postponement of the Long-Term Performance Unit Plan at the upcoming December 17, 2019 JEA Board meeting. As you know, it is not uncommon to have one, instead of two, meetings of the JEA Board during the months of November and December. This year, we are meeting on December 17<sup>th</sup> and as such we did not have a November meeting opportunity to formally postpone the Plan.

Moreover, as your memo stated, we announced to all employees and members of the media last week that our CEO had written to the City of Jacksonville's General Counsel that we indefinitely postponed the implementation of the Performance Unit Plan.

In specific, your memo addresses the value of the Performance Units in the event of a decision for JEA to be recapitalized. JEA CEO Aaron Zahn's November 12<sup>th</sup> letter addressed that with the following statements:

“Should the Board choose Scenarios 3, 4, or 5 [Community Ownership Plan; Initial Public Offering (IPO) Plan; or, Strategic Alternative from ITN 127-19] the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.”

Again, our letter to the City said this decision was made based on the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As our CEO stated, choosing Scenarios 3, 4, or 5 would make the Plans unnecessary. Therefore, we believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board. Thanks so much for your concern and please don't hesitate to contact me directly with any future concerns.

Sincerely,

April Green, JEA Board

JEA0496

**From:** [Maillis, Patricia L. - Director, Employee Services](#)  
**To:** [andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com); [Wathen, David \(Atlanta\)](#)  
**Subject:** FW: SUPER URGENT  
**Date:** Monday, January 7, 2019 11:51:20 AM

---

Andrea/David,

See Angie's request below. Please assist us with this. I can be available to talk this afternoon.

Pat

---

**From:** Hiers, Angelia R. - VP & Chief Human Resources Officer  
**Sent:** Monday, January 7, 2019 11:23 AM  
**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** SUPER URGENT

Pat,

Will you please contact Towers Watson and ask them if they would provide by the beginning of the workday tomorrow, a short scenario (SCOPE) of the possible engagement with us. It does not need to include price as of yet. In other words, what they will do for us. It doesn't need to be the final, just what they think will be involved as we start the project. **We need to give this to our Compensation Chair tomorrow.**

It should include the following:

1. Towers will assist with design of a STI and Long Term Incentive structure that will incent employees to perform their best work in accordance with our culture values and guiding principles.
2. The incentive plan will be connected to metrics as set forth by the company's strategic plan.

Call me if you need to.

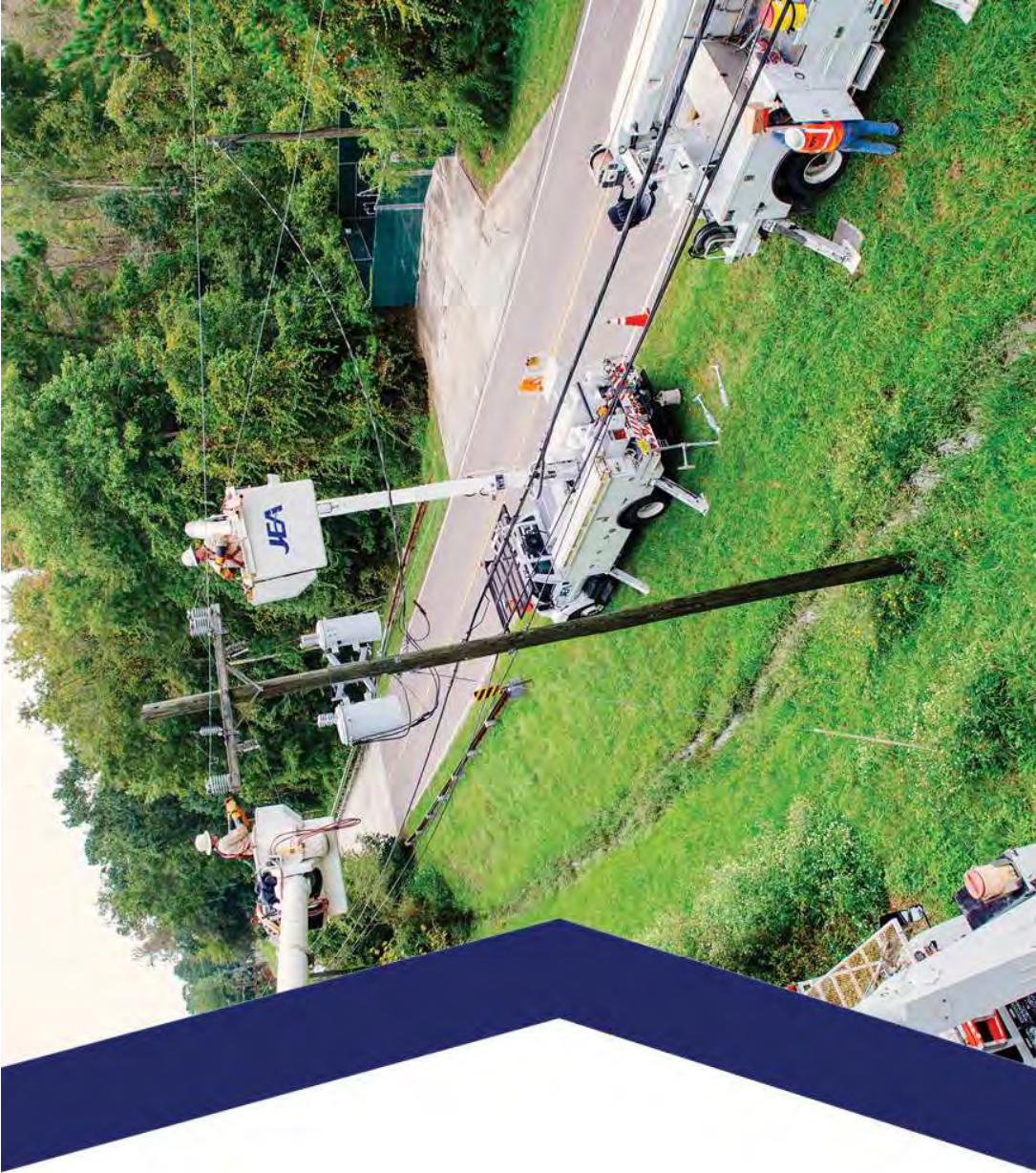
**JEA0497**





# Total Market Compensation Strategy

January 2018



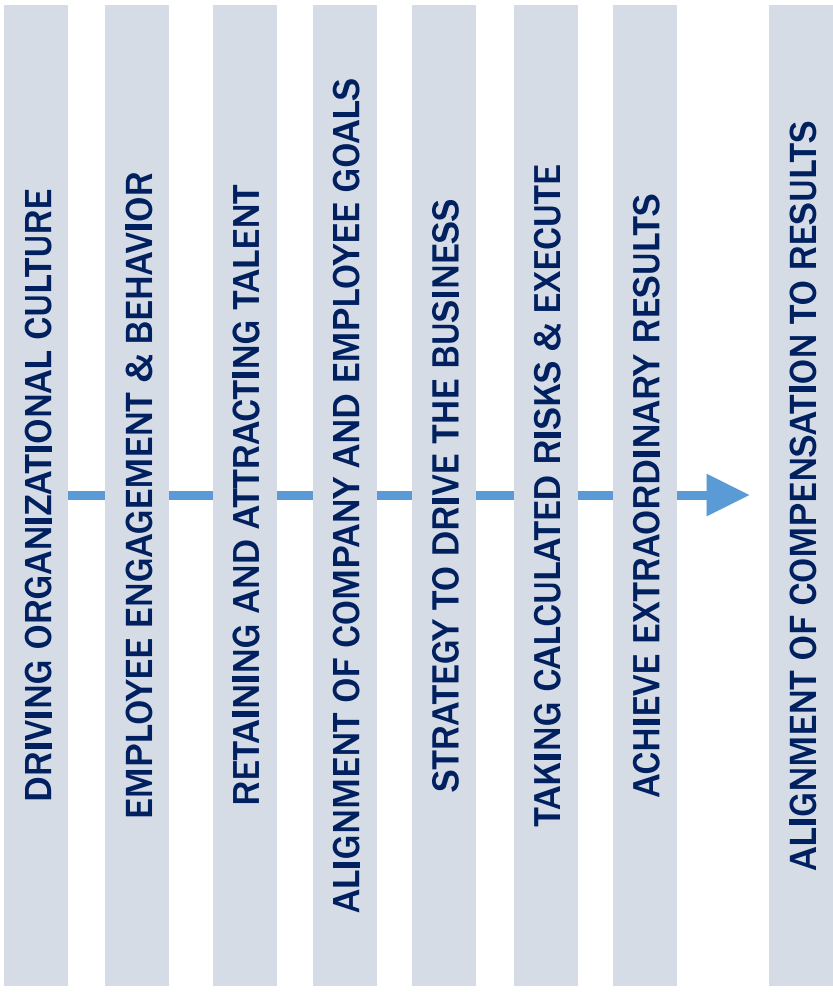
 **COMMITMENT TO  
RESULTS & VALUE**

JEA0499

# Company Culture and Strategy Driven by Good Well Aligned "Total Compensation Program"

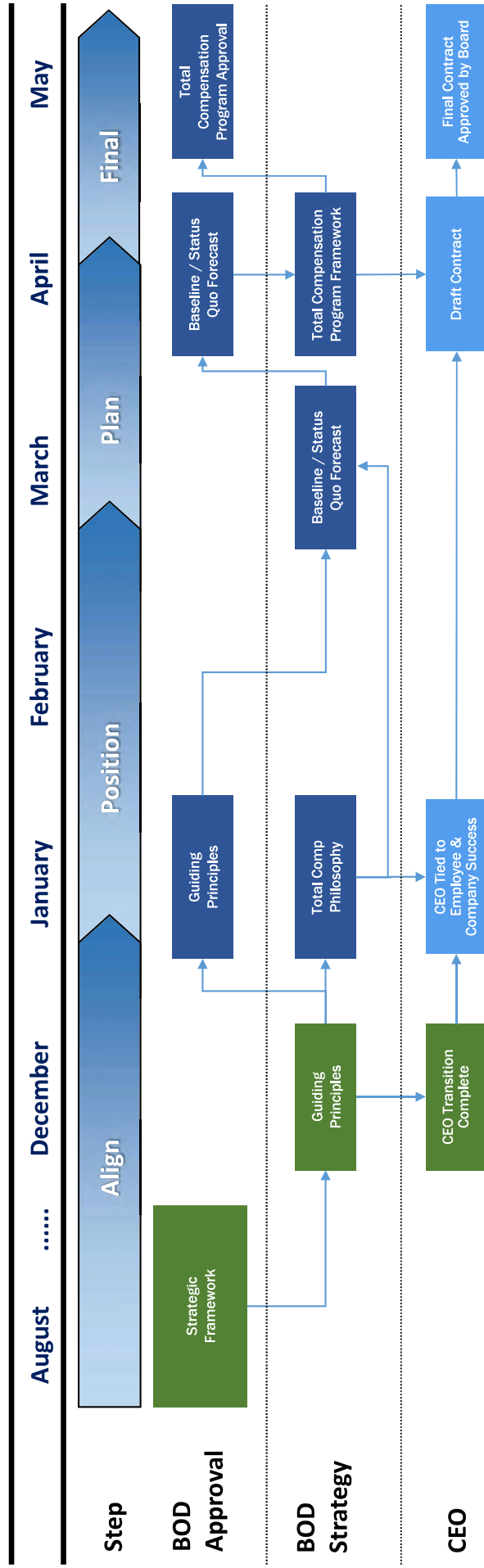


  
**LEADING BY EXAMPLE**



# ALIGNING TO RESULTS & VALUE

- Board wants all employee compensation to be aligned with: 1) Total Compensation Philosophy; and 2) driving Results vs. Baseline
- Board to agree on TC Philosophy and Baseline before finalizing Total Compensation Program for all employees





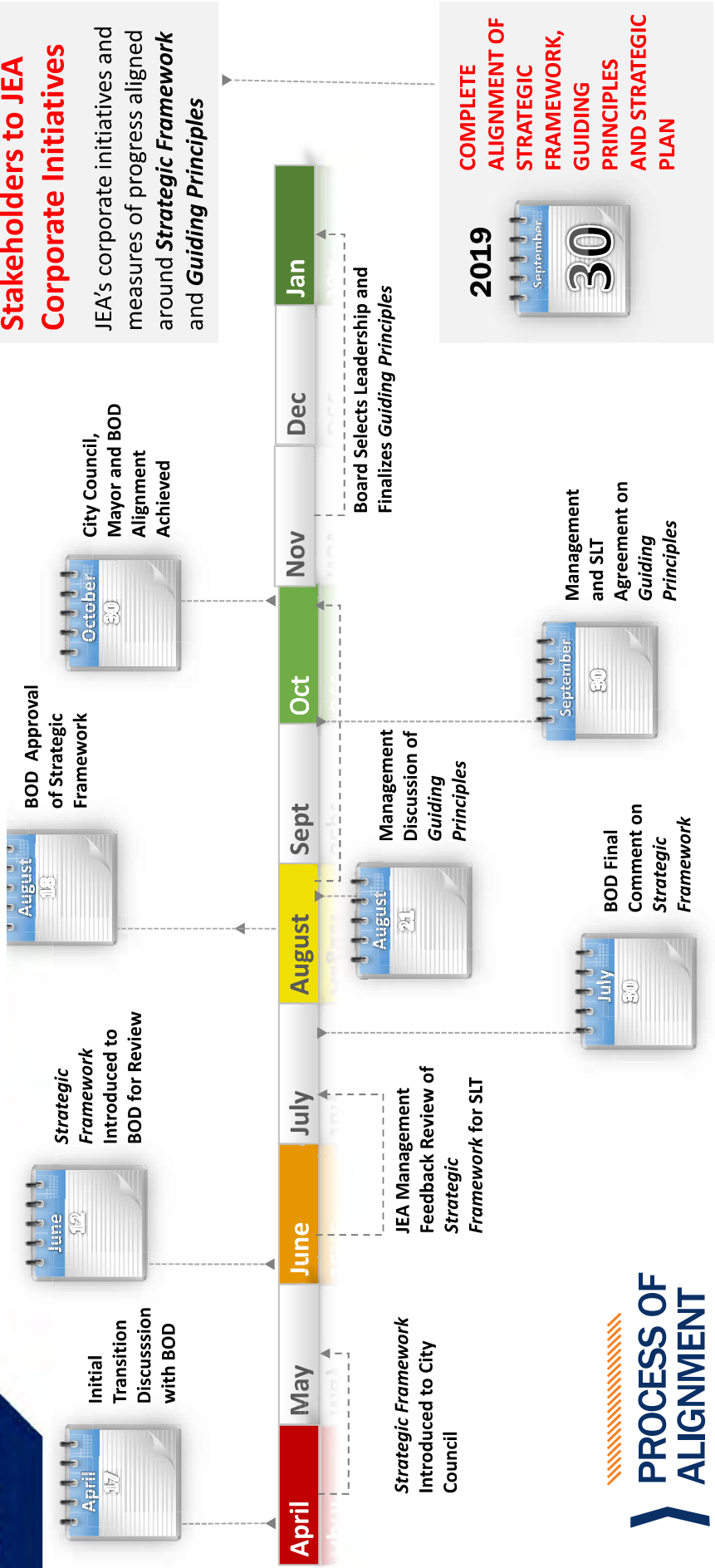
 **TOTAL COMPENSATION  
PHILOSOPHY**





# “Guiding Principles” More Than Talk

**Result: Alignment of Stakeholders to JEA Corporate Initiatives**  
JEA’s corporate initiatives and measures of progress aligned around **Strategic Framework** and **Guiding Principles**





## **GUIDING PRINCIPLES** ACCELERATING UTILITY INNOVATION

### **Vision**

*Why we exist and who we want to be in the future*

**Improve lives by accelerating innovation**

### **Mission**

*How we are going to pursue our vision and what we need to do today to get there*

**Provide the best service by becoming the center of our customers' energy and water experience**

### **Corporate Measures**

*Our mission will be guided by and evaluated against how we as employees drive these four basic Corporate Measures of JEA's value*

The fundamental goal is to maximize each value both now and in the future:

#### **1) Customer value**

What a customer expects to get in exchange for the price they pay

#### **2) Financial value**

The monetary value and risk profile, both today and tomorrow, of JEA as it relates to the City

#### **3) Community impact value**

Improving the quality of life through innovative and cost-effective service offerings, employee volunteerism and ambassadorship, relevant and timely communications, and support of economic development and job growth throughout JEA's service territory; foster a collaborative and respectful corporate culture that provides exceptional employee value to equip the JEA team to deliver outstanding service and value to its community

#### **4) Environmental value**

Ensuring a sustainable environment for future generations

### **Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*

- Deliver an unparalleled positive customer experience
- Work together to elevate the entire team
- Innovate and evolve to match our customer's needs with market trends

# STAKEHOLDER ALIGNMENT

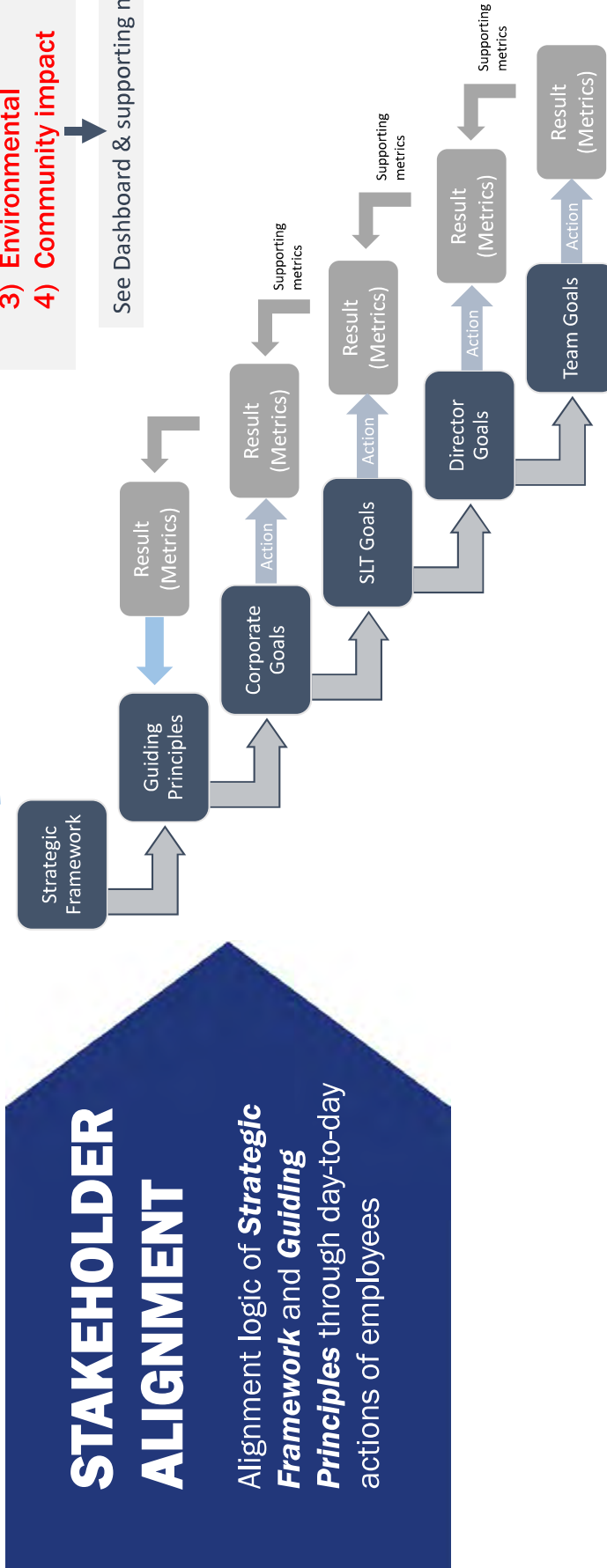
Alignment logic of **Strategic Framework** and **Guiding Principles** through day-to-day actions of employees

- Administration Feedback
- Employee Feedback
- City Council Feedback
- SLT Input
- City Council Report on JEA
- Customer Feedback

Employee behavior tied to driving metrics that measure the 4 values outlined in the Guiding Principles:

- 1) Customer
- 2) Financial
- 3) Environmental
- 4) Community impact

See Dashboard & supporting metrics



Employees aligned to Board and COJ



**GUIDING PRINCIPLES**  
ACCELERATING UTILITY INNOVATION

## Corporate Measures

*Our mission will be guided by and evaluated against how **we as employees drive these four basic Corporate Measures** of JEA's value*

The fundamental goal is to maximize each value both now and in the future:

- 1) Customer Value**
- 2) Financial Value**
- 3) Environmental Value**
- 4) Community Impact Value**

Employee behavior key to maximizing value



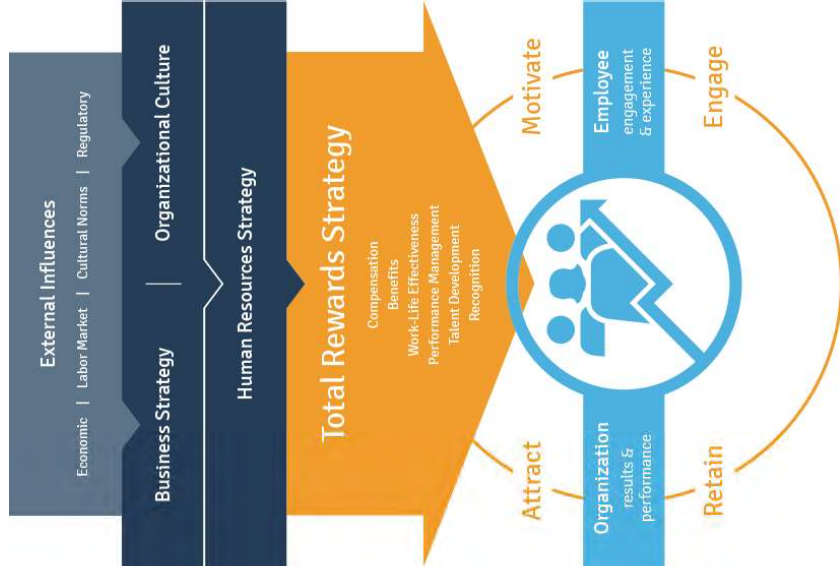
**GUIDING PRINCIPLES**  
ACCELERATING UTILITY INNOVATION

## **Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*



**Work together to elevate the entire team**



# ELEVATE THE ENTIRE TEAM

1. Ensure JEA’s corporate compensation philosophy is aligned with JEA’s Guiding Principles
2. Encourage long-term culture of value creation
3. Establish formal compensation policy to align behavior to 4 Corporate Measures of Value and market based compensation
4. Ensure policy promotes collaboration to drive Vision and Mission

Employee incentives should drive “value” & “teamwork”

# JEA Board Policy Manual

(Policy 2.7 adopted by JEA Board on June 17, 2014)

50<sup>th</sup> %



JEA's current total compensation structure aims to compete with the market for talent

“With respect to employment, compensation, and benefits to employees, consultants, contract workers and volunteers, the CEO shall not cause or allow jeopardy to financial integrity or to public image. Accordingly, the CEO will not:

Promote a compensation philosophy that is contradictory to JEA’s philosophy of providing a total rewards package that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits.

Salary/wages will meet the market (50% percentile), which is where the majority of companies in the geographical area reside. The 50th percentile pays competitively for behavior that meets expectations. Additional consideration will be given to behaviors that exceeds expectations which are typically rewarded at the 75th percentile. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”





# HOW DO WE DEFINE TOTAL COMPENSATION?

	BASE	+	SHORT TERM INCENTIVE	+	LONG TERM INCENTIVE
JEA	\$132.8		\$5.2		\$0.0
50% Percentile	\$124.9		\$10.5		\$5.5
DELTA ▲	<b>\$7.9</b>		<b>(\$5.3)</b>		<b>(\$5.5)</b>

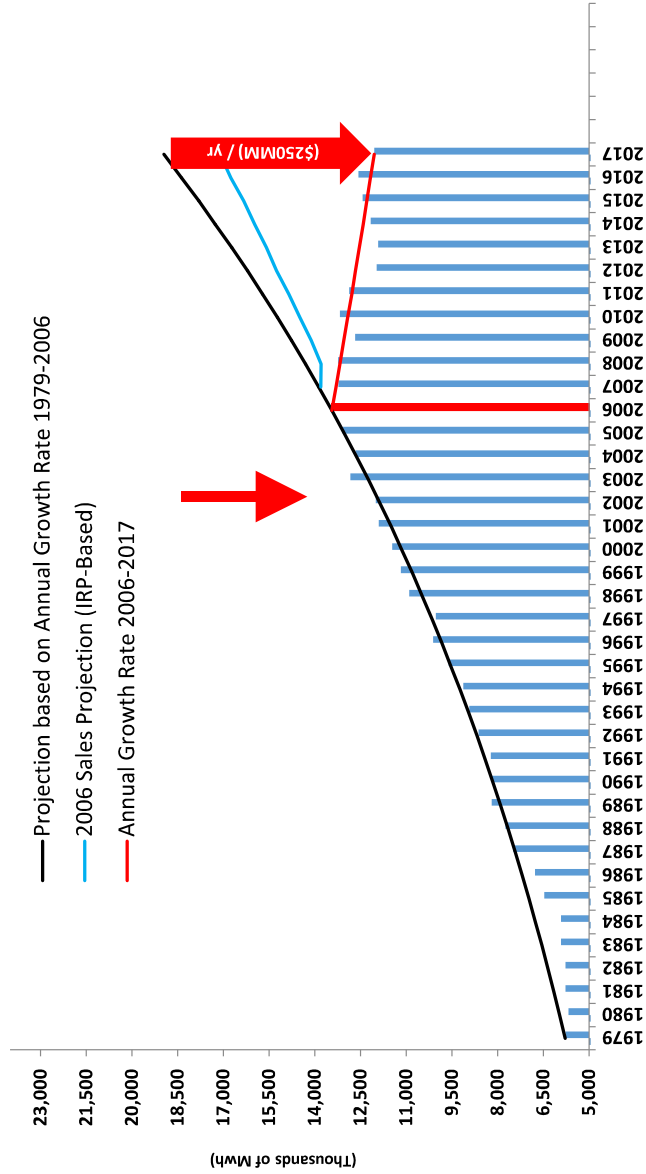
Above numbers exclude healthcare and retirement

Dollars above are in millions

JEA's total compensation structure does not reward value creation



# 2007 to 2017 JEA lost Avg. of \$130 MM / yr in FCF (\$1.4B of cash) vs IRP Case



## Industry Macro Trends Impacting JEA

### Energy Efficiency (2000's tech trend)

- Mandates account for >90% of reduction in electric sales
- 30% lower sales in 2017 than forecasted back in 2006

### Distributed Generation (2010's tech trend)

- Solar growth increasing in JEA territory 67% CAGR since FY 14
- >\$2.5MM of Net Income lost to distributed generation annually

### Distributed Storage & iDER (2020's tech trend)

- Similar cost / performance trends to distributed generation being witnessed
- Storage will change the entire energy sector once cost parity with utility achieved

**WHY FOCUS AND COMPENSATION ALIGNMENT MATTERS**

# RECOMMENDED: JEA Board Policy Manual

(Revision to Policy 2.7 adopted by JEA Board on June 17, 2014)

“With respect to employment, compensation, and benefits to employees, consultants, ~~and contract workers and volunteers~~, the CEO shall ~~not cause or allow jeopardy to financial integrity or to public image. Accordingly, the CEO will not:~~ ~~P~~ promote a compensation philosophy ~~providing a total rewards package~~ that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits **that align with and drive JEA’s Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.**

**Total compensation ~~Salary/wages~~** will meet the market (50% percentile), which is where the majority of companies in the **industry and** geographical area reside. **Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives.** The 50th percentile pays competitively for behavior that meets expectations. **Short term and long term incentives will align to and drive JEA’s Corporate Measures of Value.** Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

50th %

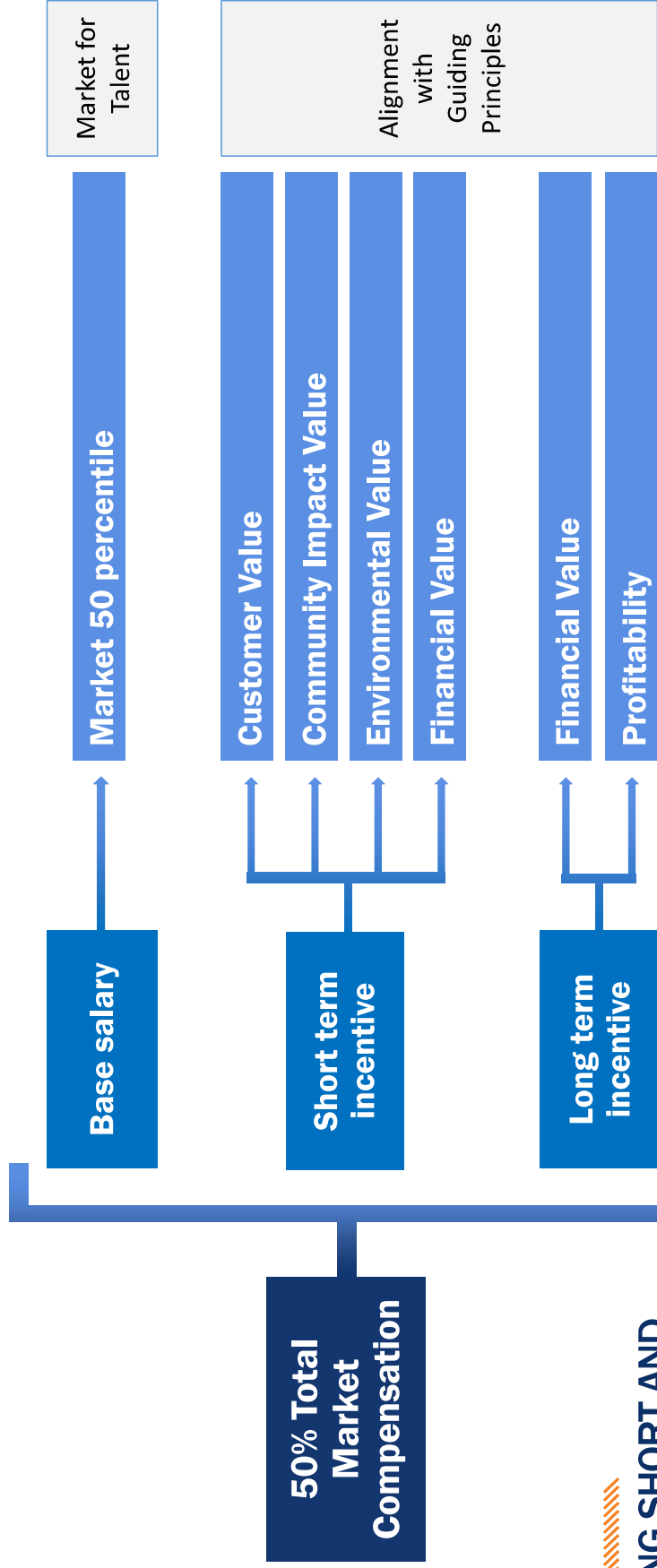


JEA’s total compensation structure should both compete with the market for talent & drive results aligned with “guiding principles”



# Establish a Formal Compensation Policy to Align with:

## 1) Talent Market and 2) Guiding Principles



 **DRIVING SHORT AND LONG-TERM BEHAVIOR**



 **ADAPTABLE  
CULTURE**

JEA0514

# Cultural Values

Safety

Service

Growth<sup>2</sup>

Accountability

Integrity

*Ideas*



JEA0515





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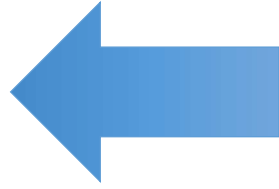
Dilbert.com DilbertCartoonist@gmail.com



 **CULTURE IS CELEBRATED**

## Driving Toward Success

*Willing to take appropriate and calculated risks and fail from time to time in order to achieve extraordinary results*



## Working Not to Fail

*Culture and individuals motivated by risk aversion striving not to fail rather than to succeed*

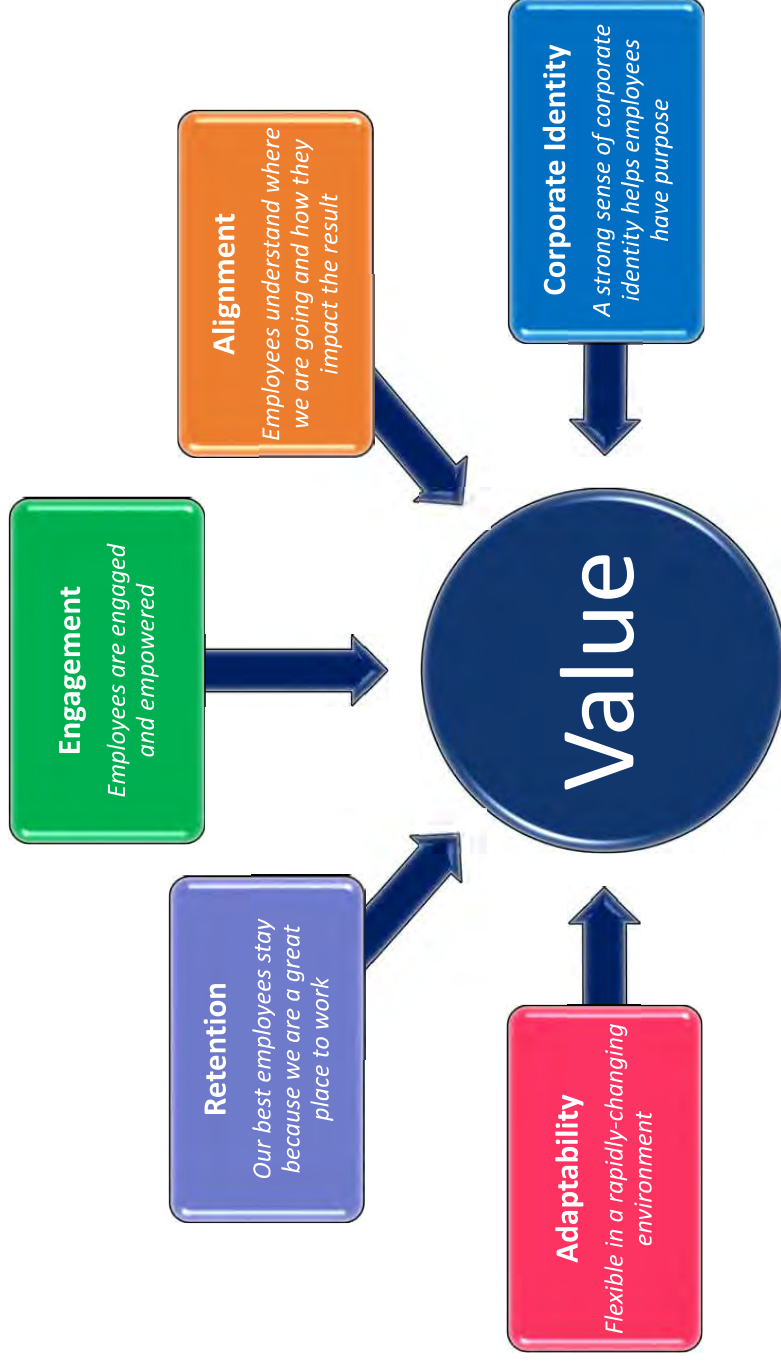


**WHERE ARE WE  
GOING?**

JEA0517

**Vision: Improve lives by accelerating innovation**

**Mission: Provide the best service by becoming the center of our customer's energy and water experience**





## INTRODUCING THE 5 to 5 Innovation Incentive Program

- 5 to 5 is about culture
- Purpose of the **5 to 5 Innovation Incentive Program** is to encourage and reward employees for developing and submitting innovative *ideas* (*Ideas* being one of JEA's core values) that benefit JEA and our community.
- Employees who submit an *idea* that is implemented will be eligible for incentives ranging between **\$500 to \$5,000** depending on the scope, cost savings, and/or revenue generation associated with the submitted *idea* and corresponding results.
- *Ideas* will align with JEA's corporate measures:
  - Customer Value
  - Financial Value
  - Environmental Value
  - Community Impact Value







# Long-Term Incentive Plan Market Practices & Proposed Design

Prepared for Jacksonville Electric Authority

March 19, 2019

Discussion Draft



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Willis Towers Watson 

# Table of Contents

Section	Page
Introduction	2
Long-Term Incentive Plan Design Market Practices	4
Long-Term Incentive Plan Design Alternatives	16
Long-Term Incentive Plan Design Strawman	23
Appendix: Utility Peer Group	25

## Introduction Summary

- Jacksonville Electric Authority (“JEA”) engaged Willis Towers Watson (“WTW”) to complete the following:
  - Conduct an analysis of market competitive long-term incentive (“LTI”) plan design practices in the utility industry, covering both investor owned utilities and public power utilities, and
  - Develop an LTI plan design that align with JEA’s compensation philosophy and business strategy
- Pages 4 through 15 summarize competitive market practices for:
  - Investor Owned Utility (IOUs) peer group (comparably sized to JEA)
  - Public Power utilities (based on client work and anecdotal consulting experience)
  - Broader Utility Industry practices from WTW’s 2018 *Long-Term Incentives Policies and Practices Survey Report*; Energy Services Industry data cut reflecting predominantly IOU peer practices
- Pages 16 through 23 present LTI plan design alternatives and a strawman design for JEA’s consideration

## **Introduction**

### **Methodology**

- WTW completed a competitive market analysis of LTI plan designs with regards to the following key design aspects:
  - Prevalence
  - Eligibility
  - Target incentive opportunity
  - Award frequency
  - Award vehicles
  - Performance metrics
  - Performance metrics weights
  - Performance range
  - Payout range
- The following perspectives were reviewed during the analysis:
  - IOU peer group practices
  - Public power utilities' practices
  - Broader Utility Industry practices

# Long-Term Incentive Plan Design Market Practices Summary

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Prevalence</b>	LTI plans are uncommon	All 13 IOU peers have an LTI plan	LTI plans are very prevalent with almost all IOUs using an LTI plan
<b>Eligibility</b>	For those Public Power Utilities with an LTI plan, eligibility limited to select executives	Typically executives down to director level positions	Typically executives down to director level positions
<b>Target Opportunity (% of Base Salary)</b>	Varies widely based on the organization, but targets will be lower than IOU levels	Median for CEOs: 230% Median for NEOs*: 110% Median for Directors: NA	Median for CEOs: 240% Median for NEOs*: 75% Median for Directors: 15-25%
<b>Award Frequency</b>	Annual awards with overlapping cycles are most common	All 13 peers grant annual awards with overlapping cycles	98.1% of organizations grant annual awards and overlapping cycles are the most common

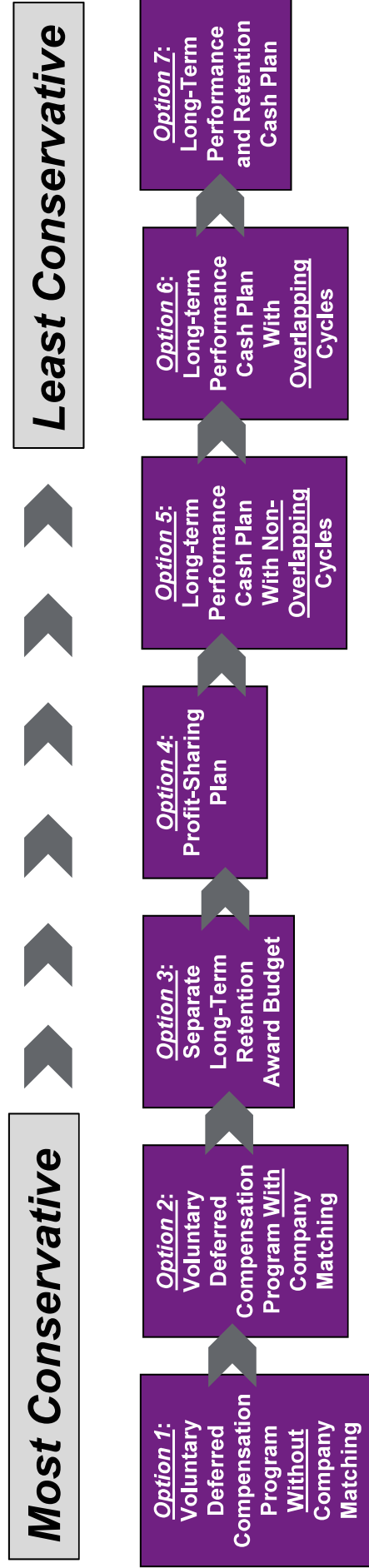
\*“NEOs” = Named Executive Officers, as disclosed in the IOU’s proxy statement

# Long-Term Incentive Plan Design Market Practices Summary (continued)

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Award Vehicles</b>	Cash-based performance plans	100% of peers use performance plans 69% use restricted stock No peers use stock options	93% of organizations use performance plans 66% use restricted stock 16% use stock options
<b>Performance Metrics</b>	Financial and operational	TSR (100%) EPS (38%) Operational (15%)	TSR (64%) EPS (22%) Other operational metrics are also common
<b>Performance Metrics Weights</b>	Operational metrics weighted more heavily than financial metrics	TSR and financial metrics weighted more heavily than operational metrics	Not available
<b>Performance Range</b>	More conservative compared to IOUs	Relative TSR: 28 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum	Relative TSR: 25 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum
<b>Payout Range</b>	Threshold: 50% of Target Maximum: 150% of Target	Threshold: 0-50% of Target Maximum: 150-200% of Target	Threshold: 50% of Target Maximum: 200% of Target

## Long-Term Incentive Plan Design Market Practices Design Considerations

- At JEA's request, potential LTI plan designs for consideration are presented below
- They are arranged from most conservative to least conservative
  - A description of the plan designs and the advantages/disadvantages of each is presented later in this report (see "LTI Plan Design Alternatives" section)





## Long-Term Incentive Plan Design Market Practices Prevalence

- LTI plans are not commonly found at Public Power Utilities, but are very common at IOUs
  - In cases where a Public Power Utility does have a long-term incentive plan, it is usually only for the CEO or a small group of select executives
  - All 13 IOU peers have a LTI plan, and most IOUs utilize a portfolio approach, reflecting the use of multiple LTI vehicles (typically 2 vehicles)
- In the broader Utility Industry, almost all IOUs have a LTI plan

**Public Power Utility Perspective:**  
Uncommon to have a LTI plan due to lack of long-term measures and stakeholder scrutiny/criticism

## Long-Term Incentive Plan Design Market Practices Eligibility

- All 13 IOU peers have a LTI plan, eligibility typically covers executives to director level positions
- In the broader Utility Industry, position or title is the most common criteria used by organizations to determine eligibility for LTI awards
  - 70% of organizations use position or title to determine eligibility for performance plans, 67% for restricted stock, and 71% for stock options (Director level typically the lowest title)
  - Award eligibility is as follows:

### Broader Utility Industry: LTI Award Eligibility

LTI Vehicle	Median % of Eligible Employees	Median Lowest Midpoint Eligible (\$000s)	Median Midpoint of 100% Participation (\$000s)
Performance Plan	2.6%	\$153.8	\$175.7
Restricted Stock	5.0%	\$135.3	\$157.0
Stock Options	1.8%	\$176.3	\$192.9

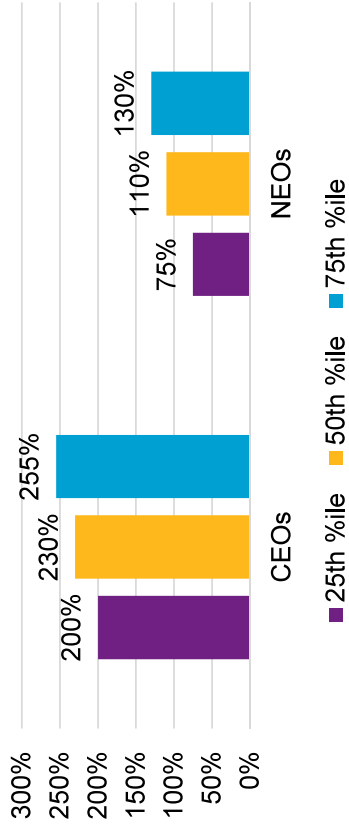
### Public Power Utility Perspective:

LTI eligibility is limited to the CEO and select executives only, broad based eligibility is not common

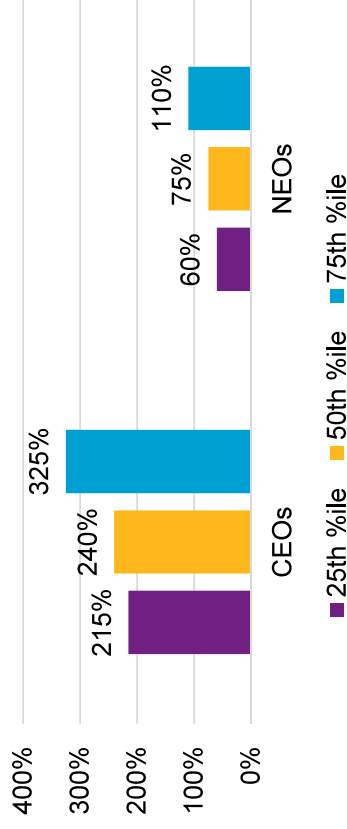
## Long-Term Incentive Plan Design Market Practices Target Incentive Opportunity

- Median target incentive opportunities are as follows:
  - IOU peer group: for CEOs is approximately **230%** and for NEOs is approximately **110%**
  - Broader Utility Industry\*: for CEOs is approximately **240%** and for NEOs is approximately **75%**
- For Directors is approximately **15-25%**

**IOU Peer Group: LTI Target % for CEOs and NEOs**



**Broader Utility Industry: LTI Target % for CEOs and NEOs**



### Public Power Utility Perspective:

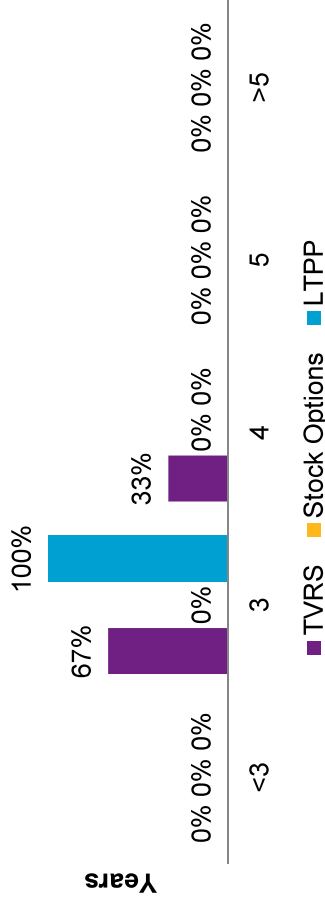
Target incentive opportunities vary widely based on the size of the Public Power Utility, however the targets are typically lower than what is common among the IOUs given the lower level of performance risk and sensitivity to not-for-profit focus

\*Broader Utility Industry data reflects trend-line data from WTW's 2018 Energy Services Executive (Revenues from \$1B-\$3B) and MMPS Compensation Surveys

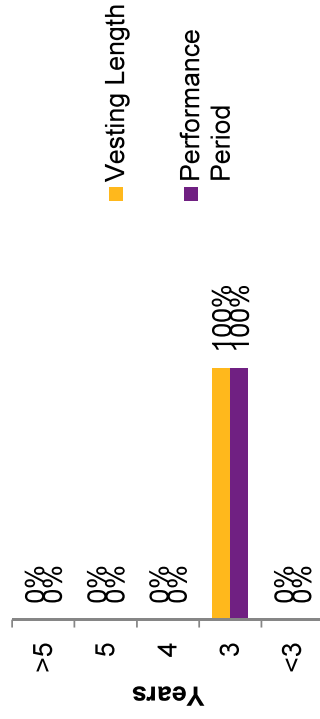
## Long-Term Incentive Plan Design Market Practices Award Frequency

- All 13 IOU peers grant awards on an annual basis with an attached vesting schedule
  - 98.1% of the broader Utility Industry also grant annual LTI awards
- IOU peers attach a **3 to 4 year** vesting requirement on their LTI
  - A three-year cliff vesting schedule is the most common vesting requirement for performance plans
  - Restricted stock vesting is mixed between 3-4 years and cliff and ratable

**IOU Peer Group: Vesting Length Prevalence**



**IOU Peer Group: LTPP Performance Period vs. Vesting**



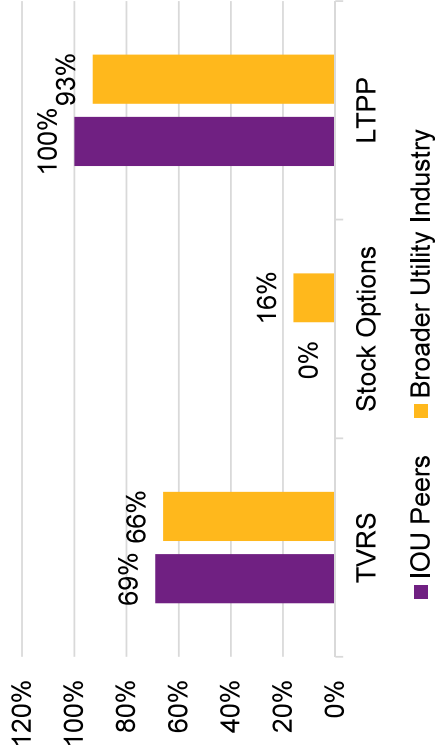
### Public Power Utility Perspective:

For the limited number of Public Power Utilities that make LTI grants, awards are most commonly awarded on an annual basis

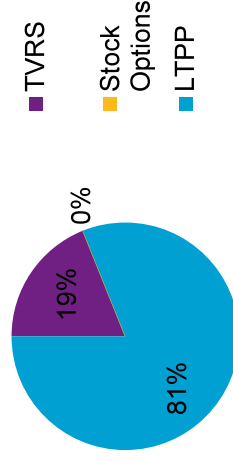
## Long-Term Incentive Plan Design Market Practices Award Vehicles

- Performance plans are much more common than restricted stock as an award vehicle for the IOU peer group, aligning with the broader Utility Industry
  - 100% of the peers use performance plans and 69% use restricted stock
  - On average, the CEO's LTI mix is comprised of performance plans at a slightly higher % than the other NEOs' LTI mix among the IOU peer group
- Unlike 16% of the broader Utility Industry, none of the IOU peer group uses stock options as an award vehicle

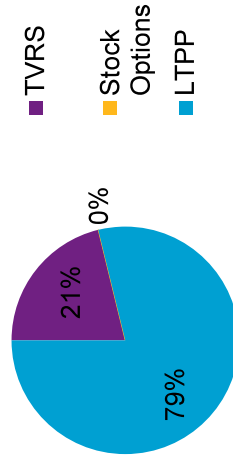
### LTI Vehicle Prevalence



### IOU Peer Group: CEO Targeted LTI Mix (Average)



### IOU Peer Group: Other NEOs Targeted LTI Mix (Average)

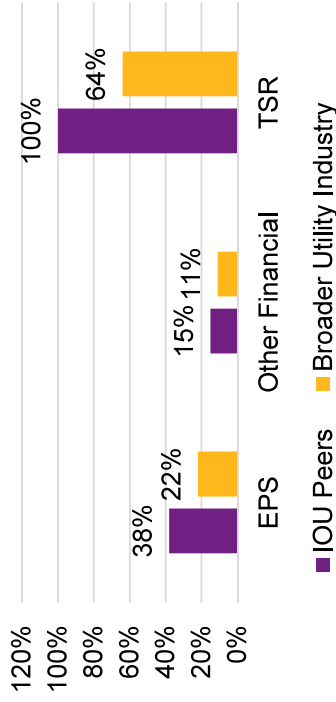


**Public Power Utility Perspective:**  
Performance cash awards are most common

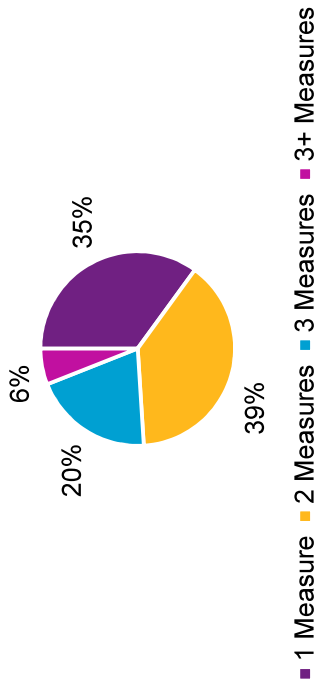
## Long-Term Incentive Plan Design Market Practices Performance Metrics

- LTI performance plans commonly consist of a mix of financial and operational metrics
- 9 of the 13 IOU peers utilize financial metrics while only 2 of the 13 peers utilize operational metrics
  - EPS is the most common financial metric for IOU peers and the broader Utility Industry
  - Operational metrics include health and safety, customer service, strategic measures, etc.
- All 13 IOU peers utilize relative TSR as a performance plan metric, much more prevalent than the broader Utility Industry

**Financial and TSR Performance Metrics (% of Organizations)**



**Broader Utility Industry: # of Metrics**



### Public Power Utility Perspective:

Common for Public Power Utilities to have a mix of financial and operational metrics for their performance plans

## Long-Term Incentive Plan Design Market Practices Performance Metrics Weights

- LTI performance metrics have specific weightings based on the organization's long-term strategies and goals
- For the 2 IOU peers that utilize operational metrics, the weightings are 50% for one peer and not disclosed for the other peer
- For the IOU peers that utilize relative TSR and EPS metrics, the approximate median weightings are as follows:

Performance Measure	Weight (%)
Relative TSR	67%
EPS	25%

### Public Power Utility Perspective:

Operational metrics typically have higher weights than financial metrics; measure weighting typically reflective of the importance and focus placed on the measure

## Long-Term Incentive Plan Design Market Practices Performance Range

- The width of performance ranges (e.g. the difference between threshold/maximum performance goals and target) vary by performance metric
  - All 13 of the IOU peers have a relative TSR component in their LTI performance plan
  - Relative TSR and EPS have the following median performance ranges:

Performance Measure	IOU Peer Group			Broader Utility Industry		
	Threshold (% of Target)	Target	Maximum (% of Target)	Threshold (% of Target)	Target	Maximum (% of Target)
Relative TSR (%ile Rank)	28 <sup>th</sup> %ile	50 <sup>th</sup> %ile	90 <sup>th</sup> %ile	25 <sup>th</sup> %ile	50 <sup>th</sup> %ile	90 <sup>th</sup> %ile
EPS	98%	100%	102%		NA	

### Public Power Utility Perspective:

Common for performance ranges to be more conservative (more narrow) compared to IOU peer group and broader Utility Industry, as performance outcomes are less volatile



## Long-Term Incentive Plan Design Market Practices Payout Range

- Payout ranges are often provided as a percentage of the target incentive opportunity (target is equal to 100% payout)
- The IOU peer groups' threshold and maximum payouts as a % of target align with what is most common in the broader Utility Industry

Payout Range	IOU Peer Group	Broader Utility Industry
Threshold	Range of 0%-50% Median: 50%	50%
Target	100%	100%
Maximum	Range of 150%-200% Median: 200%	200%

### Public Power Utility Perspective:

Payout ranges are similar to both IOU Peer Group and broader Utility Industry with thresholds typically at around 50% and maximums typically at 150%

# Long-Term Incentive Plan Design Alternatives

## Option 1: Voluntary Deferred Compensation Program Without Company Match

### Description of Plan

- Employee can voluntarily defer all or a portion of pay (typically defined as some portion of base salary and all of bonus) into a non-qualified deferred compensation account
  - No cost would be incurred by the company
  - Employees can delay taxation until a later date (e.g. retirement)

	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• No cost to company</li> <li>• Easy to administer</li> </ul>	<ul style="list-style-type: none"> <li>• Taxation is delayed (probably until retirement)</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Limited retention value given relatively small gain compared to IOU LTI programs</li> <li>• Does not align with public power utility market practice</li> </ul>	<ul style="list-style-type: none"> <li>• Risk of loss if company goes bankrupt (non-qualified plan means no protection from creditors)</li> <li>• Deferred compensation is not liquid given IRC 409(A) restrictions</li> </ul>

## Long-Term Incentive Plan Design Alternatives

### Option 2: Voluntary Deferred Compensation Program With Company Match

#### Description of Plan

- Employee can voluntarily defer all or a portion of pay (typically defined as some portion of base salary and all of bonus) into a non-qualified deferred compensation account and receive a matching contribution from the company; company match dependent on achieving defined financial performance

	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Limited cost to company</li> <li>Easy to administer</li> <li>Creates a retention incentive for employee to stay (to receive full company match)</li> </ul>	<ul style="list-style-type: none"> <li>Taxation is delayed (typically until retirement)</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Limited retention value given relatively small gain compared to IOU LTI programs</li> <li>Does not align with public power utility market practice</li> </ul>	<ul style="list-style-type: none"> <li>Company match not guaranteed given performance requirement</li> <li>Risk of loss if company goes bankrupt (non-qualified plan means no protection from creditors)</li> <li>Deferred compensation is not liquid given IRC 409(A) restrictions</li> </ul>

## Long-Term Incentive Plan Design Alternatives

### Option 3: Separate Long-Term Retention Award Budget

#### Description of Plan

- Organization has a separate budget (similar to merit budget) that focuses entirely on long-term retention awards for high performers and key roles

	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Creates a retention incentive for high performers or key employees to stay</li> </ul>	<ul style="list-style-type: none"> <li>Employee can receive annual value attached to retention award with ratable vesting</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Limited retention value given relatively small gain compared to IOU LTI programs</li> <li>Does not align with public power utility market practice</li> <li>Potentially subject to criticism/scrutiny from outside observers given not common among public power utilities</li> </ul>	<ul style="list-style-type: none"> <li>May not receive an award depending on individual performance and size of the allocated retention budget for that year</li> <li>Some key roles will receive higher awards despite performance levels</li> </ul>

## Long-Term Incentive Plan Design Alternatives

### Option 4: Profit-Sharing Plan

#### Description of Plan

- An employer shares a percentage of earnings or profit with employees based on pre-established multi-year financial goal(s); payouts would be at the end of the performance cycle and in cash, assuming requisite performance goals achieved

	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Promotes pay-for-performance philosophy</li> <li>Flexibility to decide how much profit (if any) to share with employees</li> </ul>	<ul style="list-style-type: none"> <li>Employee can receive annual value attached to profit-sharing plan</li> <li>Plan creates a sense of ownership in the company</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Limited retention value given relatively small gain compared to IOU LTI programs</li> <li>Does not align with public power utility market practice</li> <li>Subject to criticism/scrutiny from outside observers given not common among public power utilities</li> <li>Could receive additional negative criticism given the potential for payouts during periods of poor company performance</li> <li>Limited retention value as no post performance cycle vesting required</li> </ul>	<ul style="list-style-type: none"> <li>May not receive an award depending on company's decision to share profits or if company performance is poor</li> <li>Payouts typically not differentiated based on individual employee performance</li> </ul>

# Long-Term Incentive Plan Design Alternatives

## Option 5: Long-Term Performance Cash Plan With Non-Overlapping Cycles

### Description of Plan

- Employee receives a triennial, non-overlapping grant of performance cash based on predetermined financial, operational, and/or strategic objectives



	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Promotes pay-for-performance philosophy</li> <li>Use of performance plan aligns with IOUs</li> <li>Creates incentive for employee to deliver sustained (multi-year) financial and operational results</li> </ul>	<ul style="list-style-type: none"> <li>Opportunity to receive significant award after conclusion of three-year period</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Does not align with public power utility market practice</li> <li>Subject to criticism/scrutiny from outside observers given not common among public power utilities</li> <li>Limited "line of sight" or ability of employees to impact defined performance measure outcomes; typical line of sight limited to select group of senior employees</li> </ul>	<ul style="list-style-type: none"> <li>Non-overlapping cycle increases the risk of forfeiture due to leaving the company</li> <li>Non-overlapping cycle prevents the employee from receiving an annual value from the performance cash</li> <li>Non-overlapping cycle increases the chances that "one bad year" could make achievement of three-year goals difficult to achieve</li> <li>All performance-based, no consideration for sustained service</li> <li>Plans/measures can be complex to understand and communicate</li> </ul>

# Long-Term Incentive Plan Design Alternatives

## Option 6: Long-Term Performance Cash Plan With Overlapping Cycles

### Description of Plan

- Employee receives an annual, overlapping grant of performance cash based on predetermined financial, operational, and strategic objectives



	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Promotes pay-for-performance philosophy</li> <li>Greater alignment with IOU peers (more than non-overlapping plans)</li> <li>Creates incentive for employee to deliver sustained (multi-year) financial and operational results</li> <li>Most common design used by public power utilities with LTI</li> </ul>	<ul style="list-style-type: none"> <li>Employee can receive annual value attached to long-term incentive plan</li> <li>Rolling three-year performance periods means that “one bad year” can’t make goals unachievable</li> <li>Opportunity to receive significant award after conclusion of three-year period</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Does not align with public power utility market practice</li> <li>Subject to criticism/scrutiny from outside observers given not common among public power utilities</li> <li>Limited “line of sight” or ability of employees to impact defined performance measure outcomes; typical line of sight limited to select group of senior employees</li> </ul>	<ul style="list-style-type: none"> <li>All performance-based, no consideration for sustained service</li> <li>Plans/measures can be complex to understand and communicate</li> </ul>

# Long-Term Incentive Plan Design Alternatives

## Option 7: Long-Term Performance Cash and Retention Cash Plan

### Description of Plan

- A mix of long-term cash linked to both company performance and continued employment
  - The mix would be weighed more heavily towards the performance-based component (e.g., 75%/25% performance-based to service/time-based)

	To JEA	To Employee
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• Promotes pay-for-performance philosophy</li> <li>• Creates incentive for employee to deliver sustained (multi-year) financial and operational results</li> <li>• Time-based portion creates strong retention incentive to employee (even during periods when company performance is poor)</li> <li>• Design that most closely aligns with IOU LTI designs</li> </ul>	<ul style="list-style-type: none"> <li>• Time-based portion provides opportunity for payout even if company performance is poor</li> <li>• Employee can receive annual value attached to long-term incentive plan</li> <li>• Opportunity to receive significant award after conclusion of three-year period</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>• Does not align with public power utility market practice</li> <li>• Subject to criticism/scrutiny from outside observers given not common among public power utilities</li> <li>• Limited “line of sight” or ability of employees to impact defined performance measure outcomes; typical line of sight limited to select group of senior employees</li> </ul>	<ul style="list-style-type: none"> <li>• No upside potential (e.g. maximum opportunity) would be attached to the time-based portion of the LTI</li> <li>• Plans/measures can be complex to understand and communicate</li> </ul>



## Long-Term Incentive Plan Design Strawman Proposed Strawman Design

- Given consideration of the overarching goal to allow all employees to share in the long-term success of the company and public power utility LTI market practices, we propose a multi-pronged LTI design approach below for consideration:

Employee Population	Plan Design Overview
Select Executives	<ul style="list-style-type: none"> <li><b>Design:</b> long-term performance cash grants tied to 3-year performance cycle</li> <li><b>Eligibility:</b> limited to select executives (i.e., CEO, COO) with direct ability to influence performance</li> <li><b>Frequency:</b> annual grants (overlapping award cycles)</li> <li><b>Performance Measures:</b> tied to achievement against defined financial and/or operational performance measures; tied to 2 to 3 key measures where performance can be set for a multi-year period</li> </ul>
All Employees	<ul style="list-style-type: none"> <li><b>Design:</b> voluntary deferred compensation plan with company match tied to overall company financial performance; deferral of some portion of pay (base salary and/or bonus) allowed</li> <li><b>Eligibility:</b> all employees</li> <li><b>Company match:</b> tied to long-term company financial performance with match dependent on level of performance achieved</li> </ul>
Employees with Critical Skills or Retention Risk	<ul style="list-style-type: none"> <li><b>Design:</b> long-term company performance funds supplemental long-term award pool used to make long-term retention cash awards; awards vest upon completion of defined service period (i.e., cliff vest end of year 3 from grant)</li> <li><b>Eligibility:</b> critically skilled employees or employees viewed as retention risks</li> </ul>

# Appendix

**JEA0543**

# Appendix

## Utility Peer Group

### IOUs (13 Companies)

- ALLETE
- Alliant Energy
- Avista
- Black Hills
- El Paso Electric
- Hawaiian Electric Industries
- NorthWestern Energy
- OGE Energy
- Otter Tail
- Pinnacle West Capital
- PNM Resources
- Portland General Electric
- Vectren

### Public Power Utilities

- Six public power utility clients
- Anecdotal consulting experience

**From:** [Wathen, David \(Atlanta\)](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#); [Deeb, Andrea \(Atlanta\)](#); [Hiers, Angelia R. - VP & Chief Human Resources Officer](#)  
**Cc:** [Strackbine, Scott I.](#); [Hwang, Paul \(Atlanta\)](#); [Kelly, Tom \(Charlotte\)](#); [Meng, Patrick \(Atlanta\)](#)  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Date:** Monday, March 25, 2019 2:40:23 PM

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Pat:

Yes, based on the input from last week's meeting, we are pulling together materials for the April committee meeting that will address the following:

- Review current compensation philosophy
- Evolution as to how compensation programs got to their current state
- Current gaps to market in compensation levels – specifically calling out gaps in base salary, short and long-term incentives by organizational level and actions to take to close those gaps to market. These proposed pay adjustments will detail by grade what base salary, short-term and long-term incentive opportunities should be
- Short-term incentive plan design – based on the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?
- Long-term incentive plan design – we will provide a more detailed LTI design given Aaron's feedback around the draft strawman design we shared. It will include target incentive opportunities by level, where applicable, as well as performance measure weightings and a proposed formula for determining a Performance Share Unit (PSU) value. As it relates to the LTI plan performance measures (rates customers pay, change in net book value and contribution to the city), we would look to Ryan to provide guidance on what performance hurdles should be at Threshold, Target and Maximum, as he has insights into historical performance, future projections, business strategy, etc., but we can certainly provide guidance as to what probability payout distributions look a well-designed incentive plan
- Overview of best practices to consider for modernizing total rewards

As it relates to determining an applicable formula for valuing a PSU in the long-term incentive plan, we need some additional information. Would you please check with Ryan to see if he could provide us information on key drivers of long-term performance, such as:

- 1) Historical financials, most importantly on book value as of year-end and anything impacting that other than income/surplus generated in a year less any cash contributions/outlays made
- 2) Better understanding (and history) of cash contributions made to City and the basis by which the contribution level in a given year is determined and/or could be evaluated. Percentage of

**JEA0545**

income/surplus or something else. Also understanding of timing on those contributions and how they impact book value – for example, contribution made in 2018 based on surplus generated in 2017 and so are reflected in year-end book value for 2018 but not 2017.

- 3) How “customer rates” are determined and evaluated, along with historical JEA information as well as historical/current information on relevant comparators or index
- 4) Any information on forward looking projections/estimates on these same items.

We are working to deliver the next draft of materials by the end of next week, assuming we get the financial data requested above. Please let us know if we need to schedule a call to talk through these additional data needs or if we are missing anything in the materials we are pulling together for the committee meeting.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [mailto:mailpl@jea.com]  
**Sent:** Monday, March 25, 2019 10:08 AM  
**To:** Wathen, David (Atlanta) <david.wathen@willistowerswatson.com>; Deeb, Andrea (Atlanta) <andrea.deeb@willistowerswatson.com>  
**Cc:** Strackbine, Scott I. <strasi@jea.com>; Hwang, Paul (Atlanta) <paul.hwang@willistowerswatson.com>; Patrick, Michael (Atlanta) <michael.patrick@willistowerswatson.com>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Importance:** High

David,

Angie received some feedback from Aaron today regarding our meeting last week.

Aaron indicated he had expected to receive an example of a plan (not just a few options). Based on the feedback and input that you received in the meeting last week, will you be providing a draft plan that will detail more of the values by grade or level, the metrics, thresholds, timing of payouts, etc.? If so, what is the timing on receipt of this information?

Pat

---

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, March 21, 2019 8:58 AM  
**To:** 'Wathen, David (Atlanta)' <david.wathen@willistowerswatson.com>; Deeb, Andrea (Atlanta) <andrea.deeb@willistowerswatson.com>  
**Cc:** Strackbine, Scott I. <strasi@jea.com>; Hwang, Paul (Atlanta) <paul.hwang@willistowerswatson.com>; Patrick, Michael (Atlanta) <michael.patrick@willistowerswatson.com>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

As LTI structure takes form, I think we will need to state at some point where gaps in STI may be

**JEA0546**

made up in LTI or reference Total Comp so that we also have flexibility to shift the mix, if the company chooses. It seems the message will or should focus on Total Comp (not just the cash components).

Again, thanks. Talk soon.

Pat

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>  
**Sent:** Wednesday, March 20, 2019 6:41 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

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Pat:

Nice to meet you yesterday. We enjoyed getting to meet the JEA team. Also, hanks for the update on the STI plan. We are working through assessing the gaps to market based on current STI levels, not proposed, but will likely be in touch with you and Scott if we have any follow up questions or data needs.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Wednesday, March 20, 2019 9:24 AM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>  
**Subject:** Follow-up from Meeting - FY19 Metrics

David and Andrea,

Thank you for a great meeting yesterday.

As follow-up to our conversation yesterday, wanted to provide some clarification on the current state of the STI plan. There have been no changes to date in total opportunity for employees. There were originally discussions regarding not having a payout for 2019, but this was not communicated to employees and so employees are thinking it is status quo. At the beginning of the

**JEA0547**

performance period, October 1, 2018, there was clear communication regarding the 2019 goals. These were new in many respects so it was not clear (from my perspective as to which of the goals would translate to the STI). Last week, I was asked to incorporate the new goals into the plan. No change in payout values, (except maybe the executives – this discussion has not been finalized).

Providing you the new dashboard so you can see the goals(the first 21 , in four categories that align with our Corporate Measures of Value; Customer Value, Financial Value, Environmental Value and Community Impact Value. To the far right of the attached spreadsheet, is Compensation's calculations re the payout values for each metric based on the achievement of a meets or exceeds. The leadership team has confirmed that we will have these 21 measures. This is Comp's draft for cost modelling.

The one item that is up in the air is a comment made by the team last week re "make the spreads between the meets and exceeds wider".

The plan has progressed over the last 5 years from a set payout based on achievement of 5 operational measures, then \$500 - \$3000 for all employees, much like a Profit Sharing Plan with little to no differentiation and below the market for all managers and above. In 2014, , we incorporated individual performance factor for the appointed further differentiating the payout between line and management employees. In 2016, we increased the payouts further for the management to director level (and have done minor fine tuning since). We were not able to do this for the SLT due to optics, so we focused on making sure their base pay was at or moving towards 50<sup>th</sup> percentile. Today, the difference between a meets and exceeds for non-SLT is 160%. I am going to pitch that this is wide enough for now and that we don't want to make changes based on this project. However, I do not think that we will win this battle with the SLT pieces.

As we have discussed, with the addition of a broad based LTI plan, the LTI component can make up that difference in market value for the non-management and lower level managers that don't normally receive LTI in the market place. We probably still need to increase some levels of management STI with the addition of the LTI as well.

**Pat Maillis**

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)

-----  
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**From:** [Hiers, Angelia R. - VP & Chief Human Resources Officer](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** Re: Follow-up from Meeting - FY19 Metrics  
**Date:** Tuesday, March 26, 2019 9:46:47 AM

---

Aaron feels we are good on STI but they dropped the ball on LTI. We need to focus on it.

On Mar 25, 2019, at 3:47 PM, Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)> wrote:

Please review the below from David and provide me any feedback on whether this covers what Aaron is expecting. If appropriate, I can send this to Aaron, Ryan and you to get feedback?

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>  
**Sent:** Monday, March 25, 2019 2:40 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

Yes, based on the input from last week's meeting, we are pulling together materials for the April committee meeting that will address the following:

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- <!--[if !supportLists]-->• <!--[endif]-->Evolution as to how compensation programs got to their current state
- <!--[if !supportLists]-->• <!--[endif]-->Current gaps to market in compensation levels – specifically calling out gaps in base salary, short and long-term incentives by organizational level and actions to take to close those gaps to market. These proposed pay adjustments will detail by grade what base salary, short-term and long-term incentive opportunities should be
- <!--[if !supportLists]-->• <!--[endif]-->Short-term incentive plan design – based on

the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?

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Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services

**Sent:** Thursday, March 21, 2019 8:58 AM

**JEA0551**

**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

As LTI structure takes form, I think we will need to state at some point where gaps in STI may be made up in LTI or reference Total Comp so that we also have flexibility to shift the mix, if the company chooses. It seems the message will or should focus on Total Comp (not just the cash components).

Again, thanks. Talk soon.

Pat

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>

**Sent:** Wednesday, March 20, 2019 6:41 PM

**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

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Pat:

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Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]

**Sent:** Wednesday, March 20, 2019 9:24 AM

**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>

**Subject:** Follow-up from Meeting - FY19 Metrics

**JEA0552**

David and Andrea,

Thank you for a great meeting yesterday.

As follow-up to our conversation yesterday, wanted to provide some clarification on the current state of the STI plan. There have been no changes to date in total opportunity for employees. There were originally discussions regarding not having a payout for 2019, but this was not communicated to employees and so employees are thinking it is status quo. At the beginning of the performance period, October 1, 2018, there was clear communication regarding the 2019 goals. These were new in many respects so it was not clear (from my perspective as to which of the goals would translate to the STI). Last week, I was asked to incorporate the new goals into the plan. No change in payout values, (except maybe the executives – this discussion has not been finalized).

Providing you the new dashboard so you can see the goals(the first 21 , in four categories that align with our Corporate Measures of Value; Customer Value, Financial Value, Environmental Value and Community Impact Value. To the far right of the attached spreadsheet, is Compensation's calculations re the payout values for each metric based on the achievement of a meets or exceeds. The leadership team has confirmed that we will have these 21 measures. This is Comp's draft for cost modelling.

The one item that is up in the air is a comment made by the team last week re "make the spreads between the meets and exceeds wider".

The plan has progressed over the last 5 years from a set payout based on achievement of 5 operational measures, then \$500 - \$3000 for all employees, much like a Profit Sharing Plan with little to no differentiation and below the market for all managers and above. In 2014, , we incorporated individual performance factor for the appointed further differentiating the payout between line and management employees. In 2016, we increased the payouts further for the management to director level (and have done minor fine tuning since). We were not able to do this for the SLT due to optics, so we focused on making sure their base pay was at or moving towards 50<sup>th</sup> percentile. Today, the difference between a meets and exceeds for non-SLT is 160%. I am going to pitch that this is wide enough for now and that we don't want to make changes based on this project. However, I do not think that we will win this battle with the SLT pieces.

As we have discussed, with the addition of a broad based LTI plan, the LTI component can make up that difference in market value for the non-management and lower level managers that don't normally receive LTI in the market place. We probably still need to increase some levels of management STI with the addition of the LTI as well.

**Pat Maillis**

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)



[<image002.jpg>](#) [<image003.jpg>](#) [<image004.jpg>](#)

**JEA0555**

[<image005.jpg>](#)





**From:** [Hiers, Angelia R. - VP & Chief Human Resources Officer](#)  
**To:** [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**Subject:** Follow-up from Meeting - FY19 Metrics  
**Date:** Tuesday, March 26, 2019 2:43:33 PM

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Please see the email below based on the conversation with David from Towers. He needs some information in order to give us the deliverable by the end of next week. Let's talk!!  
Based on the input from last week's meeting, we are pulling together materials for the April committee meeting that will address the following:

- Review current compensation philosophy
- Evolution as to how compensation programs got to their current state
- Current gaps to market in compensation levels – specifically calling out gaps in base salary, short and long-term incentives by organizational level and actions to take to close those gaps to market. These proposed pay adjustments will detail by grade what base salary, short-term and long-term incentive opportunities should be
- Short-term incentive plan design – based on the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?
- Long-term incentive plan design – we will provide a more detailed LTI design given Aaron's feedback around the draft strawman design we shared. It will include target incentive opportunities by level, where applicable, as well as performance measure weightings and a proposed formula for determining a Performance Share Unit (PSU) value. As it relates to the LTI plan performance measures (rates customers pay, change in net book value and contribution to the city), we would look to Ryan to provide guidance on what performance hurdles should be at Threshold, Target and Maximum, as he has insights into historical performance, future projections, business strategy, etc., but we can certainly provide guidance as to what probability payout distributions look a well-designed incentive plan
- Overview of best practices to consider for modernizing total rewards

As it relates to determining an applicable formula for valuing a PSU in the long-term incentive plan, we need some additional information. Would you please check with Ryan to see if he could provide us information on key drivers of long-term performance, such as:

- 1) Historical financials, most importantly on book value as of year-end and anything impacting that other than income/surplus generated in a year less any cash contributions/outlays made
- 2) Better understanding (and history) of cash contributions made to City and the basis by which the contribution level in a given year is determined and/or could be evaluated. Percentage of income/surplus or something else. Also understanding of timing on those contributions and how they impact book value – for example, contribution made in 2018 based on surplus generated in 2017 and so are reflected in year-end book value for 2018 but not 2017.
- 3) How "customer rates" are determined and evaluated, along with historical JEA information as well as historical/current information on relevant comparators or index
- 4) Any information on forward looking projections/estimates on these same items.

We are working to deliver the next draft of materials by the end of next week, assuming we get the financial data requested above. Please let us know if we need to schedule a call to talk through these additional data needs or if we are missing anything in the materials we are pulling together for the committee meeting.

Best regards,

David

**From:** [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**To:** [Hiers, Angelia R. - VP & Chief Human Resources Officer](#)  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Date:** Tuesday, March 26, 2019 2:56:59 PM

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Angie,

Separately, one other thing that I noticed as I was going back through the slides is that the calculations for the target TCC and TDC were based on the existing JEA base salary and not the competitive market base salary. This understates the magnitude of the total market compensation discrepancies because the STI and LTI is expressed as a % of the base which in all cases is lower than the market base salary. When they update their presentation can we be sure that they apply the % for STI and LTI to market base so that we get an accurate comparison when we look at target vs actual TCC and TDC for 50<sup>th</sup> percentile?

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

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**From:** [Hiers, Angelia R. - VP & Chief Human Resources Officer](#)  
**Sent:** Tuesday, March 26, 2019 2:43 PM  
**To:** [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**Subject:** Follow-up from Meeting - FY19 Metrics

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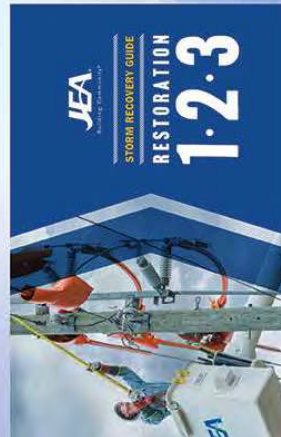
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Best regards,

David



# THE YEAR IN REVIEW 2018-2019



# Table of Contents

- ▶ **Part 1** WHO WE ARE
- ▶ **Part 2** WHAT WE'VE DONE
- ▶ **Part 3** WHERE WE ARE GOING

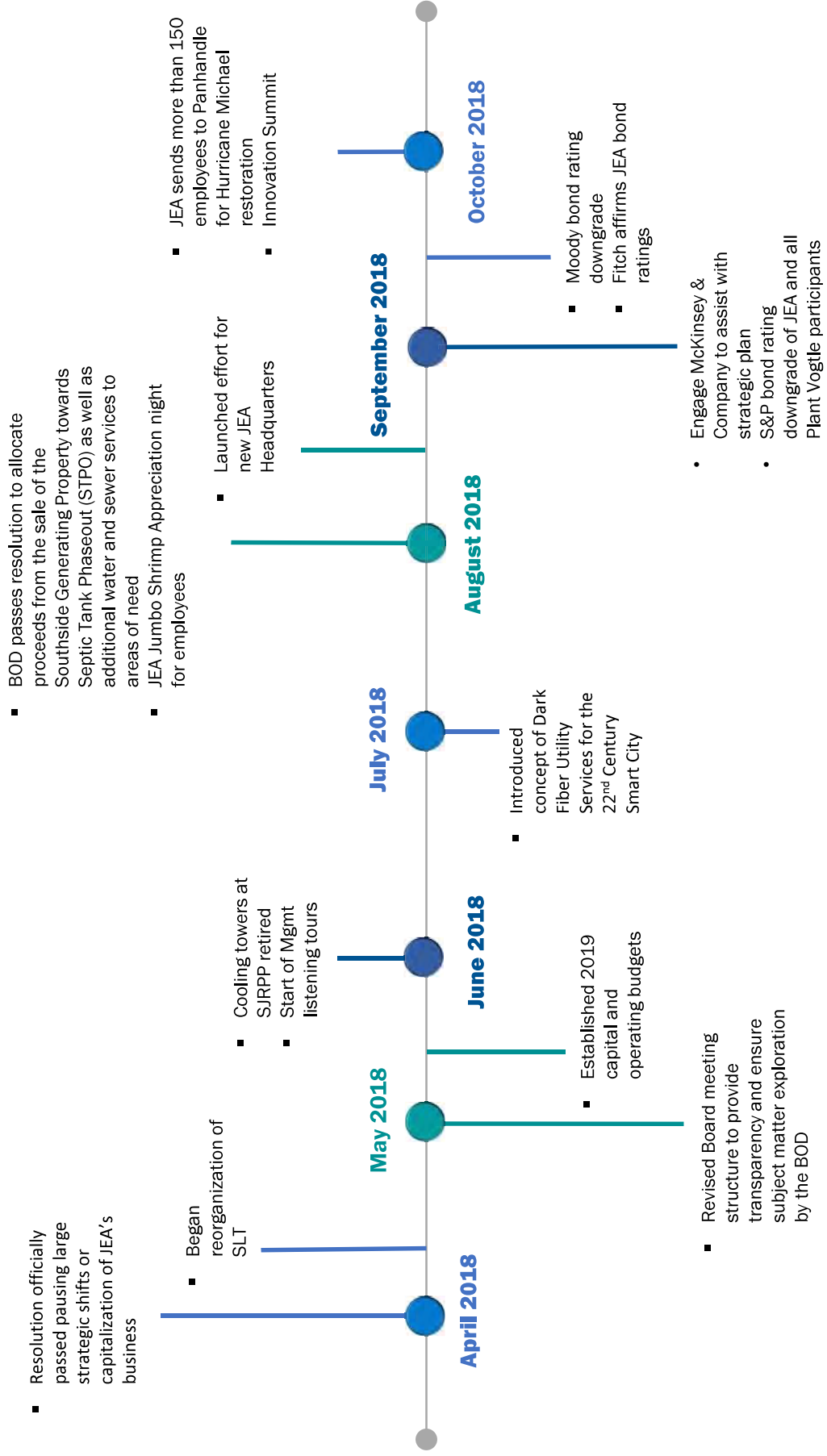


# PART 1.....

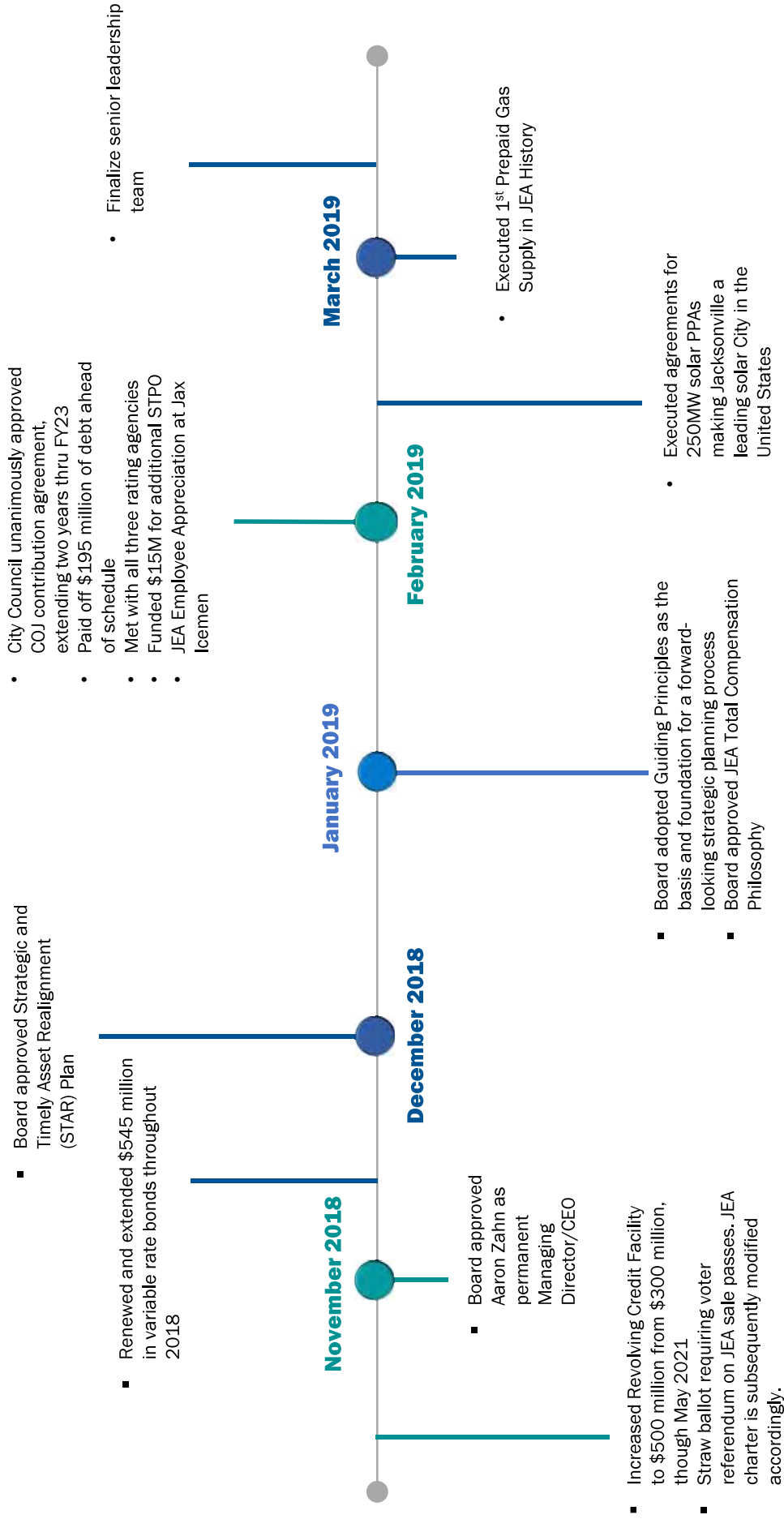
## Who We Are: We Do What We Say



# April 2018 – October 2018 Transition



# November 2018 – March 2019 Set Foundation, Direction and Team



# JEA is a Superior Energy Utility

## Since April 2018

- Maintained excellent financial and operational metrics
- Repaid \$326 million of debt in FY2018 for a total reduction of \$1.9 billion since 2009
  - Accelerated \$100 million of debt reduction with February 2019 defeasance and plan to drive debt to a 40-year low
- Continued to strategically plan to absorb the cost of Plant Vogtle
- Accelerating nearly all principal due before 2028
- Capital program includes \$897 million of projects over the next five years
- Rates are at the median in the state
- Closed the St. Johns River Power Park, reducing JEA carbon emissions by 30% and saving \$50 million in operating expenses per year starting in 2020

**Management driving financial metrics  
for to position for the future**

# JEA is a Superior Water Utility

## Since April 2018

- All financial metrics are a fortress:
  - Strong balance sheet
  - Ample liquidity
  - Superior debt service coverage
- Debt service coverage expected to be 3.5x to 4x over the next five years
- Paid down \$74 million debt in FY2018 for a total reduction of \$532 million since 2011 projected to total \$827 over the next five years
- Accelerated \$95 million of debt reduction with February 2019 defeasance
- Robust \$1 billion capital program over the next five years
- Launched integrated water resource plan

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**Superior performance drives JEA's  
long-term water leadership in FL**



# PART 2

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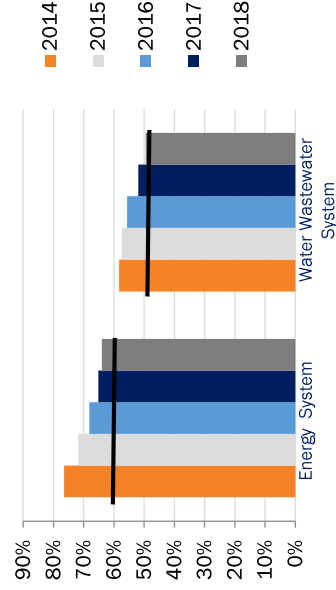
## What We've Done: A Year of Results

# Historical Financial Metrics

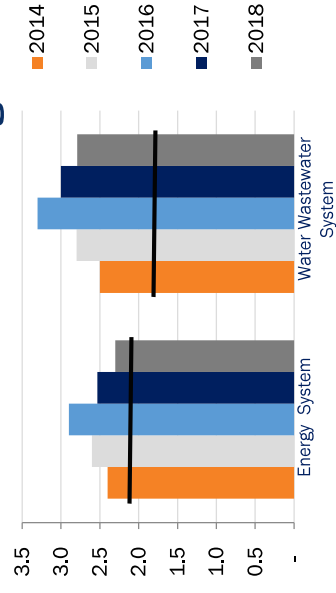
## FY2018 RESULTS DEMONSTRATE STRONG PERFORMANCE ACROSS ALL KEY FINANCIAL METRICS

- FY2018 Debt Service Coverage remains strong and provides financial flexibility to respond to industry challenges
- Debt to Asset % continues to improve and approach long-term targets
- Days Liquidity and Days Cash metrics continue to be strong and provide the ability to invest in infrastructure in both systems without new debt

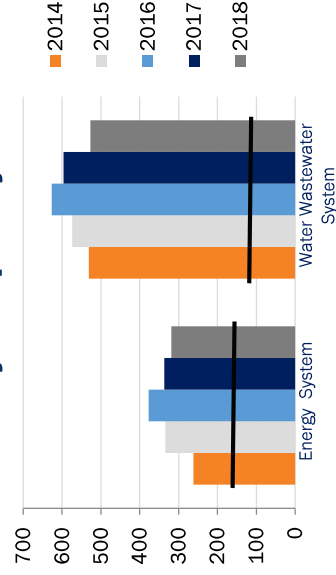
Debt to Asset %



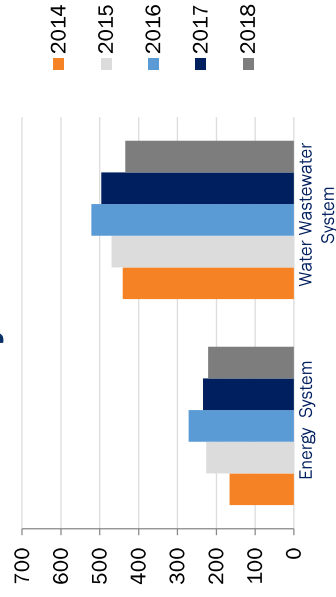
Debt Service Coverage



Days Liquidity



Days Cash



— Long Term targets per JEA pricing policy

# Energy System Key Metrics

## WHAT WE SAID DECEMBER 2017

- 2.2x combined debt service coverage
- Days of cash on hand: 180 days
- Days of liquidity: 280 days
- Net funded debt reduction: \$135 million
- Debt to Asset ratio: 71.8%
- Capital Expenditures: \$166 million
- Decrease in system MWh sales of (0.4%)
- Base revenue reduction of (0.4%)

## WHAT WE DID FY2018

- 2.3x combined debt service coverage
- Days of cash on hand: 221 days
- Days of liquidity: 320 days
- Net funded debt reduction: \$154 million
- Debt to Asset ratio: 71.0%
- Capital Expenditures: \$174 million
- Increase in System MWh sales of 2.6%
- Base revenue increase of 2.9%

# Water System Key Metrics

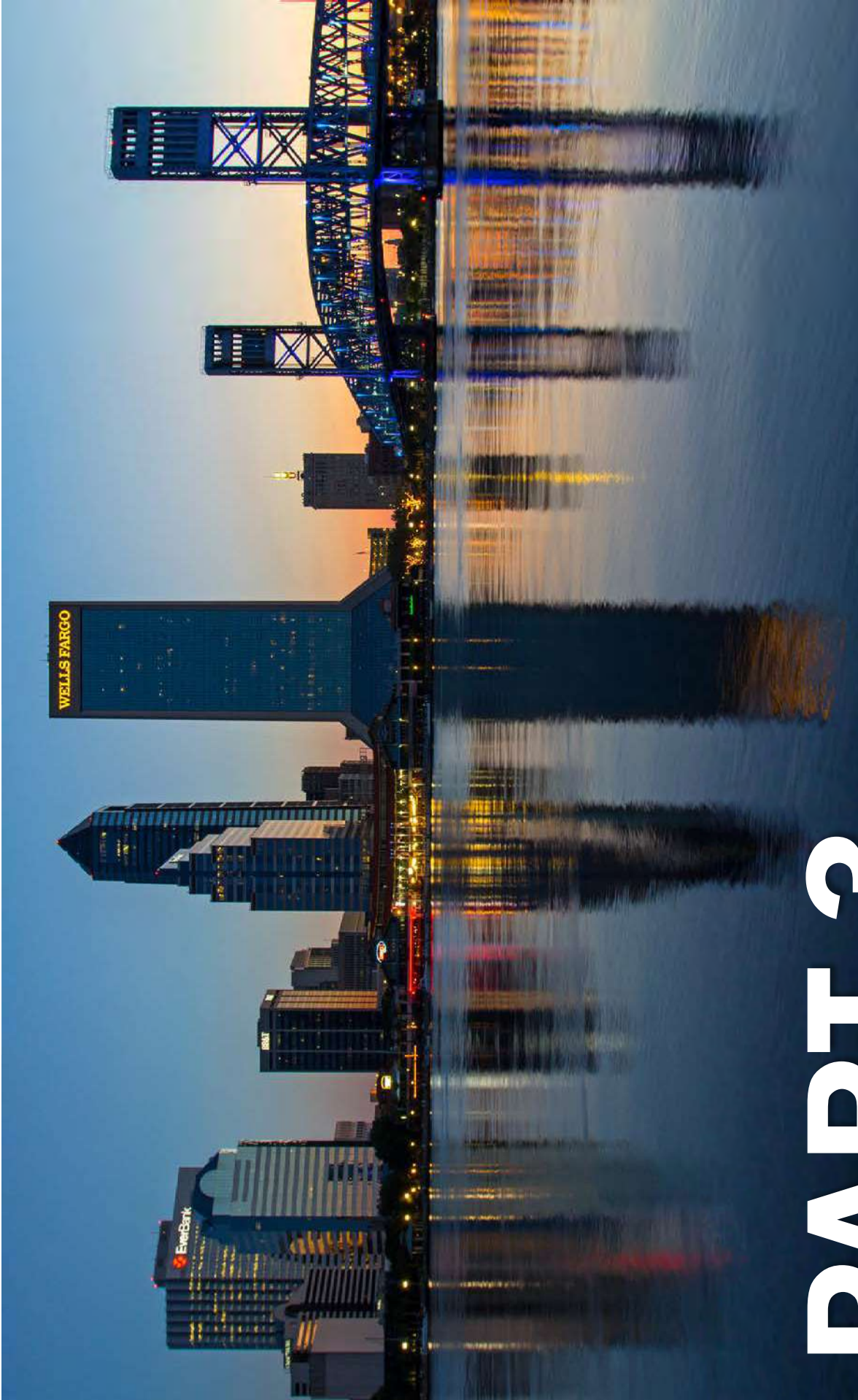
## WHAT WE SAID DECEMBER 2017

- 2.7x combined debt service coverage
- Days of cash on hand: 404 days
- Days of liquidity: 502 days
- Net funded debt reduction: \$50 million
- Debt to Asset ratio: 49.6%
- Capital Expenditures: \$215 million
- 2.0% increase in Water kgal sales
- Total system revenue decrease of (2.9%)

## WHAT WE DID FY2018

- 2.8x combined debt service coverage
- Days of cash on hand: 434 days
- Days of liquidity: 529 days
- Net funded debt reduction: \$70 million
- Debt to Asset ratio: 49.5%
- Capital Expenditures: \$199 million
- (2.8%) decrease in Water kgal sales
- Total system revenue decrease of (3.8%)

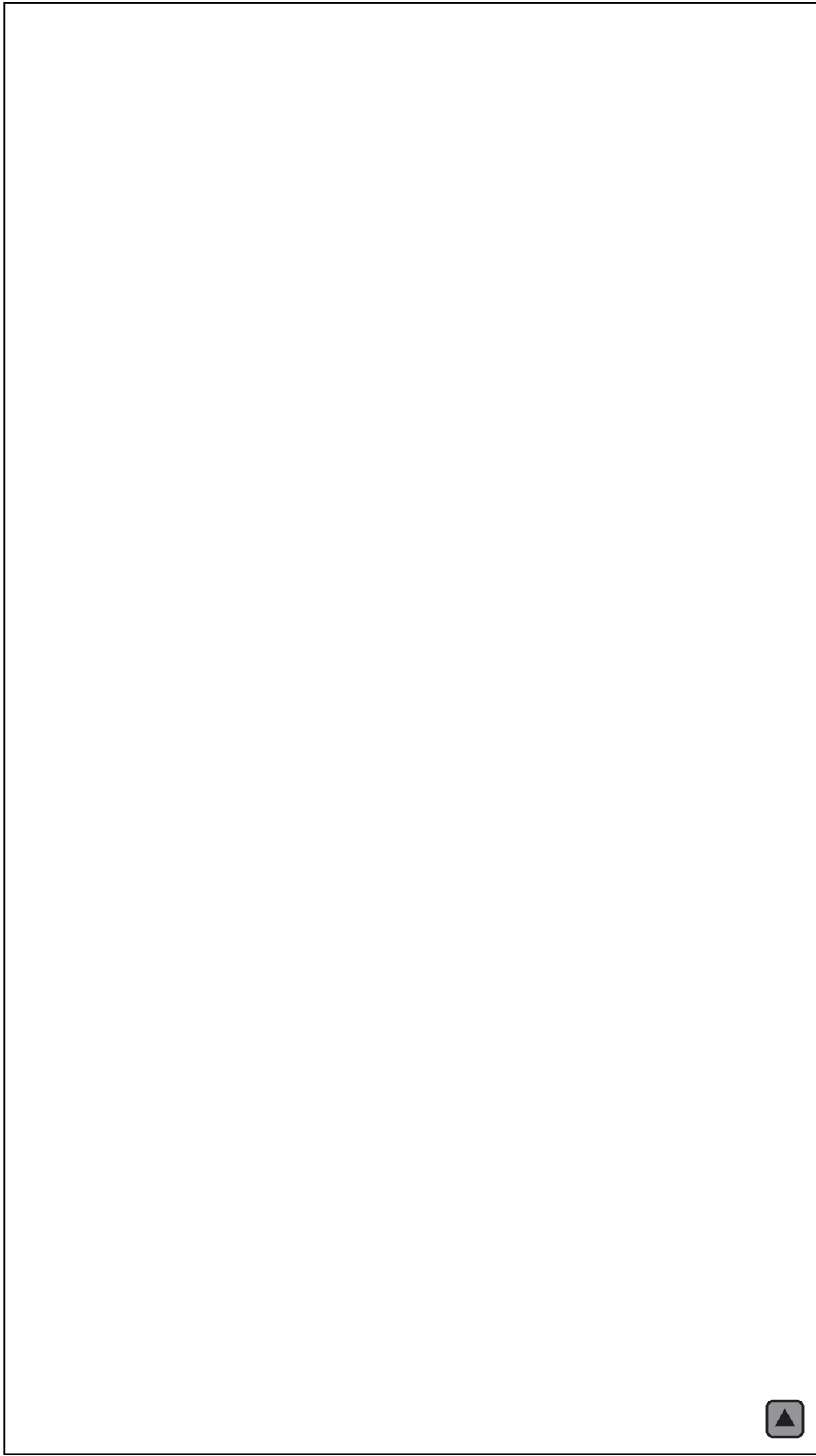




# PART 3.....

## Where We Are Going: Goals and Priorities

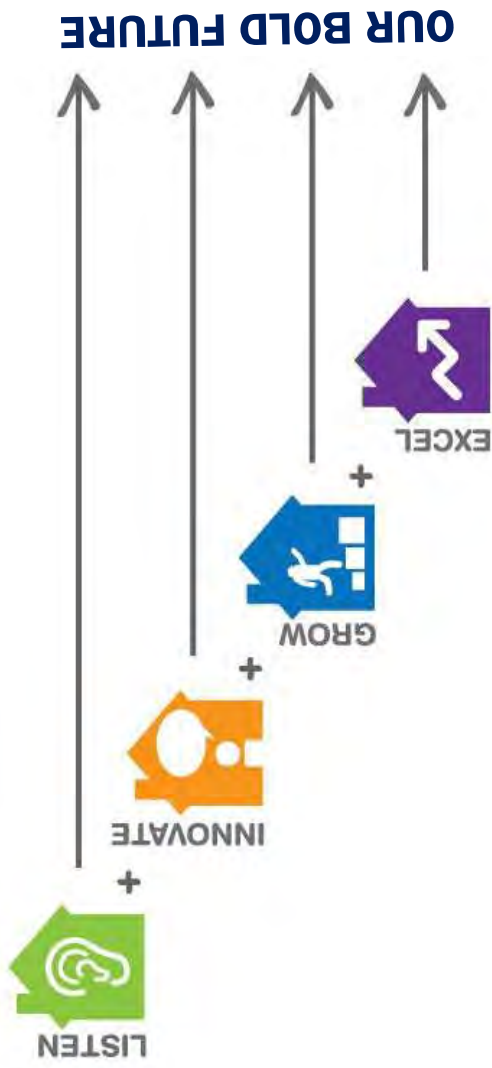
# IT'S TIME TO PIVOT



# New Strategic Framework

Our mission will be guided by and evaluated against how well we as employees drive these four basic corporate measures of JEA's value:

- Customer Value
- Financial Value
- Community Impact Value
- Environmental Value



# Guiding Principles

“Improve Lives”

## **OUR VISION**

Improve lives by accelerating innovation

## **OUR MISSION**

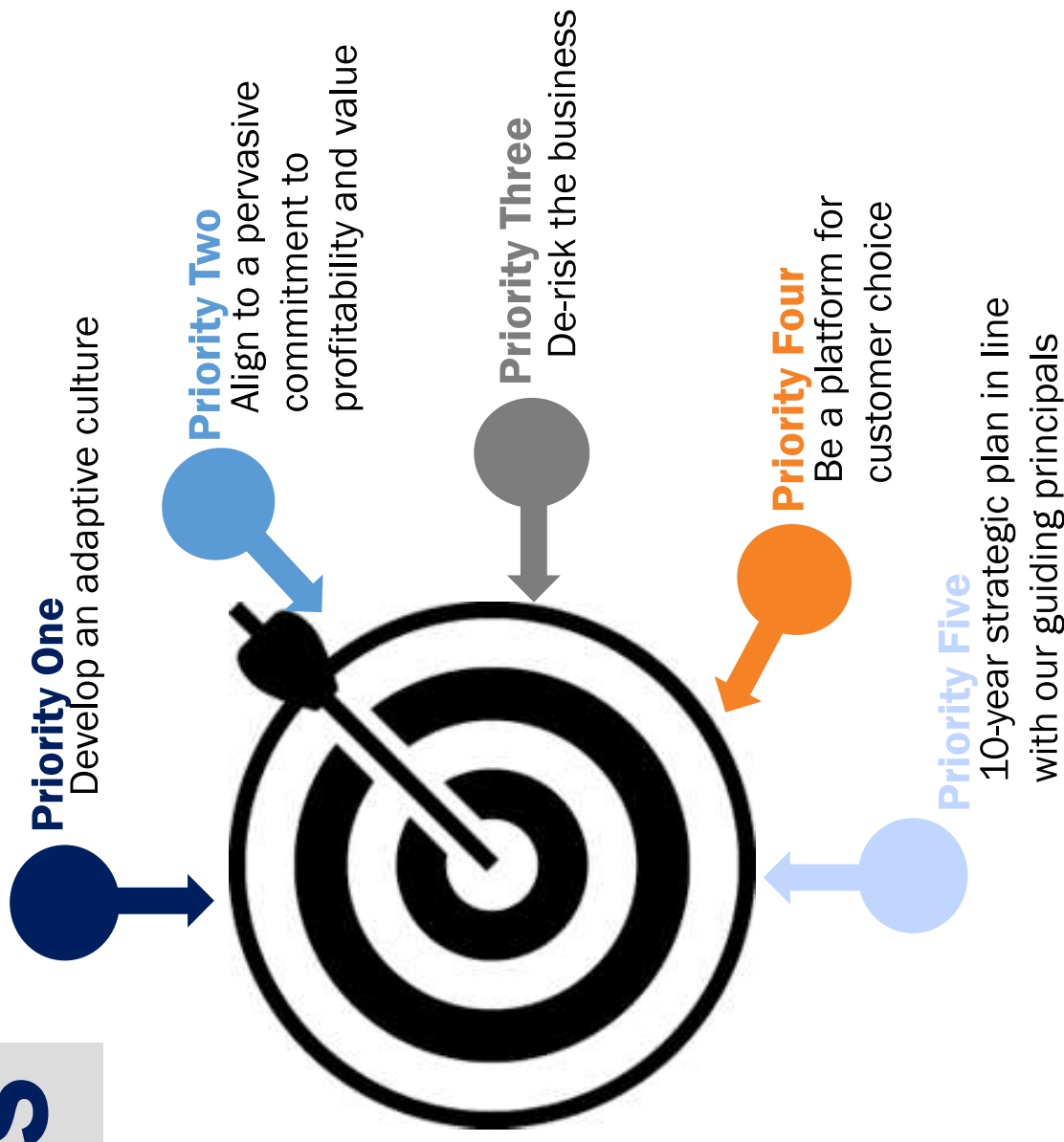
Provide the best service by becoming the center of our customers’ energy and water experience

## **OUR CORE COMPETENCIES**

- Deliver an unparalleled customer experience
- Work together to elevate the entire team
- Innovate and evolve to match our customers’ needs with market trends

# FY19 GOALS

## Our Five Focus Areas That Are Necessary For Future Success



# Points of Concern

- **Maintaining alignment of Stakeholders and focus on corporate measures will be critical**
- **Time to ‘pivot’ is critical for JEA in updating business strategy and plan**
- **Culture**
- **Capital**
- **City Council and Community engagement on future of JEA will be necessary to migrate business**
- **Vogtle will weigh on JEA and our customers**

# Priority One:

Develop an adaptive culture.

# Our Cultural Values

Safety  
Service  
Growth<sup>2</sup>  
Accountability  
Integrity  
*Ideas*



## **STOP**

### **Working Not To Fail**

A culture where individuals are motivated by risk aversion striving not to fail rather than to succeed



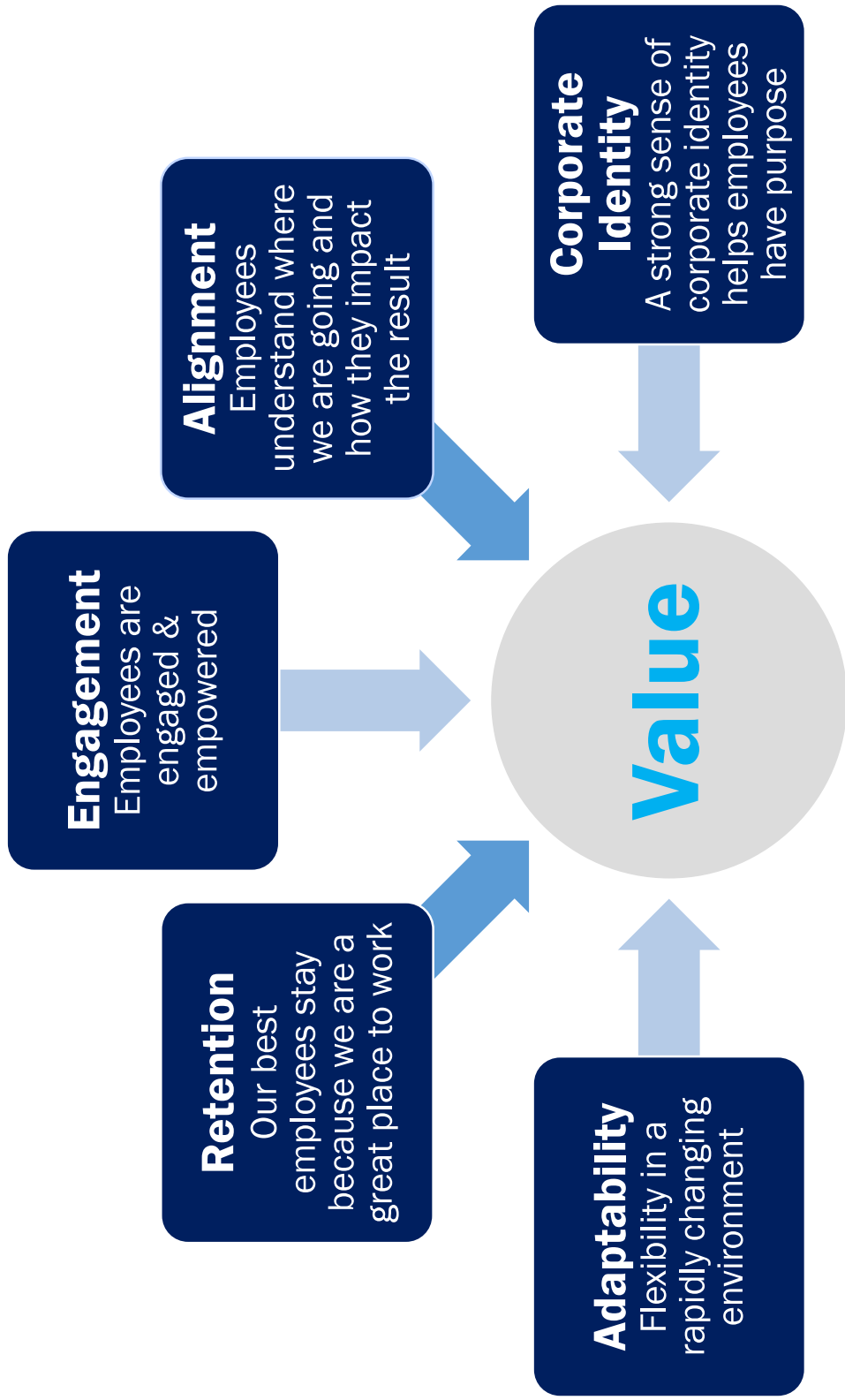
## **START**

### **Driving Towards Success**

Be willing to take appropriate and calculated risks to achieve extraordinary results

# **Our Mantra To Realize An Adaptive Culture**

# Why An Adaptive Culture Matters



# Priority Two:

Align to a pervasive commitment to  
profitability & value.

# Maximize Each of the Four Corporate Measures of Value

## Customer Value



Provide JEA customers with safe and reliable electric, water and wastewater **services at a rate structure equal to or less than industry average**



Maintain **customer service standards and experience** within the top quartile of the industry



Expand our trusted partner **relationship with our customers**

## Financial Value



**Maintain financial performance metrics** necessary to preserve AA3/AA- ratings, or similar comparable risk measures as adopted and deemed appropriate by JEA



**Establish growth initiatives** to drive values and efficiencies with respect to electric, water, sewer, natural gas and other utility services, systems and/or products

## Community Impact Value



Establish and maintain **open, transparent communication** with employee, customer and all our stakeholders



Continue investment and leadership of **economic development within Jacksonville**



Continue and drive **employment within the region**



Foster an environment of **engaged employees** that treat JEA as owners



Preserve the level of **financial contribution of JEA to the city**

## Environmental Value



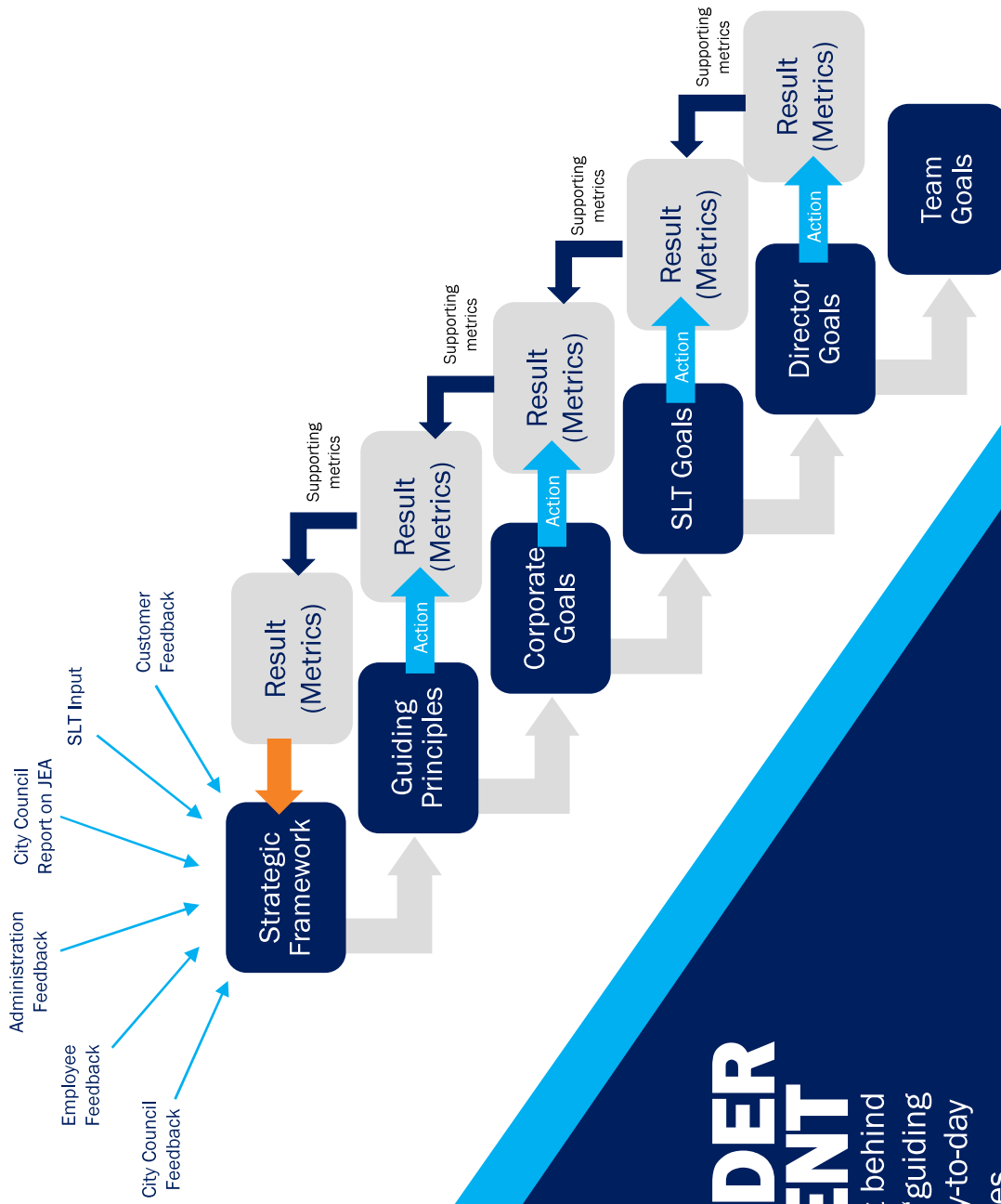
Maintain **compliance with all regulations** and meet or exceed industry standards that impact the environment



Establish and lead a **sustainability program** for the benefit of the region



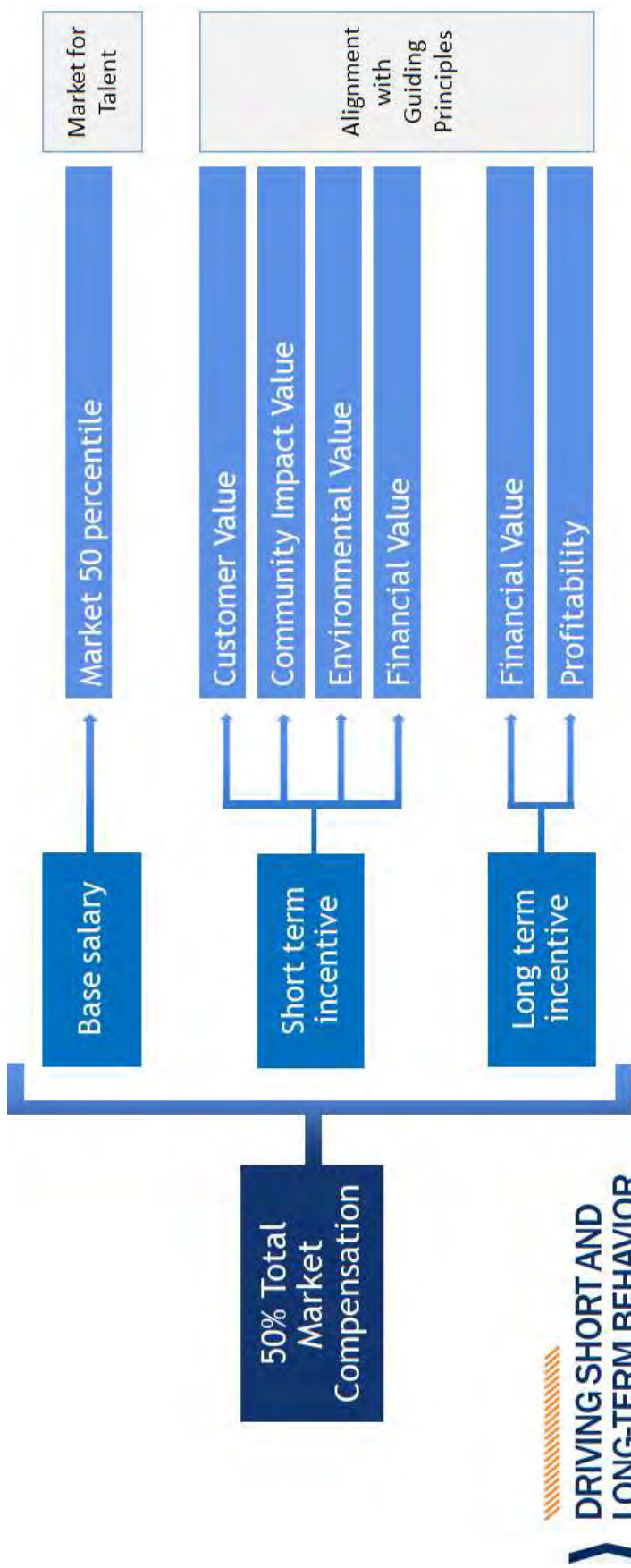
Set an example of **environmental stewardship**



# STAKEHOLDER ALIGNMENT

Basic logic of alignment behind “strategic framework,” “guiding principles,” through day-to-day actions of employees.

# Company Culture and Corporate Measures (Customer, Financial, Community Impact and Environmental) will be driven by "Total Compensation Program"



# Priority Three:

De-risk the business.

- Develop the STAR plan
- Hedge our fuel expenses
- Strengthen our PPAs
- Extend our city contribution plan
- Reevaluate our risks for future



# **Strategic & Timely Asset Realignment (STAR) Plan** **JEA's Financial Strength Revised**

## **Approved Plan that increases operating efficiency and reduces corporate risk includes:**

- Increased revolver by \$200 million at same pricing / terms and conditions ✓
- Maintaining solid AA financial credit metrics ✓
- Increase cash flow by an average of ~\$80 million annually through 2023
- Pay off ~\$1 billion of debt by 2023 – all debt maturing before 2028
- Cash funding ~\$1.9 billion in CAPEX for next 5 years
- Increase CAPEX by over 40% over the next 5 years vs. the last 5 years
- No projected base rate increases necessary to execute on plan



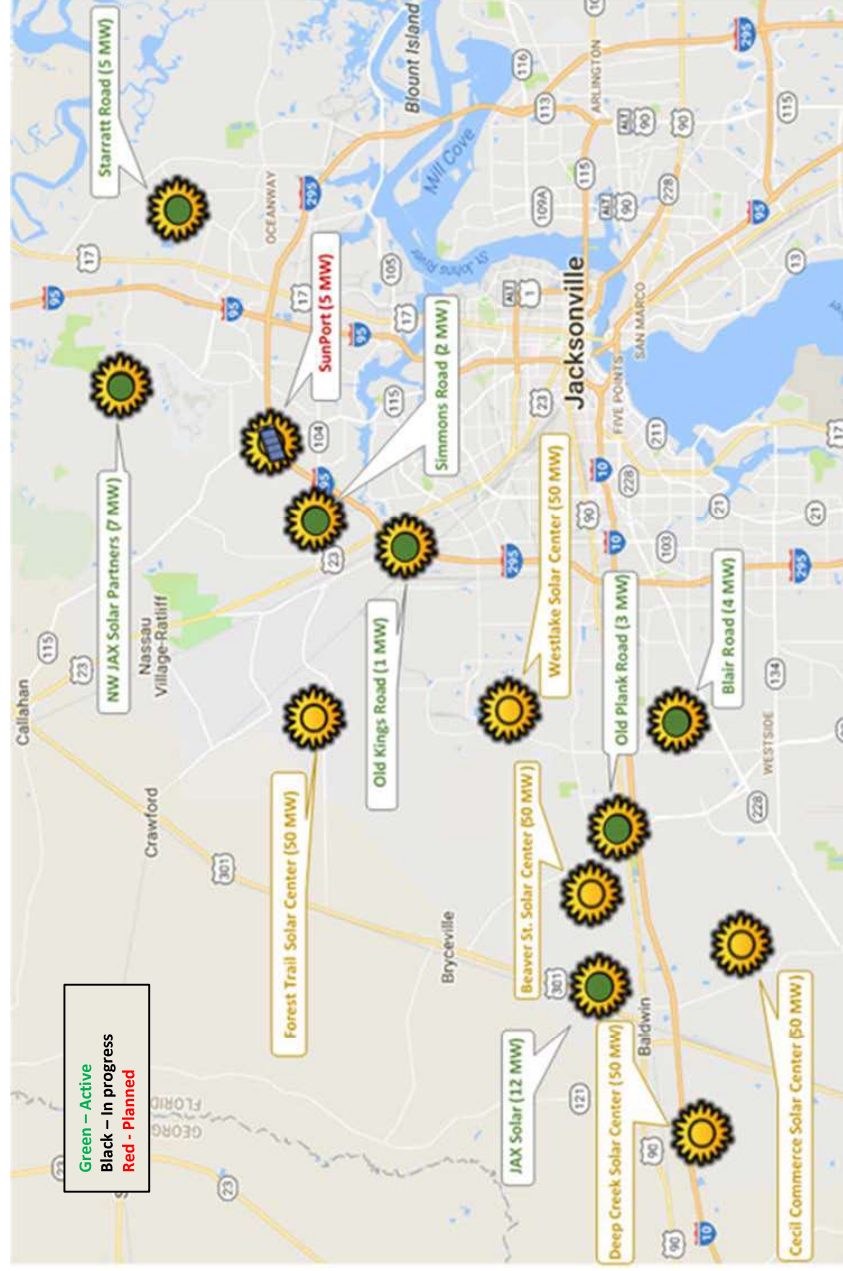
# JEA Current & Future PV Solar Sites

## JEA IS PURSUING A SUBSTANTIAL INCREASE IN SOLAR GENERATION

We have contracted to add up to 250 MW of universal solar by 2022, in addition to 34 MW installed, and 5 MW currently in progress making Jacksonville the largest solar city in the U.S.

### WHAT THIS LOOKS LIKE:

- New sites, land owned by JEA
- Reduces exposure to fossil fuel volatility
- PPA prices below current fuel rate with no escalator providing a 20+ year fuel hedge



# Contribution Agreement Extension

- Extends the terms & conditions of the current agreement through 2023
- Contribution rate stays stable at a rate of prior year plus 1%
- Continue JEA's contribution to COJ of 30.34 metric tons in water quality credits plus an additional 13.6 metric tons in water quality credits each year in perpetuity (the additional 13.6 metric tons comes from the decommissioning of SJRPP)
- Provide an additional \$15 million contribution to the COJ/JEA Septic Tank Phase Out Program. This brings the total COJ and JEA contribution towards the septic tank phase out program to over \$45 million since 2016.
- Provide a one-time \$155,000 contribution for river level monitoring equipment that was damaged during recent hurricanes.
- City Council approved on February 12, 2019
- To be executed February 2019

**This creates a stable operating environment through 2023**

# Enterprise Risk Management



**JEA's Enterprise Risk Management (ERM) program identifies, assesses, measures, and actively manages risk, including mitigation strategies and actions.**

**Our methodology has been modified to better prioritize risks, relative to each other, and better assess reputation impact of a risk event.**

**We have developed a new scoring metric and updated our tier one risks.**

# Priority Four:

Be a platform for customer choice.

# Become a platform for customer choice: Demand Rate Study

## Our First Step:

Create a pricing platform for the future that provides *Revenue Stability* that delivers positive *Customer Impact* while promoting efficient *System Utilization*.

We believe our cost of service should align with our customers use of the electric system. As they reduce usage, we can equally reduce costs to match.

## What We've Learned So Far:

- Demand pricing is less impacted by weather and more stable than kWh
- Customers perceive more and longer demand intervals to be more fair
- Customers like the opportunity to save by avoiding peak periods
- Customers believe that technology (information and control) is needed to manage usage effectively

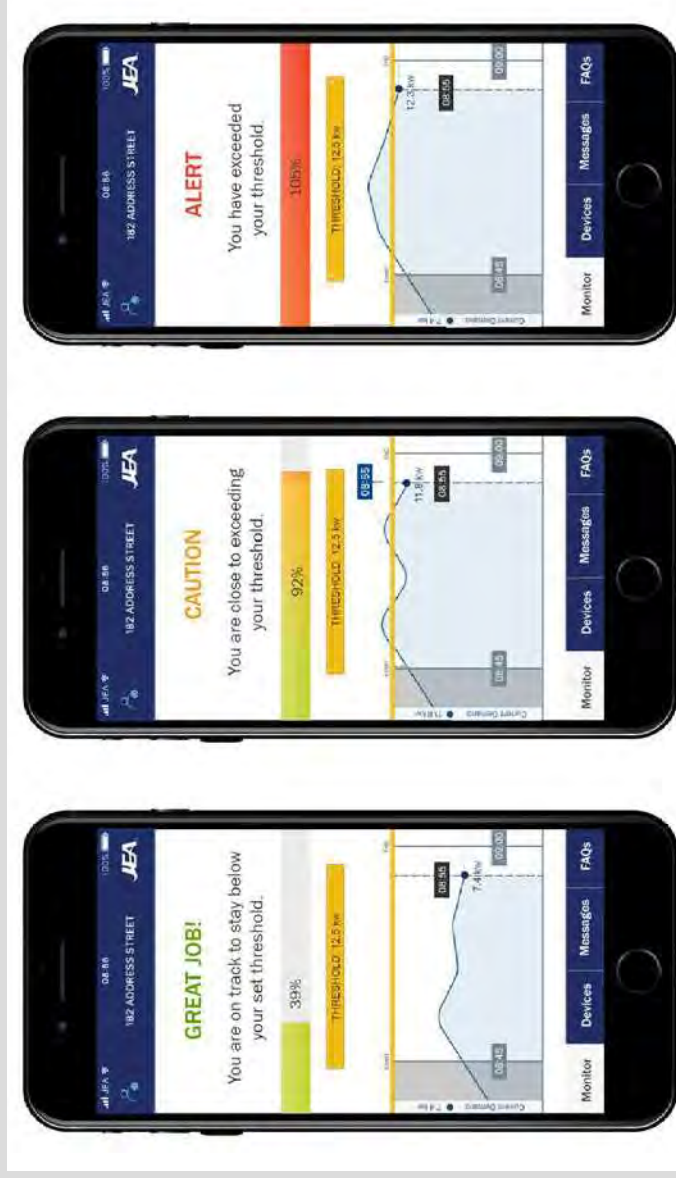


## Enabling Technology Customer Home Energy Management Tool Pilot

We are in the midst of conducting research and development into the enabling technology we feel is necessary to support the customer in a demand pricing scenario.

Our current 250 customer and employee pilot is testing a state-of-the-art Customer Home Energy Management (HEM) tool.

- Our HEM technology includes:
  - Cellular gateway that provides 1 minute data off the meter
  - A JEA app that will monitor energy usage and provide threshold alerts
- Appliance (HVAC and Water Heater) control
  - Fun gamification that encourages education thru entertainment



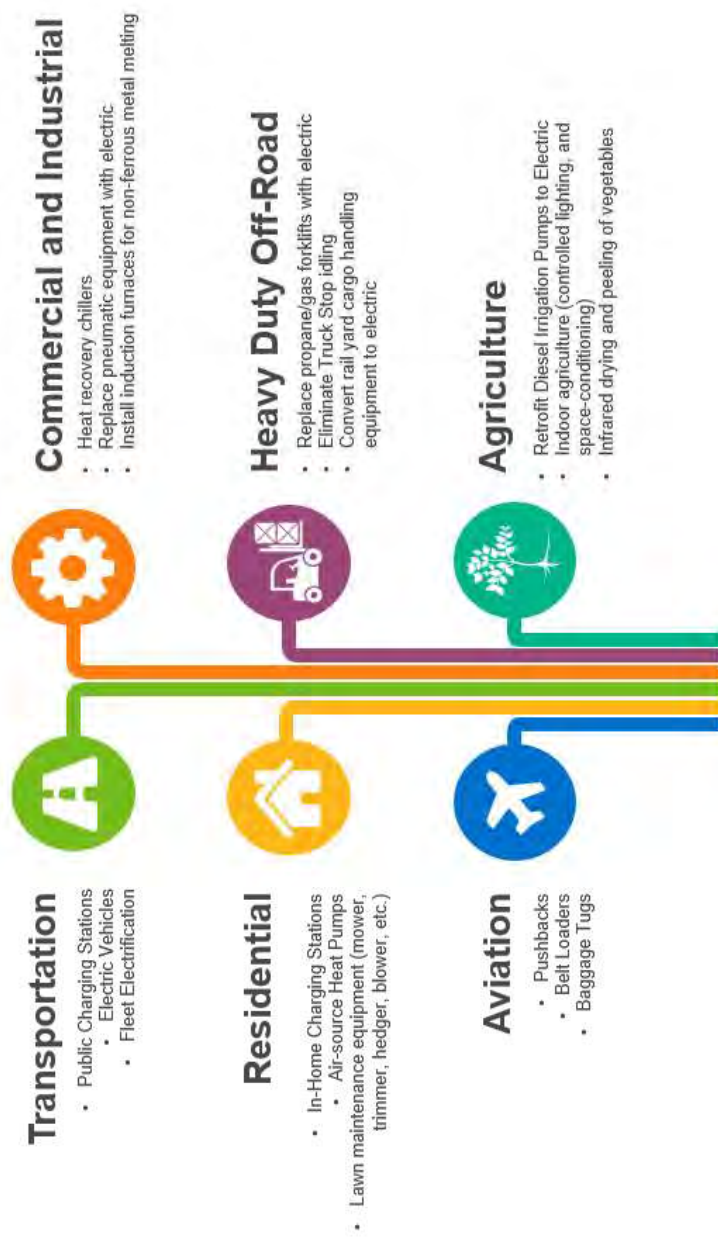
# Become a platform for customer choice: Electrification

**What is electrification?**  
**Electrification is the shift from any non-electric source of energy to electricity at the point of final consumption.**

- National Renewable Energy Lab

**How is it beneficial?**  
**Beneficial Electrification requires that it be cost-effective for JEA, good for all customers (whether they participate in the program or not), and good or neutral for the environment.**

-ICF



There exists an opportunity to increase the scale and scope of both the on-road and non-road program. By adding additional technologies, program design elements, and budget, JEA may be able to:

- Significantly increase the revenue and values from the programs
- Put downward pressure on rates
- Provide a more flexible and efficient JEA load shape
- Significantly reduce JEA's (and its customers') environmental footprint

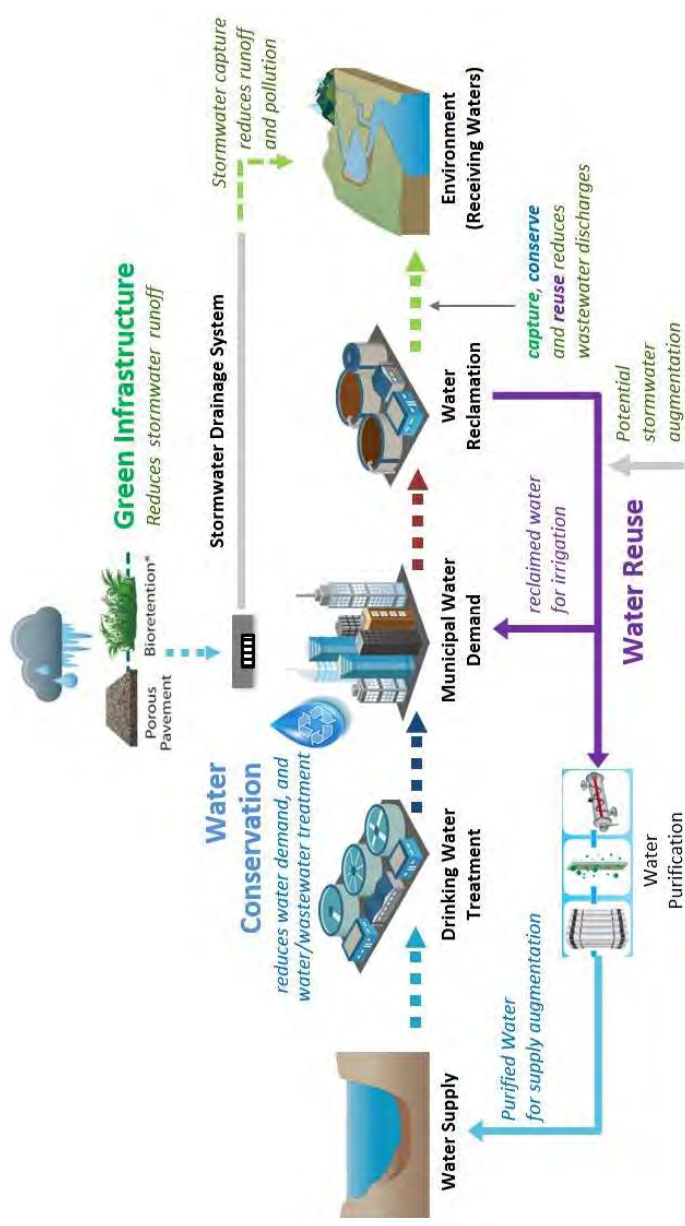
JEA is currently conducting a study with ICF to quantify the costs and risks of pursuing this opportunity. The study will be complete in 2019.

# JEA's Electrification Future



# Become a platform for customer choice: Integrated Water Resource Plan (IWRP)

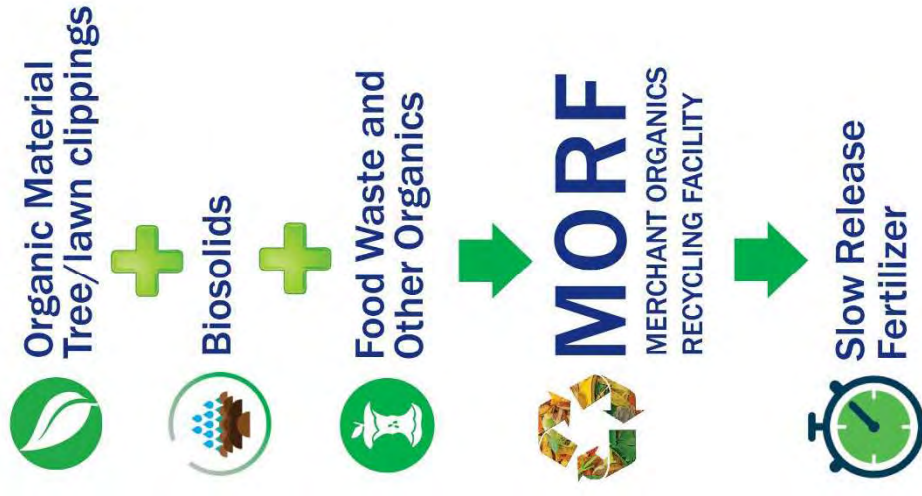
- Water Resources
- Water Supply
  - Quality
  - Quantity
- Water Resources Recovery Facilities



## **PUBLIC-PRIVATE PARTNERSHIP FOR ORGANIC RECYCLING**

**Merchant Organics Recycling Facility (MORF)  
replaces Buckman's pelletizer as the next  
generation in beneficial use**

- Reduces energy demand and landfill waste
- Greater market opportunity due to type of fertilizer produced
- Lower cost to customers and to City of Jacksonville



## Renewable Natural Gas

- Biogas Credit Feasibility Study underway
- Upgrade biogas from Buckman WRF to a purified Renewable Natural Gas (RNG)
- Evaluate injecting RNG into commercial natural gas pipeline
- Optimize production of RNG from WRF digestion processes



*By capturing waste gas produced by wastewater treatment, JEA reduces greenhouse gas emissions and increases financial value*

# Water Purification

*One Potential Alternative Water Supply Option*



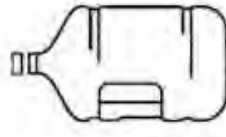
## PHASE 1 RESEARCH & DEVELOPMENT

- Tested two leading technologies at 2 Water Reclamation Facilities
- Report Completion Feb 2019



## PHASE 2 DEMONSTRATION TESTING

- Selected best technology from Phase 1 for optimization
- Immersive public engagement at Demonstration Facility



## PHASE 3 COMMERCIAL IMPLEMENTATION

- Dependent upon Integrated Water Resource Plan insights
- Can be expanded as needed to meet demands

# Priority Five:

10-year strategic plan.

# Step 1: “Agree on how to measure success”

*(Measure what matters to JEA and the Community)*

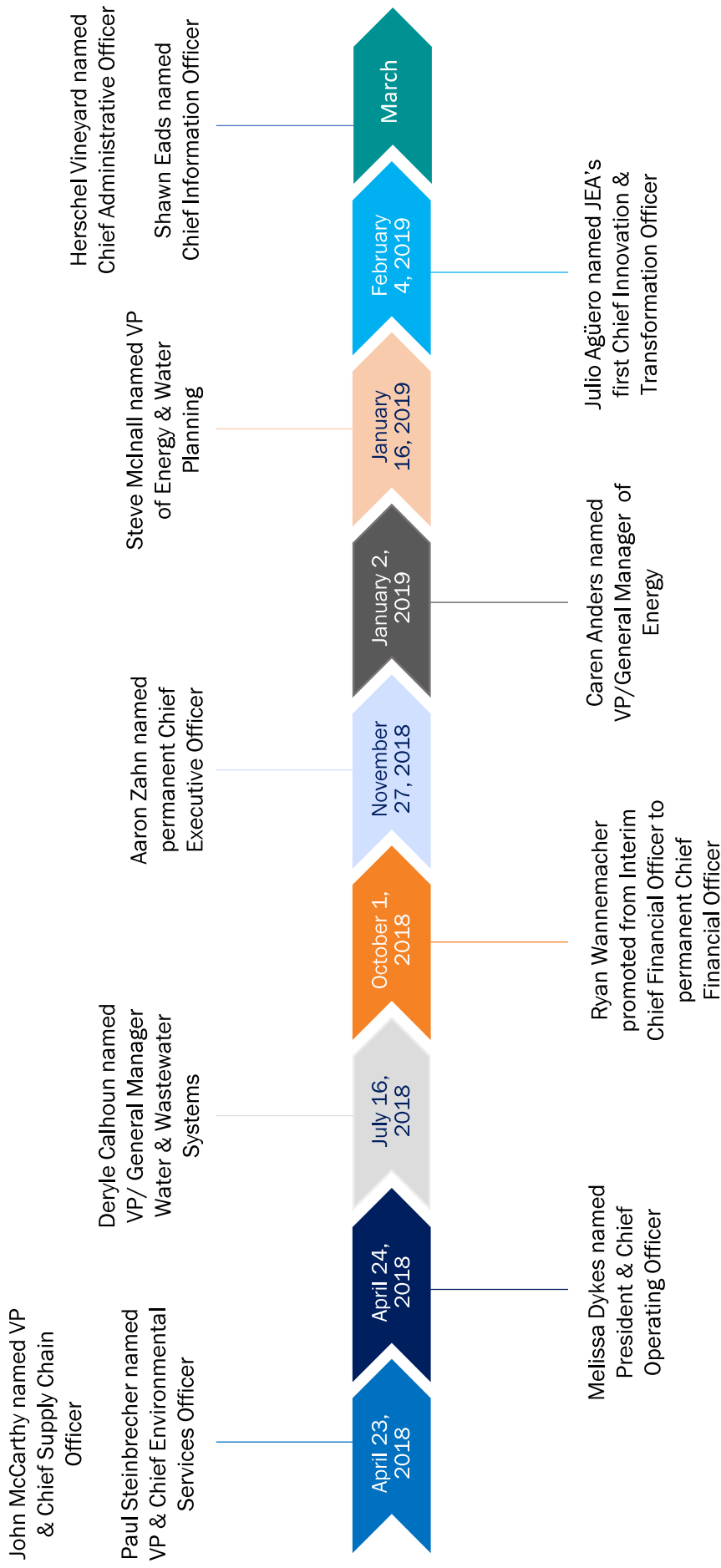


Our mission will be **guided by and evaluated** against how we as **employees drive** these four basic Corporate measures of JEA’s **value**

The fundamental **goal is to maximize** each value both now and in the future.

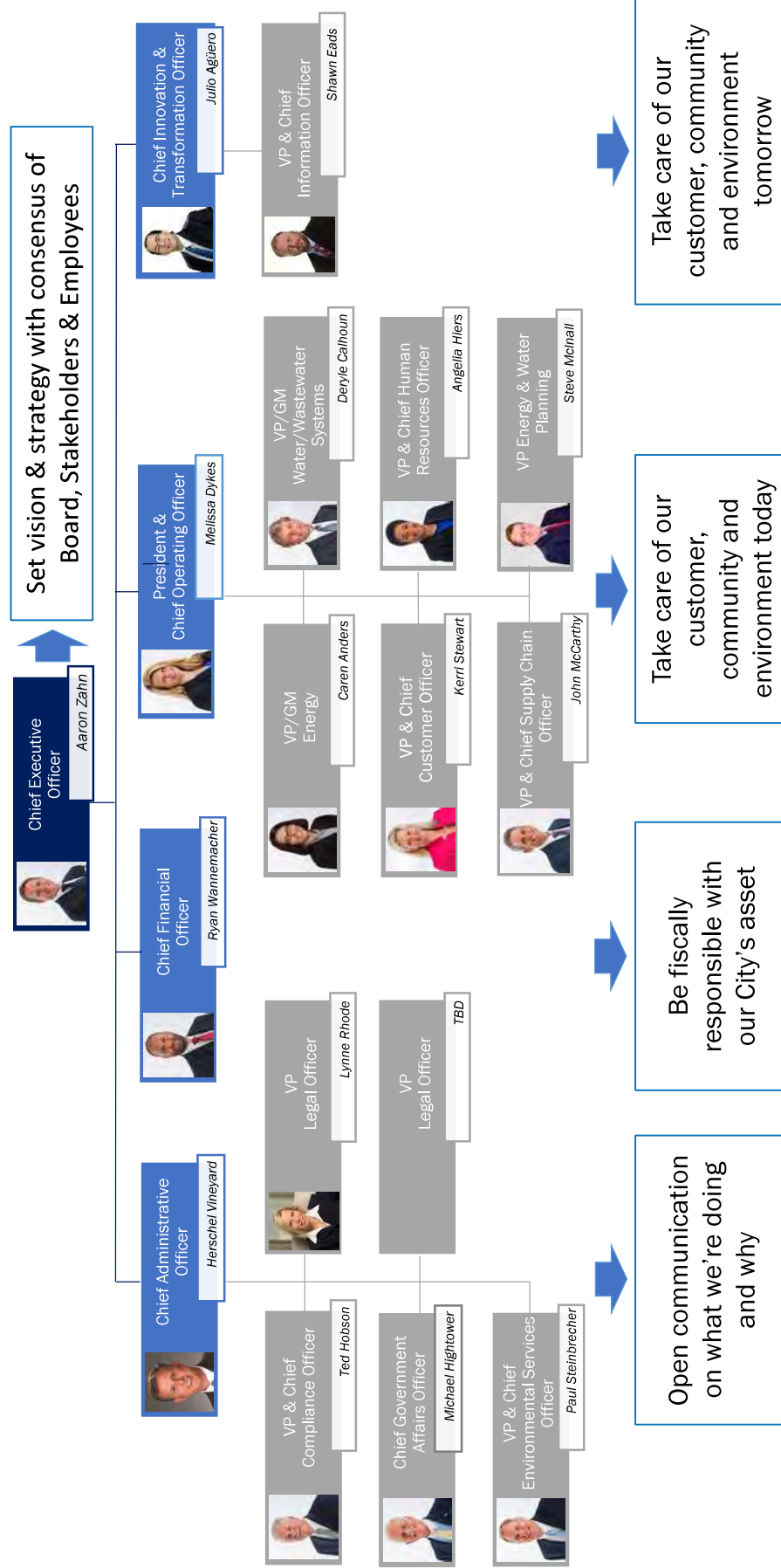
# Step 2: “Get the right team for the job”

## (Senior Leadership Transformation)



# Step 3: "Organize for success"

*(Leadership Designed to Accelerate Innovation)*





# Step 4: “Agree on path forward”

*(Transparent, Inclusive and Thoughtful Process)*

Internal Stakeholder Alignment (Board, Leadership, Appointed Employees, Unions)



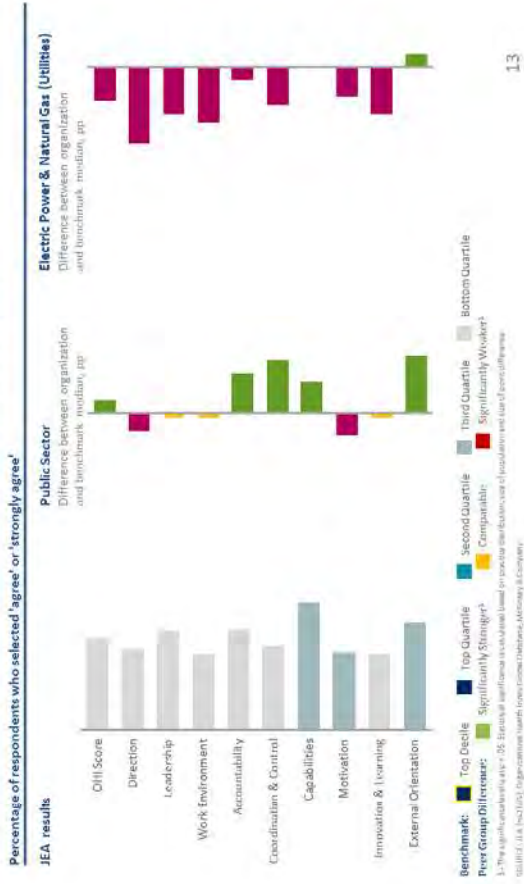
External Stakeholder Feedback (City of Jax, Community Leaders, Customers)

# Step 5: “Measure the baseline”

(Where are we now? What does future look like absent action?)

## PHASE 2a Organizational Health (Complete)

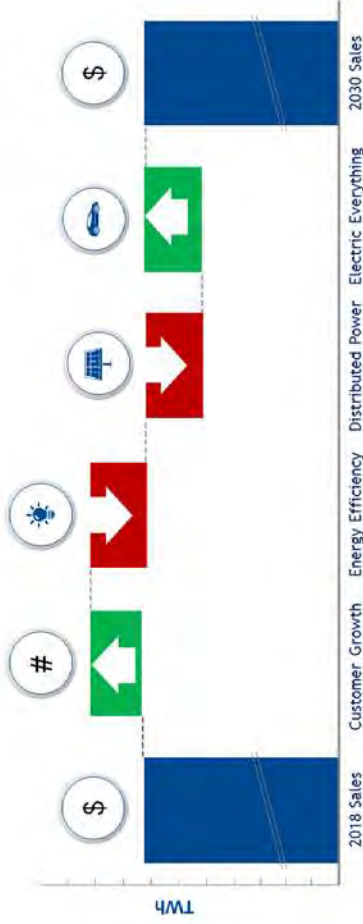
When compared with peers groups who also tend to have weaker health, JEA’s health is still low – especially relative to other utilities



## PHASE 2b Status Quo Baseline (In Progress)

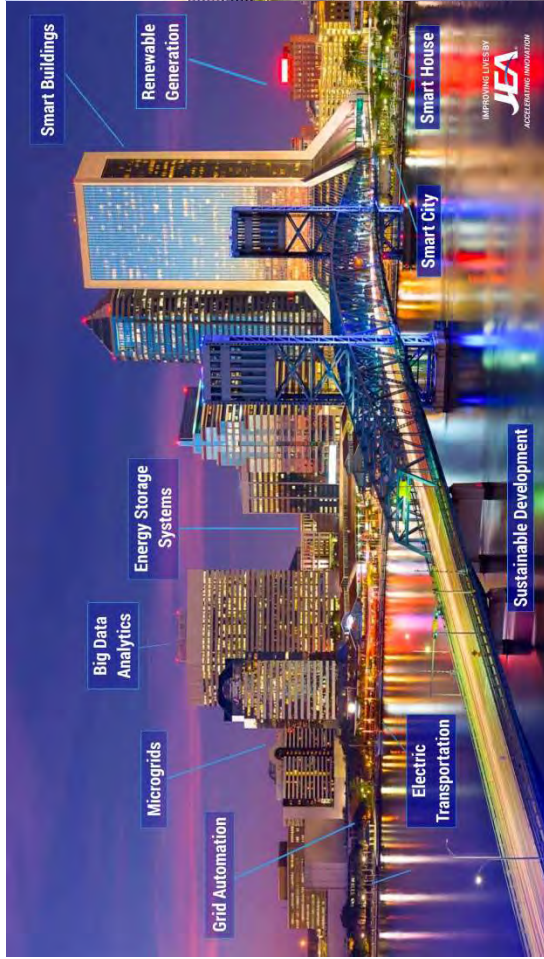
National Trends Impact On JEA By 2030

2030 JEA Energy Sales Drivers



# Step 6: “Establish long-term goals” (Where do we want to be in 2030 and 2050?)

## ACCELERATING ENERGY INNOVATION



## ACCELERATING WATER INNOVATION



# Step 7: “Publish Plan and Steps to Future”

(What do we need to do *first* to ensure success?)



# Strategic Planning Deliverables

**Fully vetted financial forecasts** for status quo scenario and alignment around implication and case for change

**Understanding of JEA current state organizational health** and implications for current and future state performance

**Specific, measurable, achievable targets for JEA performance and health** aligned against JEA's existing strategic framework

**Pipeline of initiatives** with initial estimate of value that exceeds strategic targets including **"quick win" initiatives** with short implementation timelines

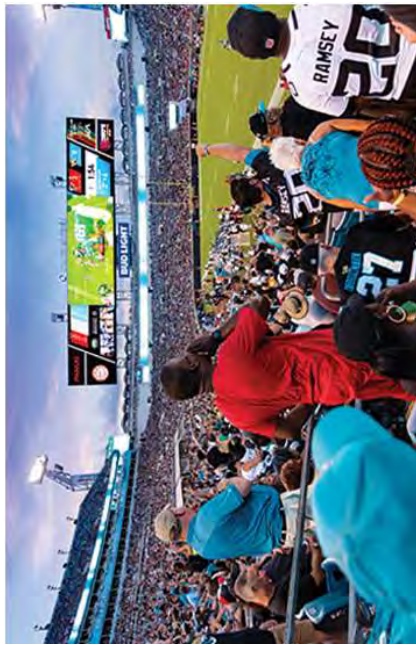
**Identification of risks and constraints** that may impact JEA's execution on its Strategic Plan with clear **mitigation plan**

**Fully executable strategic plan for JEA**





## IMPROVING LIVES BY ACCELERATING INNOVATION



JEA0609

*Accelerating innovation to improve the lives of each and every customer for the benefit of the community as a whole*



**From:** [Maillis, Patricia L. - Director, Employee Services](#)  
**To:** [Wathen, David \(Atlanta\)](#)  
**Subject:** Re: Follow-up from Meeting - FY19 Metrics  
**Date:** Wednesday, March 27, 2019 8:58:46 AM

---

This is not the first time he has put it out there. No comments at this meeting. Believe he uses each opportunity to be transparent and so the topic won't be a surprise. He got board approval to change the philosophy several weeks ago.

Ryan and Aaron's goal is to reach provide market on all levels and include components that make the company on par with IOUs of similar revenues, output and customers.

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Now, the kicker is, the optics. Several years later, constituents pushed back and the plan suspended. Aaron is willing and wants to take the risk on this. He knows to go for the ideal state and if we get push back, we'll deal with it.

Can you give me the specifics on what you need for the financial data for the PU plan and I will get Ryan on it right away?

Pat  
Sent from my iPhone

On Mar 26, 2019, at 9:39 PM, Wathen, David (Atlanta)  
<[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)> wrote:

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Also, do you think you will be able to provide the financial data we requested to help in determining the best approach for valuing a performance share unit?

Thanks.

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Tuesday, March 26, 2019 3:21 PM

**JEA0610**



**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

David,

Attached are the slides from today's JEA Board of Director meeting. Suggest taking a look at slides 22 – 24. Aaron is laying the groundwork on LTI.

---

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**Sent:** Tuesday, March 26, 2019 11:27 AM

**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

Will send you today's pieces from the Board meeting re Compensation. Aaron referenced the methodology today.

Below looks good.

LTI – agree with the below. Strong emphasis on LTI and proposed plan design

Some of my notes from our meeting on LTI:

3 Financial Factors (can be measured over 5 years):

Rates

Net Book Value

Contribution to the City of Jacksonville

Dashboard is centered around the corporate measures of value:

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Financial Value

Environmental Value

Community Impact Value

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>

**JEA0611**

**Sent:** Monday, March 25, 2019 2:40 PM

**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

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Pat:

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- Evolution as to how compensation programs got to their current state
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- Short-term incentive plan design – based on the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?
- Long-term incentive plan design – we will provide a more detailed LTI design given Aaron's feedback around the draft strawman design we shared. It will include target incentive opportunities by level, where applicable, as well as performance measure weightings and a proposed formula for determining a Performance Share Unit (PSU) value. As it relates to the LTI plan performance measures (rates customers pay, change in net book value and contribution to the city), we would look to Ryan to provide guidance on what performance hurdles should be at Threshold, Target and Maximum, as he has insights into historical performance, future projections, business strategy, etc., but we can certainly provide guidance as to what probability payout distributions look a well-designed incentive plan
- Overview of best practices to consider for modernizing total rewards

**JEA0612**

As it relates to determining an applicable formula for valuing a PSU in the long-term incentive plan, we need some additional information. Would you please check with Ryan to see if he could provide us information on key drivers of long-term performance, such as:

- <!--[if !supportLists]-->1) <!--[endif]-->Historical financials, most importantly on book value as of year-end and anything impacting that other than income/surplus generated in a year less any cash contributions/outlays made
- <!--[if !supportLists]-->2) <!--[endif]-->Better understanding (and history) of cash contributions made to City and the basis by which the contribution level in a given year is determined and/or could be evaluated. Percentage of income/surplus or something else. Also understanding of timing on those contributions and how they impact book value – for example, contribution made in 2018 based on surplus generated in 2017 and so are reflected in year-end book value for 2018 but not 2017.
- <!--[if !supportLists]-->3) <!--[endif]-->How “customer rates” are determined and evaluated, along with historical JEA information as well as historical/current information on relevant comparators or index
- <!--[if !supportLists]-->4) <!--[endif]-->Any information on forward looking projections/estimates on these same items.

We are working to deliver the next draft of materials by the end of next week, assuming we get the financial data requested above. Please let us know if we need to schedule a call to talk through these additional data needs or if we are missing anything in the materials we are pulling together for the committee meeting.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Monday, March 25, 2019 10:08 AM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Importance:** High

David,

Angie received some feedback from Aaron today regarding our meeting last week.

Aaron indicated he had expected to receive an example of a plan (not just a few options). Based on the feedback and input that you received in the meeting last week, will you be providing a draft plan that will detail more of the values by grade or level, the

**JEA0613**

metrics, thresholds, timing of payouts, etc.? If so, what is the timing on receipt of this information?

Pat

---

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, March 21, 2019 8:58 AM  
**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

As LTI structure takes form, I think we will need to state at some point where gaps in STI may be made up in LTI or reference Total Comp so that we also have flexibility to shift the mix, if the company chooses. It seems the message will or should focus on Total Comp (not just the cash components).

Again, thanks. Talk soon.

Pat

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>  
**Sent:** Wednesday, March 20, 2019 6:41 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
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**Subject:** RE: Follow-up from Meeting - FY19 Metrics

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

Nice to meet you yesterday. We enjoyed getting to meet the JEA team. Also, thanks for the update on the STI plan. We are working through assessing the gaps to market based on current STI levels, not proposed, but will likely be in touch with you and Scott if we have any follow up questions or data needs.

Best regards,

David

---

**JEA0614**

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Wednesday, March 20, 2019 9:24 AM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>  
**Subject:** Follow-up from Meeting - FY19 Metrics

David and Andrea,

Thank you for a great meeting yesterday.

As follow-up to our conversation yesterday, wanted to provide some clarification on the current state of the STI plan. There have been no changes to date in total opportunity for employees. There were originally discussions regarding not having a payout for 2019, but this was not communicated to employees and so employees are thinking it is status quo. At the beginning of the performance period, October 1, 2018, there was clear communication regarding the 2019 goals. These were new in many respects so it was not clear (from my perspective as to which of the goals would translate to the STI). Last week, I was asked to incorporate the new goals into the plan. No change in payout values, (except maybe the executives – this discussion has not been finalized).

Providing you the new dashboard so you can see the goals (the first 21, in four categories that align with our Corporate Measures of Value; Customer Value, Financial Value, Environmental Value and Community Impact Value. To the far right of the attached spreadsheet, is Compensation's calculations re the payout values for each metric based on the achievement of a meets or exceeds. The leadership team has confirmed that we will have these 21 measures. This is Comp's draft for cost modelling.

The one item that is up in the air is a comment made by the team last week re "make the spreads between the meets and exceeds wider".

The plan has progressed over the last 5 years from a set payout based on achievement of 5 operational measures, then \$500 - \$3000 for all employees, much like a Profit Sharing Plan with little to no differentiation and below the market for all managers and above. In 2014, we incorporated individual performance factor for the appointed further differentiating the payout between line and management employees. In 2016, we increased the payouts further for the management to director level (and have done minor fine tuning since). We were not able to do this for the SLT due to optics, so we focused on making sure their base pay was at or moving towards 50<sup>th</sup> percentile. Today, the difference between a meets and exceeds for non-SLT is 160%. I am going to pitch that this is wide enough for now and that we don't want to make changes based on this project. However, I do not think that we will win this battle with the SLT pieces.

As we have discussed, with the addition of a broad based LTI plan, the LTI component can make up that difference in market value for the non-management and lower level managers that don't normally receive LTI in the market place. We probably still need to



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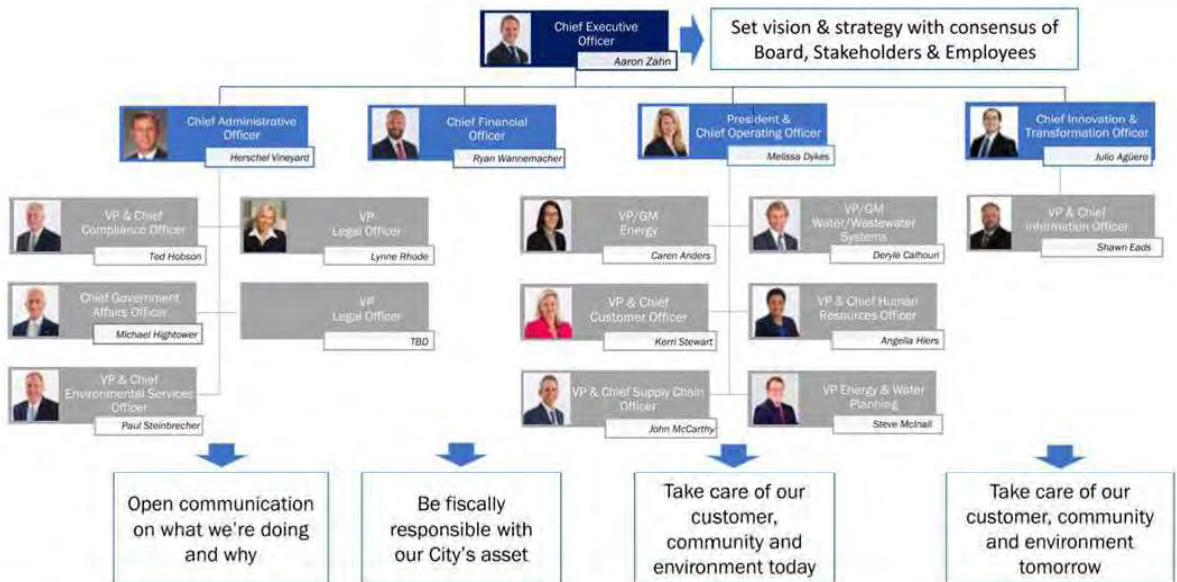
**From:** [Dykes, Melissa H. - President/COO](#)  
**To:** [Stewart, Kern - VP & Chief Customer Officer](#)  
**Cc:** [Goldberg, David M. - Director Customer & Community Engagement](#)  
**Subject:** KW - would you please edit based on your recollection of the meeting? Thanks.  
**Date:** Wednesday, March 27, 2019 2:34:23 PM

Managers,

Each month Aaron and I meet with Union Leaders to keep them apprised of developments in the business and hear the concerns they have from their members. The purpose is to develop relationships with individual union leaders while encouraging them to flex their leadership and communication capabilities with their membership. This note summarizes what we discussed with union leaders at yesterday's meeting.

- We've heard the feedback "loud and clear" that employees want more communication from us, and therefore asked representatives from our communications team to join the meeting. With their expertise we can better design communications to reach more employees more effectively in a more timely manner.
- Herschel Vinyard will be joining our team on Monday, completing our SLT organizational structure. Herschel is a former secretary of the DEP and an expert in state-wide water issues. Our leadership team is now divided into four functions: Taking Care of the Customer, Community, and Environment Today (Melissa Dykes, President/COO), Taking Care of the Customer, Community, and Environment Tomorrow (Julio Romero Agüero, Chief Innovation & Transformation Officer), Open Communication on What We're Doing and Why (Herschel Vinyard, Chief Administrative Officer), and Be Fiscally Responsible with Our City's Asset (Ryan Wannemacher, Chief Financial Officer). The chart below was included in the Board presentation "Year in Review" at this week's Board meeting.

## Step 3: "Organize for success" (Leadership Designed to Accelerate Innovation)



- We also recapped a Board discussion: Where are we going? The slide below was discussed with the Board and illustrates where we are early in the process and what comes next. We have established a baseline in our cultural health and are now working to establish a baseline for the business. Once we have both baselines, we will focus on where the business is headed in the next step and identify which cultural practices are critical to the success of that path. Eventually culture and business strategy merge, where we develop tactics for execution of business strategy (the "what") and the cultural elements we can drive through those tactics (the "how").



## Step 4: “Agree on path forward” (Transparent, Inclusive and Thoughtful Process)



- Total compensation strategy update: Market analysis is coming over the next couple months. Long-term compensation is tricky: we are creating a new and unique instrument which takes some time. Please be patient.
- Seeing senior leaders out in the field remains important to union members, particularly in informal settings. Communications are requested to be accessible and user-friendly. More focus on successes, and raise awareness of JEA’s news channel on YouTube.
- Ask: If you have ideas about tactics please send them to Julio.

**From:** [Wathen, David \(Atlanta\)](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Date:** Wednesday, March 27, 2019 3:25:34 PM

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[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

Thanks for the update. I think model Ryan provided today is good for now. We will review that and let you know if we have any questions.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [mailto:mailpl@jea.com]  
**Sent:** Wednesday, March 27, 2019 8:59 AM  
**To:** Wathen, David (Atlanta) <david.wathen@willistowerswatson.com>  
**Subject:** Re: Follow-up from Meeting - FY19 Metrics

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Pat  
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**JEA0620**

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**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

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**JEA0621**

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**Sent:** Monday, March 25, 2019 2:40 PM

**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

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**JEA0622**

grade what base salary, short-term and long-term incentive opportunities should be

- Short-term incentive plan design – based on the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?
- Long-term incentive plan design – we will provide a more detailed LTI design given Aaron’s feedback around the draft strawman design we shared. It will include target incentive opportunities by level, where applicable, as well as performance measure weightings and a proposed formula for determining a Performance Share Unit (PSU) value. As it relates to the LTI plan performance measures (rates customers pay, change in net book value and contribution to the city), we would look to Ryan to provide guidance on what performance hurdles should be at Threshold, Target and Maximum, as he has insights into historical performance, future projections, business strategy, etc., but we can certainly provide guidance as to what probability payout distributions look a well-designed incentive plan
- Overview of best practices to consider for modernizing total rewards

As it relates to determining an applicable formula for valuing a PSU in the long-term incentive plan, we need some additional information. Would you please check with Ryan to see if he could provide us information on key drivers of long-term performance, such as:

- 1) Historical financials, most importantly on book value as of year-end and anything impacting that other than income/surplus generated in a year less any cash contributions/outlays made
- 2) Better understanding (and history) of cash contributions made to City and the basis by which the contribution level in a given year is determined and/or could be evaluated. Percentage of income/surplus or something else. Also understanding of timing on those contributions and how they impact book value – for example, contribution made in 2018 based on surplus generated in 2017 and so are reflected in year-end book value for 2018 but not 2017.
- 3) How “customer rates” are determined and evaluated, along with historical JEA information as well as historical/current information on relevant comparators or index
- 4) Any information on forward looking projections/estimates on these same items.

We are working to deliver the next draft of materials by the end of next week, assuming we get the financial data requested above. Please let us know if we need to schedule a call to talk through these additional data needs or if we are missing anything in the materials we are pulling together for the committee meeting.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]

**Sent:** Monday, March 25, 2019 10:08 AM

**JEA0623**

**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

**Importance:** High

David,

Angie received some feedback from Aaron today regarding our meeting last week.

Aaron indicated he had expected to receive an example of a plan (not just a few options). Based on the feedback and input that you received in the meeting last week, will you be providing a draft plan that will detail more of the values by grade or level, the metrics, thresholds, timing of payouts, etc.? If so, what is the timing on receipt of this information?

Pat

---

**From:** Maillis, Patricia L. - Director, Employee Services

**Sent:** Thursday, March 21, 2019 8:58 AM

**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

As LTI structure takes form, I think we will need to state at some point where gaps in STI may be made up in LTI or reference Total Comp so that we also have flexibility to shift the mix, if the company chooses. It seems the message will or should focus on Total Comp (not just the cash components).

Again, thanks. Talk soon.

Pat

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>

**Sent:** Wednesday, March 20, 2019 6:41 PM

**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

**JEA0624**

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Pat:

Nice to meet you yesterday. We enjoyed getting to meet the JEA team. Also, hanks for the update on the STI plan. We are working through assessing the gaps to market based on current STI levels, not proposed, but will likely be in touch with you and Scott if we have any follow up questions or data needs.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Wednesday, March 20, 2019 9:24 AM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>  
**Subject:** Follow-up from Meeting - FY19 Metrics

David and Andrea,

Thank you for a great meeting yesterday.

As follow-up to our conversation yesterday, wanted to provide some clarification on the current state of the STI plan. There have been no changes to date in total opportunity for employees. There were originally discussions regarding not having a payout for 2019, but this was not communicated to employees and so employees are thinking it is status quo. At the beginning of the performance period, October 1, 2018, there was clear communication regarding the 2019 goals. These were new in many respects so it was not clear (from my perspective as to which of the goals would translate to the STI). Last week, I was asked to incorporate the new goals into the plan. No change in payout values, (except maybe the executives – this discussion has not been finalized).

Providing you the new dashboard so you can see the goals(the first 21 , in four categories that align with our Corporate Measures of Value; Customer Value, Financial Value, Environmental Value and Community Impact Value. To the far right of the attached spreadsheet, is Compensation's calculations re the payout values for each metric based on the achievement of a meets or exceeds. The leadership team has confirmed that we will have these 21 measures. This is Comp's draft for cost modelling.

**JEA0625**

The one item that is up in the air is a comment made by the team last week re “make the spreads between the meets and exceeds wider”.

The plan has progressed over the last 5 years from a set payout based on achievement of 5 operational measures, then \$500 - \$3000 for all employees, much like a Profit Sharing Plan with little to no differentiation and below the market for all managers and above. In 2014, , we incorporated individual performance factor for the appointed further differentiating the payout between line and management employees. In 2016, we increased the payouts further for the management to director level (and have done minor fine tuning since). We were not able to do this for the SLT due to optics, so we focused on making sure their base pay was at or moving towards 50<sup>th</sup> percentile. Today, the difference between a meets and exceeds for non-SLT is 160%. I am going to pitch that this is wide enough for now and that we don’t want to make changes based on this project. However, I do not think that we will win this battle with the SLT pieces.

As we have discussed, with the addition of a broad based LTI plan, the LTI component can make up that difference in market value for the non-management and lower level managers that don’t normally receive LTI in the market place. We probably still need to increase some levels of management STI with the addition of the LTI as well.

**Pat Maillis**

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)

<image002.jpg> <image004.jpg> <image006.jpg> <image010.jpg> <image013.jpg>

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**JEA0628**



**From:** [Maillis, Patricia L. - Director, Employee Services](#)  
**To:** [Kendrick, Jonathan A. \(Jon\) - Interim VP & HR Officer](#)  
**Subject:** FW: Updated Committee Meeting Materials  
**Date:** Monday, April 29, 2019 12:29:19 PM  
**Attachments:** [JEA Comp Committee Draft 4.22.19 v2.pptx](#)  
[Comp Committee 1.15.19 Presentation - Total Market Compensation Strategy.pdf](#)  
**Importance:** High

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Jon,

Back in January, Angie directed me to have Willis Towers Watson conduct a Compensation Study of: CEO Compensation; Total Compensation for all employees with a focus on base salary, total cash and total compensation. Additionally they were asked to provide guidance on the design of LTI plans and to make recommendation on the cost and the structure. I can fill you in on the history of work dating back to September 2018 and why we chose WTW.

To date, Aaron does not have a contract. He is seeking to implement / add an LTI plan to our compensation package. Because LTI is rarely found in the government sector, Angie and I sought a 3<sup>rd</sup> party counsel on this, WTW. Typically, Angie would have worked directly with the Compensation Committee Chair and led them through the study for the CEO Compensation and the resultant contract. In the past, WTW has been present at the Committee Meeting and led the discussion with the Committee and had meetings with the Chair prior to the actual meeting. The CEO was not typically in the discussions with the Chair. Last Comp Committee, Aaron indicated that we were going to do this study(see attached ) and that he would not finalize his compensation until the study was complete for the whole company.

Aaron (and Ryan W) received the attached last week. Angie and I reviewed this with WTW prior and made modifications/edits – so the next step would be for Aaron and WTW to have a call to discuss and make the final changes. Compensation Committee is scheduled for May 28 at 1:00.

I do not get the impression that he is happy with the product. Let's plan to talk about this so I can give you the history and put our heads together to make sure Aaron gets the product he is seeking.

Pat

---

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Monday, April 29, 2019 11:22 AM  
**To:** Taylor, Brandi N. - Executive Assistant <taylbn@jea.com>  
**Subject:** FW: Updated Committee Meeting Materials

---

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, April 25, 2019 10:24 AM  
**To:** Zahn, Aaron F. - Managing Director/CEO <[zahnaf@jea.com](mailto:zahnaf@jea.com)>  
**Subject:** RE: Updated Committee Meeting Materials

**JEA0629**

Here is the PPT version as well.

---

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, April 25, 2019 8:51 AM  
**To:** Zahn, Aaron F. - Managing Director/CEO <[zahnaf@jea.com](mailto:zahnaf@jea.com)>  
**Subject:** RE: Updated Committee Meeting Materials

Hi Aaron,

Heard you are traveling. Do you want me to convert the Adobe doc to a PowerPoint? I've also left a physical copy in your office.

Pat

---

**From:** Zahn, Aaron F. - Managing Director/CEO <[zahnaf@jea.com](mailto:zahnaf@jea.com)>  
**Sent:** Wednesday, April 24, 2019 6:25 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Cc:** Wannemacher, Ryan F. - Chief Financial Officer <[wannrf@jea.com](mailto:wannrf@jea.com)>; Strackbine, Scott I. - Compensation Specialist <[strasi@jea.com](mailto:strasi@jea.com)>; Dykes, Melissa H. - President/COO <[dykemh@jea.com](mailto:dykemh@jea.com)>  
**Subject:** Re: Updated Committee Meeting Materials

Can you please get me the ppt? Thanks.

Aaron F. Zahn  
JEA  
Managing Director & Chief Executive Officer  
Email: [zahnaf@jea.com](mailto:zahnaf@jea.com)  
Phone: (312) 286-1040

On Apr 24, 2019, at 8:33 AM, Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)> wrote:

Aaron and Ryan,

Attached is the draft Comp Committee presentation regarding the compensation study and recommendations from Willis Towers Watson. Once you have had an opportunity to review, we can schedule a brief conference call with WTW should there be any modifications needed and discuss Committee prep.

Pat

---

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>  
**Sent:** Monday, April 22, 2019 4:58 PM

**JEA0630**

**To:** Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>; Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Strackbine, Scott I. - Compensation Specialist <[strasi@jea.com](mailto:strasi@jea.com)>

**Cc:** Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

**Subject:** Updated Committee Meeting Materials

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Angie, Pat and Scott:

Attached is the updated committee meeting materials. We incorporated all of the edits we discussed on our last call. Please review and let us know if there are any additional changes.

Best regards,

**David Wathen**

Senior Director, Rewards

**Willis Towers Watson**

5 Concourse Parkway (*Please note new address and work phone number*)

Atlanta, GA 30328

Work: 678.684.0751

Cell: 404.285.9848

Email: [david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)

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<JEA Comp Committee\_Draft\_4.22.19 v2.pdf>

**JEA0631**



**From:** [Maillis, Patricia L. - Director, Employee Services](#)  
**To:** [Kendrick, Jonathan A. - Interim VP & HR Officer](#)  
**Cc:** [Strackbine, Scott I. - Compensation Specialist](#)  
**Subject:** RE: comp draft  
**Date:** Tuesday, May 7, 2019 9:34:51 AM

---

Hi,

Looked at it last night. Sending an email to David at WTW shortly. Will copy you.

Started thinking about page 30 and 31.

I believe that Aaron is seeking to align with the Board's approve compensation philosophy – total compensation at 50<sup>th</sup> percentile. Suggest they remove the **Proposed** and perform the cost calculation based on delta between what we pay today and the market. Assuming we are adopting full market 50<sup>th</sup>. **Please run this by him and I will include this in my email.**

Also made a minor tweak to the p 7 2017 pension change.

- Effective beginning FY18, the defined benefit plan was closed to new hires. All new hires will participate in the new defined contribution plan.

As a note, sometime folks are not aware that typically, each component of compensation is calculated independently because it is submitted separate. Therefore, the variable components of compensation specifically, incentives, total cash and total comp will not be an aggregate of the differences. Data includes those that are eligible but do not receive, those that receive and those that don't have the element of compensation. This is not the issue Aaron is questioning – just offering it as a sidebar fyi.

Pat

---

**From:** Kendrick, Jonathan A. - Interim VP & HR Officer <kendja@jea.com>  
**Sent:** Monday, May 6, 2019 4:35 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** FW: comp draft

---

**From:** Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>  
**Sent:** Monday, May 6, 2019 3:34 PM  
**To:** Kendrick, Jonathan A. - Interim VP & HR Officer <kendja@jea.com>  
**Cc:** Bartley, La'Trece M. - Mgr Executive Administration <bartlm@jea.com>; Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Subject:** comp draft

**JEA0632**



Jon –

See attached. We should talk. I've edited but still have a number of comments "in red"

**Aaron Zahn**

Managing Director & Chief Executive Officer

Direct: (904) 665-4396

Mobile: (312) 286-1040

Fax: (904) 665-4238

Email: [zahnaf@jea.com](mailto:zahnaf@jea.com)

**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** "[Roesle-Parde, Kort Parde](#)"  
**Subject:** RE: CONFIDENTIAL ATTORNEY WORK PRODUCT  
**Date:** Tuesday, June 4, 2019 3:09:40 PM

---

I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. I think if we hit those four general brackets, that will suffice. Any specific program can be analyzed later. Does that make sense?

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Roesle-Parde, Kort Parde <[KParde@coj.net](mailto:KParde@coj.net)>  
**Sent:** Tuesday, June 4, 2019 1:46 PM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you and just received the memo from the other firm.

I will work on this tonight and believe I can answer most of the questions you have posed but any information you can provide me with will really help the end product.

Thank you,  
Kort

*Sent from my Verizon Motorola Droid*

On Jun 4, 2019 1:38 PM, "Rhode, Lynne C. (City of Jacksonville)" <[rhodlc@jea.com](mailto:rhodlc@jea.com)> wrote:

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**JEA0634**

open any attachments unless you trust the sender and know the content is safe.

Thanks Kort. I think there are some key questions/thoughts that need developing.

- (1) You state on p. 4 that statutory language would not permit a bonus based on JEA's overall financial improvement. Why not? This is THE KEY question and needs to be fleshed out. I don't see that restriction anywhere.
- (2) Need to include language confirming (if accurate) that an LTIP award of *cash or stock* to any employee is permissible
- (3) Need to include language/ analysis about how LTIPs are consistent (if accurate) with municipal purpose, public purpose, and ethical considerations
- (4) I don't understand the "consequences" section and think it can come out. We don't need details on specific aspects of the plan at this point. We just need to know if a long-term incentive cash or stock bonus program available to all employees and based on JEA's financial performance is permissible.
- (5) Need statement about relationship between FS 215.425 and Ord Chap 116
- (6) JEA Charter 21.08 gives JEA broad authority over employment policies – I think JEA's Charter (as the relevant Special Law) must be included in the analysis. JEA employees, by Charter, are expressly subject to City Charter Art 16 & 17 (Civil Service, which excludes management).
- (7) While the 943.22 and 1012.02 programs for police and teachers may be examples for a footnote, don't think they (or their restrictions, except potentially to show the lack of such express restrictions on utilities) are really relevant to the analysis
- (8) All of the 116 examples can just be a footnote – don't need the details if they are not relevant to the LTIP.
- (9) Civil Service and union discussions can be shortened to a note about compliance as long as you don't see any specific conflict with an LTIP (they know that CS and Unions are a factor in any bonus program)

Overall, I think they are looking for a more direct answer (yes, no, or maybe as to each aspect) related to the specific contemplated LTIP program. I think the structure of that analysis (considering at each step constitutional, state, and local laws and ethical factors) would be most useful as – (1) Authority for bonus programs by independent agencies generally, (2) general constraints on such programs, (3) authority for and constraints on the LONG TERM (1-3 years) aspect of the incentive program, (4) authority for and constraints on the availability of the incentive program to MANAGEMENT AND ALL OTHER employees, (5) authority for and constraints on use of FINANCIAL PERFORMANCE as the program's metric, and (6) authority for and constraints on the TYPE of the award (cash, stocks, other).

I don't know if you have any availability to discuss before tomorrow, but if so I am generally available today/tonight and can also be reached on my cell – 904-212-7943 – if not, we can discuss tomorrow at 10.

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202

**JEA0635**

Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Roesle-Parde, Kort Parde <[KParde@coj.net](mailto:KParde@coj.net)>  
**Sent:** Tuesday, June 4, 2019 11:39 AM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

As discussed here is the rough draft for us to start with. I look forward to speaking with you tomorrow morning. I have attached it both in word and pdf, just in case it helps.

Kort

*Tracey Kort Parde*  
Assistant General Counsel  
480 West Duval Street, Suite 480  
Jacksonville, Florida 32202

Direct: (904) 255-5079  
Fax: (904) 630-1316  
E-mail: [kparde@coj.net](mailto:kparde@coj.net)

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**JEA0636**



**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** "[Roesle-Parde, Kort Parde](#)"  
**Subject:** RE: CONFIDENTIAL ATTORNEY WORK PRODUCT  
**Date:** Tuesday, June 4, 2019 3:09:40 PM

---

I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. I think if we hit those four general brackets, that will suffice. Any specific program can be analyzed later. Does that make sense?

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Roesle-Parde, Kort Parde <[KParde@coj.net](mailto:KParde@coj.net)>  
**Sent:** Tuesday, June 4, 2019 1:46 PM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you and just received the memo from the other firm.

I will work on this tonight and believe I can answer most of the questions you have posed but any information you can provide me with will really help the end product.

Thank you,  
Kort

*Sent from my Verizon Motorola Droid*

On Jun 4, 2019 1:38 PM, "Rhode, Lynne C. (City of Jacksonville)" <[rhodlc@jea.com](mailto:rhodlc@jea.com)> wrote:

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**JEA0637**

open any attachments unless you trust the sender and know the content is safe.

Thanks Kort. I think there are some key questions/thoughts that need developing.

- (1) You state on p. 4 that statutory language would not permit a bonus based on JEA's overall financial improvement. Why not? This is THE KEY question and needs to be fleshed out. I don't see that restriction anywhere.
- (2) Need to include language confirming (if accurate) that an LTIP award of *cash or stock* to any employee is permissible
- (3) Need to include language/ analysis about how LTIPs are consistent (if accurate) with municipal purpose, public purpose, and ethical considerations
- (4) I don't understand the "consequences" section and think it can come out. We don't need details on specific aspects of the plan at this point. We just need to know if a long-term incentive cash or stock bonus program available to all employees and based on JEA's financial performance is permissible.
- (5) Need statement about relationship between FS 215.425 and Ord Chap 116
- (6) JEA Charter 21.08 gives JEA broad authority over employment policies – I think JEA's Charter (as the relevant Special Law) must be included in the analysis. JEA employees, by Charter, are expressly subject to City Charter Art 16 & 17 (Civil Service, which excludes management).
- (7) While the 943.22 and 1012.02 programs for police and teachers may be examples for a footnote, don't think they (or their restrictions, except potentially to show the lack of such express restrictions on utilities) are really relevant to the analysis
- (8) All of the 116 examples can just be a footnote – don't need the details if they are not relevant to the LTIP.
- (9) Civil Service and union discussions can be shortened to a note about compliance as long as you don't see any specific conflict with an LTIP (they know that CS and Unions are a factor in any bonus program)

Overall, I think they are looking for a more direct answer (yes, no, or maybe as to each aspect) related to the specific contemplated LTIP program. I think the structure of that analysis (considering at each step constitutional, state, and local laws and ethical factors) would be most useful as – (1) Authority for bonus programs by independent agencies generally, (2) general constraints on such programs, (3) authority for and constraints on the LONG TERM (1-3 years) aspect of the incentive program, (4) authority for and constraints on the availability of the incentive program to MANAGEMENT AND ALL OTHER employees, (5) authority for and constraints on use of FINANCIAL PERFORMANCE as the program's metric, and (6) authority for and constraints on the TYPE of the award (cash, stocks, other).

I don't know if you have any availability to discuss before tomorrow, but if so I am generally available today/tonight and can also be reached on my cell – 904-212-7943 – if not, we can discuss tomorrow at 10.

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202

**JEA0638**

Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Roesle-Parde, Kort Parde <[KParde@coj.net](mailto:KParde@coj.net)>  
**Sent:** Tuesday, June 4, 2019 11:39 AM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Subject:** CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

As discussed here is the rough draft for us to start with. I look forward to speaking with you tomorrow morning. I have attached it both in word and pdf, just in case it helps.

Kort

*Tracey Kort Parde*  
Assistant General Counsel  
480 West Duval Street, Suite 480  
Jacksonville, Florida 32202

Direct: (904) 255-5079  
Fax: (904) 630-1316  
E-mail: [kparde@coj.net](mailto:kparde@coj.net)

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**JEA0639**





**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** "[MKirwan@foley.com](#)"; [Lutrin, Jessica](#); [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**Cc:** [Vinyard, Herschel T. - Chief Administrative Officer](#); [KHyde@foley.com](#)  
**Subject:** RE: PUP  
**Date:** Friday, August 23, 2019 2:58:45 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)

---

I would suggest a call, perhaps Monday, to discuss any additional thoughts on the Plan. That way we can save some time and make sure we are all on the same page. I will ask my assistant Jill to work on setting up a call.

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** [MKirwan@foley.com](mailto:MKirwan@foley.com) <[MKirwan@foley.com](mailto:MKirwan@foley.com)>  
**Sent:** Friday, August 23, 2019 2:54 PM  
**To:** [Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>](mailto:jessica.lutrin@pillsburylaw.com); [Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>](mailto:wannrf@jea.com)  
**Cc:** [Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>](mailto:vinyht@jea.com); [Rhode, Lynne C. \(City of Jacksonville\) <rhodlc@jea.com>](mailto:rhodlc@jea.com); [KHyde@foley.com](mailto:KHyde@foley.com)  
**Subject:** RE: PUP

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Thanks Jessica. I would think the carve out for debt should be a bit broader. Perhaps the following: "and (y) the assumption or payment of any principal and interest, as well as payment of any prepayment fees or penalties and other defeasance costs on JEA's bonds and borrowings)..."

I think we should delete the audit requirement since there would likely not be an audit after a sale of the entire utility.

Michael B. Kirwan

Foley & Lardner LLP  
One Independent Drive | Suite 1300  
Jacksonville, FL 32202-5017

**JEA0640**

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---

**From:** Lutrin, Jessica <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)>  
**Sent:** Friday, August 23, 2019 11:21 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer <[wannrf@jea.com](mailto:wannrf@jea.com)>  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer <[vinyht@jea.com](mailto:vinyht@jea.com)>; Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>; Hyde, Kevin E. <[KH Hyde@foley.com](mailto:KH Hyde@foley.com)>; Kirwan, Michael B. <[MKirwan@foley.com](mailto:MKirwan@foley.com)>  
**Subject:** RE: PUP

**\*\* EXTERNAL EMAIL MESSAGE \*\***

As discussed with Ryan and Michael, below are the proposed edits to the definition of "Current Year Value". Any thoughts are welcome.

"Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA's Net Position as shown on JEA's [audited] financial statements immediately following the Closing Date), (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding (x) any public service taxes or franchise fees and (y) the payment of any principal and interest on JEA's bonds and borrowings) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

---

**From:** Wannemacher, Ryan F. - Chief Financial Officer <[wannrf@jea.com](mailto:wannrf@jea.com)>  
**Sent:** Friday, August 23, 2019 10:37 AM  
**To:** Lutrin, Jessica <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)>  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer <[vinyht@jea.com](mailto:vinyht@jea.com)>; Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>; [khyde@foley.com](mailto:khyde@foley.com); [mkirwan@foley.com](mailto:mkirwan@foley.com)  
**Subject:** Re: PUP

Jessica,

Thanks for following up. I agree that it makes sense to clarify that the contribution to the city should not include the debt pay off. It should be any amounts after the payment of debt.

**JEA0641**

Thanks  
Ryan

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On Fri, Aug 23, 2019 at 10:11 AM -0400, "Lutrin, Jessica" <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)> wrote:

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Hi Ryan,

I hope you are well.

I just spoke with Michael Kirwan at Foley and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us? It would be helpful to see your calculations (even if rough) so that we can reconcile the calculations to the formula and adjust the formula in the PUP, if necessary.

Thank you,  
Jessica

**Jessica Lutrin** | Partner

Pillsbury Winthrop Shaw Pittman LLP

31 West 52nd Street | New York, NY 10019-6131

t +1.212.858.1090

[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com) | [website bio \[pillsburylaw.com\]](#)

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**JEA0642**

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an agreement by electronic means.



**From:** [Lutrin, Jessica](#)  
**To:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**Subject:** PUP  
**Date:** Monday, August 26, 2019 6:46:00 PM  
**Attachments:** [imagefd38a4.PNG](#)  
[imageafb4f2.PNG](#)  
[JEA - Long-Term Performance Unit Plan 4819-6312-2076 v.9.docx](#)  
[Redline - JEA - Long-Term Performance Unit Plan.pdf](#)

---

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Hi Lynne,

As discussed, attached please find a revised draft of the plan (clean and a redline). There were no changes to the form of agreement.

Please let me know if you have any questions.

Best,  
Jessica

**Jessica Lutrin | Partner**

Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1090  
[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com) | [website bio \[pillsburylaw.com\]](#)

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**JEA0645**





**From:** [Lutrin, Jessica](#)  
**To:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**Subject:** PUP  
**Date:** Monday, August 26, 2019 6:46:00 PM  
**Attachments:** [imagefd38a4.PNG](#)  
[imageafb4f2.PNG](#)  
[JEA - Long-Term Performance Unit Plan 4819-6312-2076 v.9.docx](#)  
[Redline - JEA - Long-Term Performance Unit Plan.pdf](#)

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Please let me know if you have any questions.

Best,  
Jessica

**Jessica Lutrin | Partner**

Pillsbury Winthrop Shaw Pittman LLP  
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[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com) | [website bio \[pillsburylaw.com\]](#)

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**JEA0647**



**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Cc:** [Kendrick, Jonathan A. - VP & Chief Human Resources Officer](#)  
**Subject:** RE: Confidential - Feedback on PUPs Plan Docs  
**Date:** Friday, September 13, 2019 3:29:02 PM

---

Pat,

Thanks for sending your concerns. Responses below. It is important to note that this plan has been fully vetted, including through four subject matter expert attorneys, prior to be presented to the JEA Board for approval in July.

- 1) Agree that the letter is too technical. It is being revised. It is wholly appropriate to reference the financial statements in the assessment of risks.
- 2) The example is a placeholder in the q&a section that has not been filled in yet but will be completed before the information is distributed.
- 3) This is for tax reasons: risk of forfeiture is a critical fact for tax purposes. Can give you more color if you would like to discuss.
- 4) Yes

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>  
**Sent:** Thursday, September 12, 2019 2:36 PM  
**To:** Rhode, Lynne C. (City of Jacksonville) <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Cc:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <[kendja@jea.com](mailto:kendja@jea.com)>  
**Subject:** Confidential - Feedback on PUPs Plan Docs

Hi Lynne,

I reviewed the PUP docs from the v9/10. From an employee and benefits perspective, here are some concerns:

- 1) The documents read very legalize. Typically there is a Plan document that is very legal and formal in nature (which is appropriate), however, the employee letter and an exhibit(s) would be highlights of interest with references to see the Plan doc. The exhibit should include an example of the how the benefit is calculated: metrics, calculation and potential results. Referencing the Financial Statements is not appropriate.

**JEA0649**

- 2) The Plan does not provide clear calculation of how monies will grow.
- 3) The goals for the Plan as a Retention Tool don't align with a tool where an employee is investing their dollars. There is no Company investment. Usually when there is an investment from the employee it is to ensure success and ownership in the company. The Plan appears to hold employees captive. Understand there are Plans that have provisions to vest, but this is typically where there is an investment made by the company, not the employee. While there are typically penalties associated with certain investments for early withdrawal, e.g., timeframes to retain the investment, I do believe that most investments tools have forfeiture rules, whereby a person may receive a refund, but not a return of your money at \$0 (unless it is a stock and it crashes). Employees who separate from the company whether for cause or voluntarily should have the right to a refund of their money or if the value is less than their purchase, the decreased value. Increased value can have the caveat of vesting or retention.

Example: If an employee voluntarily or involuntarily terminates, they will be refunded 100% of the value of the units at the purchase price. They will not be eligible for any increase in the value. If the value has decreased, the person may only receive the value of the units as of the termination date.

- 4) Does this Plan comply with all applicable non-qualified IRS rules for government Deferred Compensation plans.

**Pat Maillis**

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)

**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** [khyde@foley.com](mailto:khyde@foley.com); "Lutrin, Jessica"  
**Subject:** RE: Edits  
**Date:** Thursday, September 26, 2019 3:11:18 PM

---

Hi Kevin and Jessica,

Just circling back on this. When do you anticipate having a revised PUP booklet for Melissa's review? Also, could we please schedule a call to discuss processes, including the appropriate process for reallocation of any PUPs not purchased in the first round? I am relatively available tomorrow after 11am as well as Monday afternoon and much of Tuesday next week.

Thank you,

Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, September 16, 2019 5:26 PM  
**To:** [khyde@foley.com](mailto:khyde@foley.com)  
**Subject:** FW: Edits

FYI – Per our conversation today, I asked Jessica to get you a redline for your review. Thanks Kevin!

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



---

**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, September 16, 2019 4:01 PM  
**To:** 'Lutrin, Jessica' <[jessica.lutrin@pillsburylaw.com](mailto:jessica.lutrin@pillsburylaw.com)>  
**Subject:** Edits

**JEA0651**

Hi Jessica,

I hope you had a nice weekend! Please see attached comments/edits to the booklet. Could you please review, edit and respond as needed and send a redline to Kevin for his input as well then circle back up with me?

Thank you,

Lynne

Lynne C. Rhode

Vice President and Chief Legal Officer

21 West Church Street Jacksonville, FL 32202

Office: (904) 665-4115

Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)



## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees’ proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this “Plan”) is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.



(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(ii) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(iii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iv) the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(v) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(vi) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any

termination of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules, as applicable, shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date ~~or any~~ and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) “Involuntary Termination” means, with respect to a Participant, a termination of the Participant’s employment by any member of the JEA Group without Cause or due to such Participant’s death or Disability.

(m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.

(n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.

(o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier to occur of the third anniversary of the Purchase Date ~~or~~ and the Closing Date.

(p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.

(q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.

(r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.

(s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.

(t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.

(u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.

(v) “Vesting Date” means the ~~earlier to occur of (i) the first anniversary of the~~ last day of the Performance Period ~~and (ii) the date on which a Recapitalization Event occurs.~~

**SECTION 3  
ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

**SECTION 4  
EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**

- (a) Effective Date. This Plan is effective as of July 23, 2019 (the “Effective Date”).
- (b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## **SECTION 5 VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan and the applicable Agreement.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant’s Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA’s annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant’s employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant’s Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment for any reason shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant’s Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent

unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Civil Service Reversion. If at any time during the period commencing on the date on which an Employee is notified by JEA of his or her eligibility to participate in the Plan and ending on the last day of the Performance Period, such Employee's designation changes from appointed to civil service (whether or not such change is voluntary), the level at which such Employee participates in the Plan shall be adjusted to reflect such change. If such change occurs (i) at any time prior to the Purchase Date, the number of Performance Units that such Employee shall be eligible to purchase shall be reduced to a number of Performance Units that is equal to the number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the date on which such Employee was notified of his or her eligibility to participate in the Plan or (ii) at any time on or after the Purchase Date, but prior to the last day of the Performance Period, the Employee shall forfeit a number of Performance Units such that the Employee shall have purchased a number of Performance Units that is equal to the maximum number of Performance Units such Employee would have been eligible to purchase had such Employee been civil service on the Purchase Date (it being understood that such number of forfeited Performance Units may be zero) and JEA shall refund to the Employee the aggregate Purchase Price in respect of such forfeited Performance Units. Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants in accordance with the terms of this Plan.

(h) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

## **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To ~~receive a Purchase Price~~purchase Performance Units under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments

shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

## **SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units ~~(it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).~~

## **SECTION 8 AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## **SECTION 9 MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the

Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any ~~Agreement~~Agreements are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) This Plan and any Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreements shall mean and include any such successors or assigns. This Plan and any Agreements shall be assigned to and assumed by any successor of JEA (including any organization(s) that succeeds to a substantial portion of the assets and business of JEA) and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor to assume expressly and agree to perform this Plan and any applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of



Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the “AAA”) in accordance with the AAA’s then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the “Arbitrator”). Each party further agrees to pay its or his own arbitration costs, attorneys’ fees, and expenses, unless otherwise required by the AAA’s then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys’ fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant’s termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the “Penalties”), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the

JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

(o) Savings Account. The aggregate Purchase Price paid by the Participants in respect of the Performance Units shall be deposited by JEA into a FDIC-insured savings account. JEA shall be entitled to any interest on the amount deposited into the savings account.

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**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

<b>Summary report:</b>	
<b>Litera® Change-Pro for Word 10.5.0.0 Document comparison done on 9/10/2019 11:06:22 AM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> JEA - Long-Term Performance Unit Plan.docx	
<b>Modified filename:</b> JEA - Long-Term Performance Unit Plan(1).docx	
<b>Changes:</b>	
<u>Add</u>	13
<del>Delete</del>	8
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>21</b>



**From:** [Rhode, Lynne C. \(City of Jacksonville\)](#)  
**To:** ["Lutrin, Jessica"; KHyde@foley.com](#)  
**Subject:** PUP and PUJA  
**Date:** Thursday, October 3, 2019 10:21:46 AM  
**Attachments:** [JEA - Form of Long-Term Performance Unit Agreement AS REVISED \(FINAL\).docx](#)  
[JEA - Long-Term Performance Unit Plan AS REVISED \(FINAL\).docx](#)

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Kevin and Jessica,

Attached are the FINAL versions of the Plan and the Plan Agreement. For purposes of pending memos etc., I wanted to make sure we all have the same final (as revised and housed in our internal JEA folder) documents.

Best,  
Lynne

Lynne C. Rhode  
Vice President and Chief Legal Officer  
21 West Church Street Jacksonville, FL 32202  
Office: (904) 665-4115  
Email: [rhodlc@jea.com](mailto:rhodlc@jea.com)





**From:** [Bradley, Danielle](#)  
**To:** [Dykes, Melissa H. - President/COO](#)  
**Cc:** [Lutrin, Jessica](#); [Hunt, Peter J.](#); [Krawitz, Justin](#)  
**Subject:** PUP Invitation Booklet - Confidential; Attorney-Client and Work Product Privilege  
**Date:** Friday, October 18, 2019 1:18:57 PM  
**Attachments:** [image08e85e.PNG](#)  
[imageea491f.PNG](#)  
[JEA - Long-Term Performance Unit Plan - Invitation Booklet 4816-7518-1216 v.11.docx](#)  
[Redline - JEA - Long-Term Performance Unit Plan - Invitation Booklet.pdf](#)

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[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

*Privileged & Confidential*  
*Attorney-Client Communication and Work Product*

Hi Melissa,

It was great speaking with you. As discussed, please see attached for a clean version of the long-term performance unit plan invitation booklet. Also attached for your reference is a redline against the version most recently circulated to JEA.

Please let me know if you have any questions.

Kind regards,

Danielle

**Danielle Bradley** | Associate

Pillsbury Winthrop Shaw Pittman LLP

31 West 52nd Street | New York, NY 10019-6131

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original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

**From:** [Stewart, Kerri - VP & Chief Customer Officer](#)  
**To:** ["Melissa Stone"; Michael Munz](#)  
**Subject:** Performance Units  
**Date:** Sunday, October 27, 2019 6:14:27 PM  
**Attachments:** [VI. A. 1. Comp Presentation DRAFT 7.19dmgvFINAL.pptx](#)

---

This is the presentation that was given to the board about the Performance Unit Program. While it was approved, the 3 of us need to discuss before November board meeting. k



**From:** [Scheetz, Michael](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** JEA - Performance Unit Plan - Enrollment Material  
**Date:** Monday, November 4, 2019 2:10:43 PM  
**Importance:** High

---

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Pat:

Following our conversation on Friday, I made a number of internal inquiries regarding the preparation of enrollment materials for the new plan. Since the enrollment materials are all generated based on how a plan is setup and established on our recordkeeping we will be unable to have the necessary material in four weeks as it takes 60 to 90 days to establish new plans on the system.

I tried but was not successful in pushing for an exception.

I am heading out for meetings the rest of the day. I will be around most of the day tomorrow.

Regards,

**Michael M. Scheetz**  
**Client Engagement Manager | Government Markets**  
**Workplace Solutions**  
**MassMutual**  
100 Bright Meadow Boulevard | Enfield, CT 06082  
C:(813) 244-0059

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**JEA0670**



**From:** [Scheetz, Michael](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan  
**Date:** Friday, November 8, 2019 10:36:07 AM  
**Attachments:** [image005.png](#)  
[image003.png](#)  
[image006.png](#)  
[image008.png](#)  
[image009.png](#)  
[MassMutual Pricing Proposal for JEA Non-Qualified Plan.pdf](#)

---

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Pat:

I am forwarding to your attention the proposal for the annual recordkeeping for the Non-Qualified Performance Unit Plan. Since we do not know the number of participants that will participate in the plan, we had to make some assumptions. We extracted from the database a list of employees with compensation over \$150,000 with the assumption this group of employees are the most likely to contribute. Based on that extraction we arrived at 37 participants for pricing purposes.

Let me know if you have any follow up questions.

Regards,

**Michael M. Scheetz**  
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---

**From:** Girard, Chad <CGirard@MassMutual.com>  
**Sent:** Friday, November 08, 2019 10:19 AM  
**To:** Scheetz, Michael <mscheetz@massmutual.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Please let me know if you need anything else.

**Chad Girard**  
**Sales Consultant**

**JEA0671**

**Workplace Solutions & Strategic Distribution**

**MassMutual**

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100 Bright Meadows Blvd  
Enfield, CT 06082

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**We are pleased to present the following proposal for JEA Non-Qualified Plan.**

**\$5,500** Annual Applicable Fee using S shares

**This proposal is based on the following information provided to MassMutual:**

**For Profit/Top Hat Plan**

**\$0** Assets

**\$370,000** Cash Flow

**37** Participants

Thank you for considering MassMutual as your retirement plan solutions provider.

We can help drive better outcomes for your client's retirement plan and help their employees retire on their own terms.

We look forward to working with you on this opportunity. For more information or assistance, please contact:

John Dolan, Managing Director, at 413-426-6232

Chad Girard, Sales Consultant, at 860-562-1197



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**JEA0673**





**From:** [Banks Willis](#)  
**To:** ["Melissa Stone"](#); [Stewart, Kerri - VP & Chief Customer Officer](#)  
**Cc:** [Michael Munz](#); [Maddie Milne](#)  
**Subject:** Kerri and Melissa: PUP messages  
**Date:** Thursday, November 14, 2019 2:35:05 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[JEA PUP Postpone\\_key messages\\_DRAFT\\_11.14.19.docx](#)

---

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Kerri and Melissa –

I translated Aaron’s initial PUP letter to OGC into the attached one-page backgrounder and key messages. Michael asked that I send, please see attached.

Thanks!  
Banks

The power of different.

**BANKS WILLIS** // Vice President Corporate Reputation  
w 904.398.5222 c 202.577.5847

 **daltonagency** [\[daltonagency.com\]](http://daltonagency.com)

140 West Monroe // Jacksonville, FL 32202

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**JEA0674**



**From:** [Kendrick, Jonathan A. - VP & Chief Human Resources Officer](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** RE: A Proposal for JEA Non-Qualified Plan  
**Date:** Monday, November 18, 2019 9:42:04 AM  
**Attachments:** [image002.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

---

We should have a longer lead time when it's decided to proceed. And you're right – no longer needed right now. Thanks.

**From:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Sent:** Monday, November 18, 2019 8:21 AM  
**To:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <kendja@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Jon,

If there is an intent to roll this plan out in the future, e.g., 2021, we would prefer 6 mos get contract signed and set-up automated enrollment and administration.

NOTE: assuming we no longer need this at this time.

Pat

**From:** Scheetz, Michael <mscheetz@massmutual.com>  
**Sent:** Friday, November 8, 2019 10:36 AM  
**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

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Pat:

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Let me know if you have any follow up questions.

**JEA0675**

Regards,

**Michael M. Scheetz**  
Client Engagement Manager | Government Markets  
Workplace Solutions  
**MassMutual**

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C:(813) 244-0059

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**From:** Girard, Chad <[CGirard@MassMutual.com](mailto:CGirard@MassMutual.com)>  
**Sent:** Friday, November 08, 2019 10:19 AM  
**To:** Scheetz, Michael <[mscheetz@massmutual.com](mailto:mscheetz@massmutual.com)>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Please let me know if you need anything else.

**Chad Girard**  
Sales Consultant  
Workplace Solutions & Strategic Distribution

**MassMutual**  
C: (413) 386-5658  
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 **MassMutual**

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**JEA0676**

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**From:** [Eads, Shawn W. - VP & Chief Information Officer](#)  
**To:** [Zahn, Aaron F. - Managing Director/CEO](#)  
**Subject:** Random Thought  
**Date:** Friday, November 22, 2019 5:47:05 AM

---

Aaron,

Thinking this morning over coffee and I wonder if the concept of long term incentive is just missing one piece and that is a cap. At GEA we had long term incentive that could pay out more than a target but it couldn't be unlimited. Is there a way to institute a ceiling? Was thinking if we could come up with a solution maybe in Dec the board could modify the system but not eliminate it. Maybe that shows the board believes in the concept and changed a "hole" in the first version.

We still may want to delay implementation until 2021 but it shows a progressive, pro employee stance.

I'm a rookie at the politics but I'm always thinking of ways to figure it out.

Shawn

Sent from my iPhone

**JEA0678**





# JEA BOARD MEETING AGENDA

July 23, 2019 • 9:00 a.m.

21 W. Church Street, 19<sup>th</sup> Floor



I. WELCOME	
A.	Call to Order
B.	Time of Reflection
C.	Pledge to Flag
D.	Introductions
E.	Adoption of the Agenda – Action
F.	Safety Briefing – Aaron Zahn, Managing Director/CEO
G.	Sunshine Law/Public Records Statement – Lynne Rhode, Chief Legal Officer

II. COMMENTS / PRESENTATIONS		
Item(s)	Speaker/Title	
A.	Comments from the Public	Public
B.	Council Liaison’s Comments	Council Member Danny Becton

III. OPERATIONS (DISCUSSION / ACTION)			
Definition: The “Operations” section of the Board Meeting is for business matters requiring Board discussion, Board action, or for matters being submitted to the Board as information only.			
Item(s)	Speaker/Title	Discussion Action/Information	
A.	Consent Agenda – The Consent Agenda consists of agenda items that require Board approval but are routine in nature or have been discussed in previous public meetings of the Board. The Consent Agenda items require no explanation, discussion or presentation and are approved by one motion and vote.		
Consent Agenda Reference Material (Provided in Appendices)			
Appendix A:	Board Meeting Minutes June 25, 2019		Action
Appendix B:	Approval of Bond Counsel		Action
B.	Monthly Reports and Updates – The following monthly reports and updates are submitted to the Board as information only. These items require no explanation, discussion, presentation or action.		
Monthly Reports and Updates (Provided in Appendices)			
Appendix B:	Monthly Financial Statements		Information
Appendix C:	Monthly FY18 Communications & Engagement Calendar and Plan Update		Information
Appendix D:	Sole Source & Emergency Procurement/Procurement Appeals Board Report		Information
Appendix E:	Corporate Campus Update		Information
C.	Monthly Financial and Operations Dashboard	Melissa Dykes, President/COO	Information
D.	Strategic Planning	Senior Leadership Team	Action
	A. Scenario 2A: Traditional Utility Response Implementation Plan	Senior Leadership Team	



# Total Market Compensation Strategy

Performance Unit Plan  
July 2019





**GUIDING PRINCIPLES**  
ACCELERATING UTILITY INNOVATION

**Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*

 **Work together to elevate the entire team**

Core competencies accelerate results



## ELEVATE THE ENTIRE TEAM

1. Ensure JEA’s corporate compensation philosophy is aligned with JEA’s Guiding Principles
2. Encourage long-term culture of value creation
3. Establish formal compensation policy to align behavior to 4 Corporate Measures of Value and market based compensation
4. Ensure policy promotes collaboration to drive Vision and Mission

Employee incentives should drive “value” & “teamwork”

# JEA Board Policy Manual

(Revision to Policy 2.7 adopted by JEA Board on January 22, 2019)

“With respect to employment, compensation, and benefits to employees, consultants, and contract workers, the CEO shall promote a compensation philosophy that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits that align with and drive JEA’s Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.

Total compensation will meet the market (50% percentile), which is where the majority of companies in the industry and geographical area reside. Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives. The 50th percentile pays competitively for behavior that meets expectations. Short term and long term incentives will align to and drive JEA’s Corporate Measures of Value. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

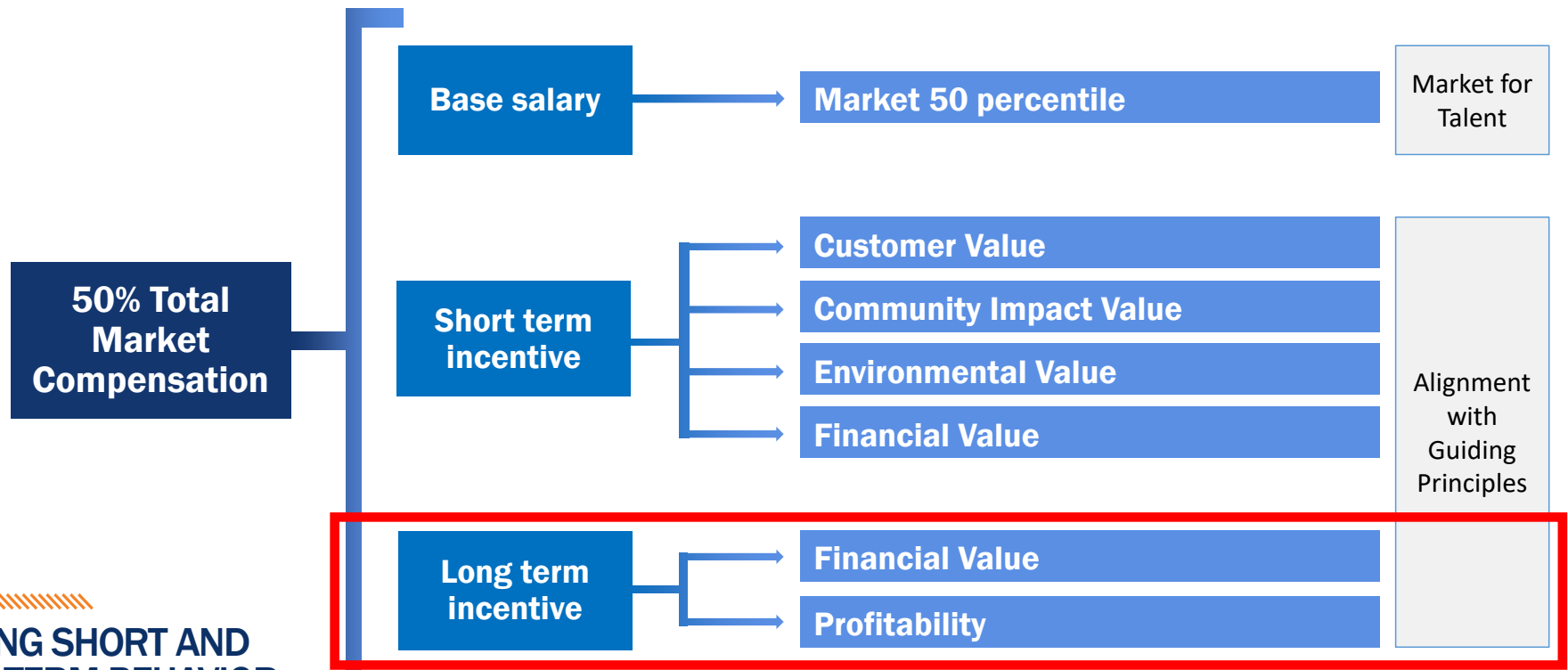
50<sup>th</sup> %



JEA’s total compensation structure should both compete with the market for talent & drive results aligned with “guiding principles”

//////  
JEA’S COMPENSATION  
PHILOSOPHY

# Establish a Formal Compensation Policy to Align with: 1) Talent Market and 2) Guiding Principles



DRIVING SHORT AND LONG-TERM BEHAVIOR

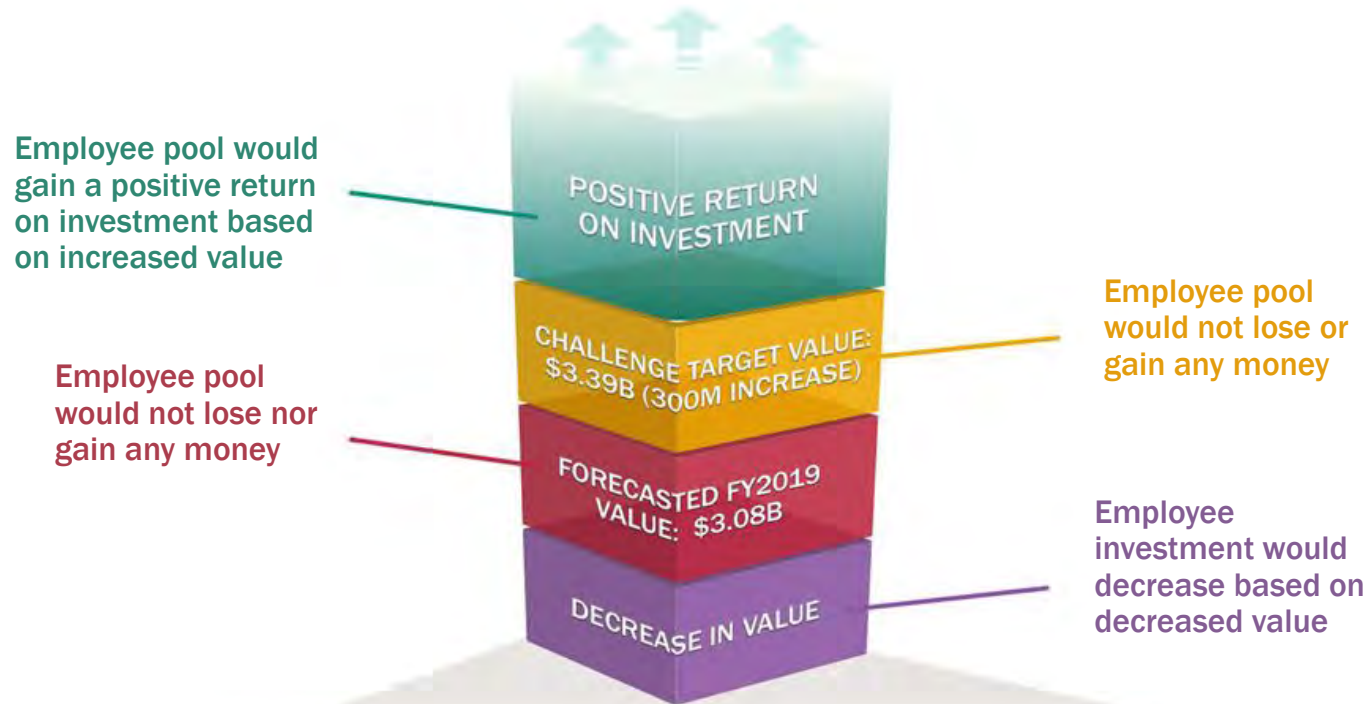


## PERFORMANCE UNIT PROGRAM

- Compensation committee proposes adoption of a performance unit plan (“PUP”) which would be a new benefit program provided to employees
- It is designed to allow employees to participate in the upside and downside as the business changes
- Employees will be eligible to purchase JEA performance units for \$10 per unit
- Units will increase or decrease in value based on the financial performance of JEA over a 3–year performance period
- Employees will be required to remain employed through the end of the performance period to benefit from any increase in value
- For the first performance period (FY2020 to FY2022) it is recommended that 30,000 performance units be made available for purchase



# EXAMPLE REDEMPTION VALUE OF THE PUPS



- Employee PUP pool equal to 10% of value created in excess of the challenge target value
- Employees must increase the value of JEA by at least \$300 million by 2022 to receive the benefit
- Calculated value is sum of the net position, city contribution and any refunds to customers

JEA COMPENSATION COMMITTEE MINUTES  
January 15, 2019

The Compensation Committee of JEA met on Tuesday, January 15, 2019, in the 8<sup>th</sup> Floor Conference Room, JEA Plaza Tower, 21 W. Church Street, Jacksonville, Florida.

**Agenda Item I – Opening Considerations**

- A. Call to Order – Interim Committee Chair Johnson called the meeting to order at 9:00 AM with Committee Member April Green in attendance, as well as Board Chair Alan Howard in observance. Also present were Aaron Zahn, Melissa Dykes, Angie Hiers, Jody Brooks, Mike Hightower, Gerri Boyce, Gina Kyle and David Bauerlein, Florida Times-Union.
- B. Adoption of Agenda – The Agenda was adopted on **motion** by Ms. Green and second by Board Chair Howard.
- C. Approval of Minutes – The May 14, 2018 minutes were approved on **motion** by Ms. Green and second by Board Chair Howard.

**Agenda Item II – New Business**

- A. Introduction – Aaron Zahn, Managing Director/CEO introduced the subjects that would be discussed during the meeting.
- B. JEA Total Compensation Philosophy – Aaron Zahn, Managing Director/CEO reviewed the Total Market Compensation Strategy, which demonstrates a commitment to results and the values of JEA. Mr. Zahn spoke of the process of alignment of stakeholders to JEA’s corporate initiatives and the path taken to gain consensus of all stakeholders to the Guiding Principles and Corporate Measures. He spoke of the need to elevate the entire team and ensure that employee incentives drive value and teamwork. Mr. Zahn then provided the definition of total compensation and short term/long term incentives and provided a recommendation for a change in the JEA Board Policy Manual to incorporate these changes. This item was presented for information to the committee.
- C. 5-to-5 Innovation Program – Melissa Dykes, President/Chief Operating Officer and Angie Hiers, VP & Chief Human Resources Officer presented the 5-to-5 Innovation Program, which is JEA’s new ideas program. With this program, employees are encouraged to present ideas and are rewarded for developing and submitting innovative ideas that benefit JEA and the community. Employees who submit an idea that is implemented will be eligible for incentives ranging from \$500 to \$5,000 depending on the scope, cost savings and/or revenue generation associated with the idea and corresponding results. This item was presented for information to the committee.
- D. Executive Contract – Aaron Zahn, Managing Director/CEO and Interim Committee Chair Johnson discussed the executive contract and discussed extending the current contract until July 31, 2019, to allow time for the total compensation plan to be worked out prior to finalizing the contract for the Managing Director/CEO. Contract discussions were deferred.
- E. Other New Business
- F. Announcements
  - 1. Schedule Next Meeting as Appropriate
- G. Adjournment

Compensation Committee

January 15, 2019

Page - 2

APPROVED BY:

\_\_\_\_\_  
Camille Johnson, Interim Committee Chair

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

Submitted by:

\_\_\_\_\_  
Cheryl Mock  
Executive Assistant

**JEA0688**



# Total Market Compensation Strategy

January 2019



//////

**COMMITMENT TO  
RESULTS & VALUE**



## Company Culture and Strategy Driven by Good Well Aligned "Total Compensation Program"

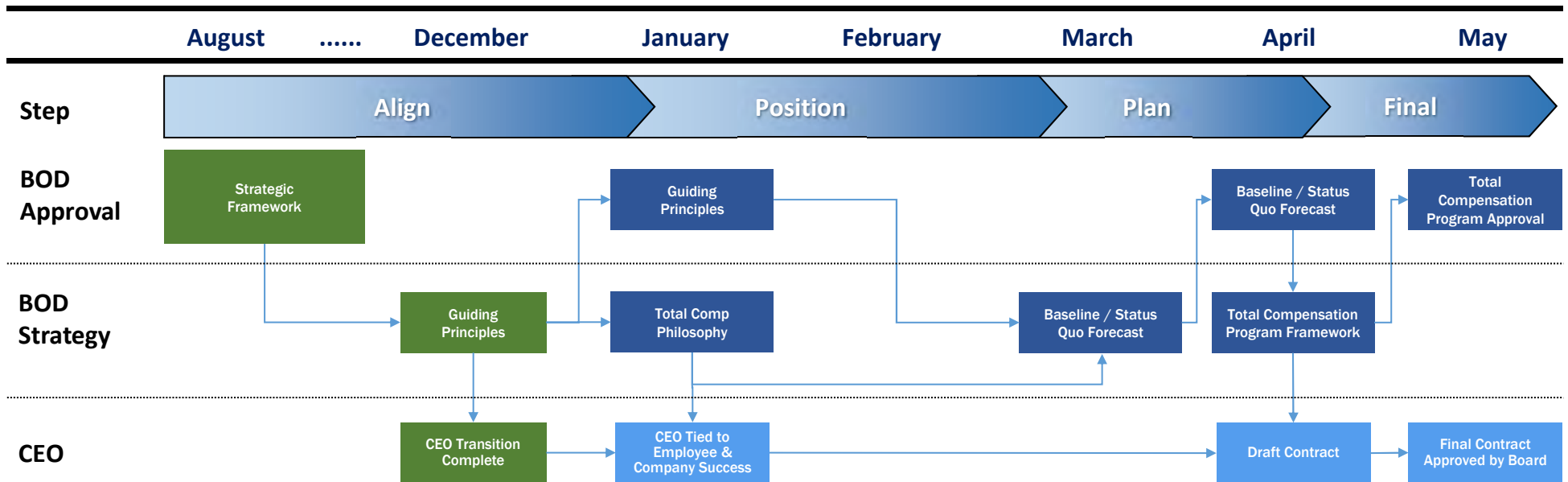


**LEADING BY EXAMPLE**



# ALIGNING TO RESULTS & VALUE

- Board wants all employee compensation to be aligned with: 1) Total Compensation Philosophy; and 2) driving Results vs. Baseline
- Board to agree on TC Philosophy and Baseline before finalizing Total Compensation Program for all employees



//////

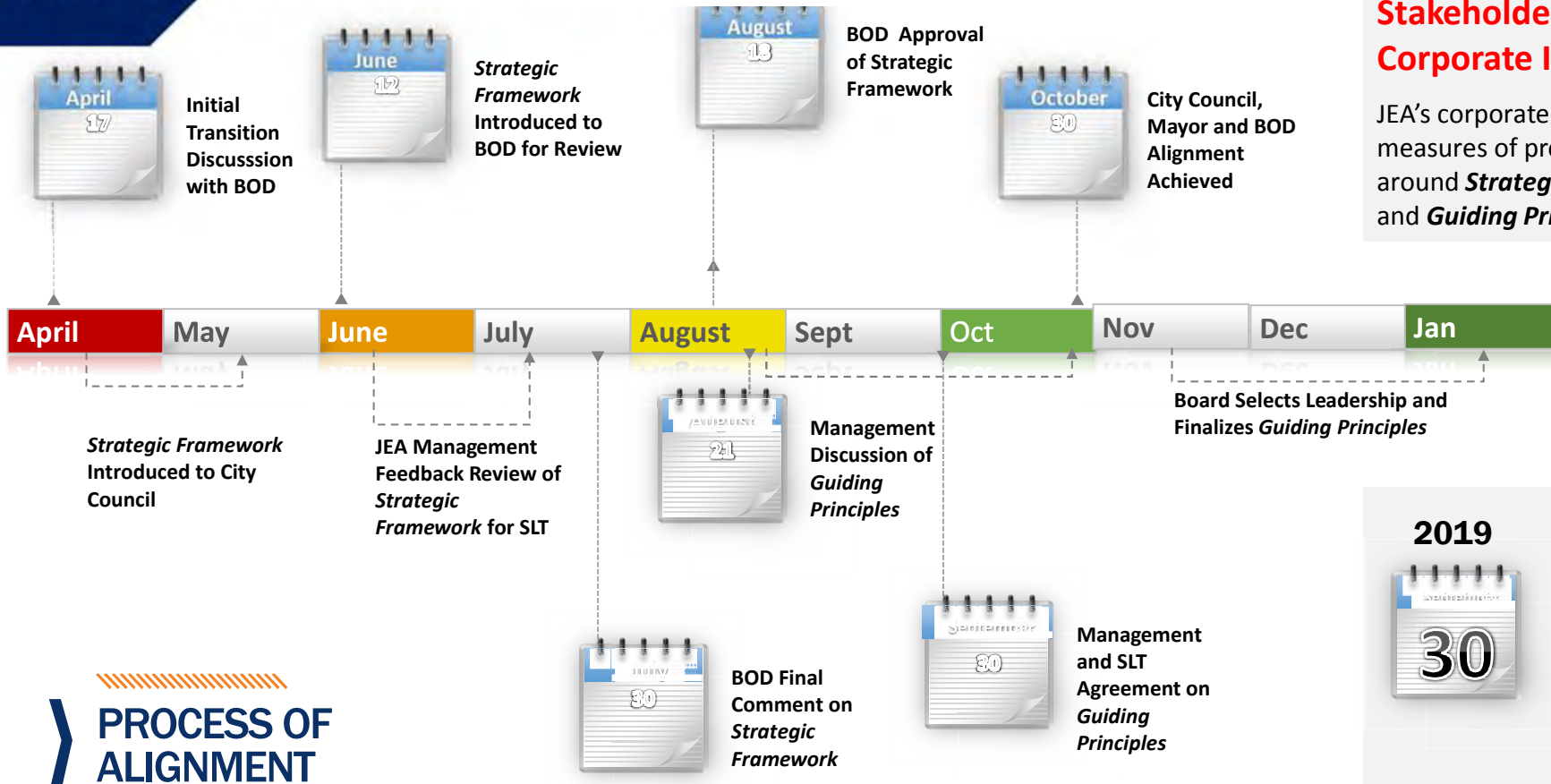
**TOTAL COMPENSATION  
PHILOSOPHY**







# “Guiding Principles” More Than Talk



**Result: Alignment of Stakeholders to JEA Corporate Initiatives**

JEA’s corporate initiatives and measures of progress aligned around *Strategic Framework* and *Guiding Principles*

**2019**

**COMPLETE ALIGNMENT OF STRATEGIC FRAMEWORK, GUIDING PRINCIPLES AND STRATEGIC PLAN**

**PROCESS OF ALIGNMENT**



## **GUIDING PRINCIPLES**

ACCELERATING UTILITY INNOVATION

### **Vision**

*Why we exist and who we want to be in the future*

**Improve lives by accelerating innovation**

### **Mission**

*How we are going to pursue our vision and what we need to do today to get there*

**Provide the best service by becoming the center of our customers' energy and water experience**

### **Corporate Measures**

*Our mission will be guided by and evaluated against how we as employees drive these four basic Corporate Measures of JEA's value*

The fundamental goal is to maximize each value both now and in the future:

**1) Customer value**

What a customer expects to get in exchange for the price they pay

**2) Financial value**

The monetary value and risk profile, both today and tomorrow, of JEA as it relates to the City

**3) Community impact value**

Improving the quality of life through innovative and cost-effective service offerings, employee volunteerism and ambassadorship, relevant and timely communications, and support of economic development and job growth throughout JEA's service territory; foster a collaborative and respectful corporate culture that provides exceptional employee value to equip the JEA team to deliver outstanding service and value to its community

**4) Environmental value**

Ensuring a sustainable environment for future generations

### **Core Competencies**

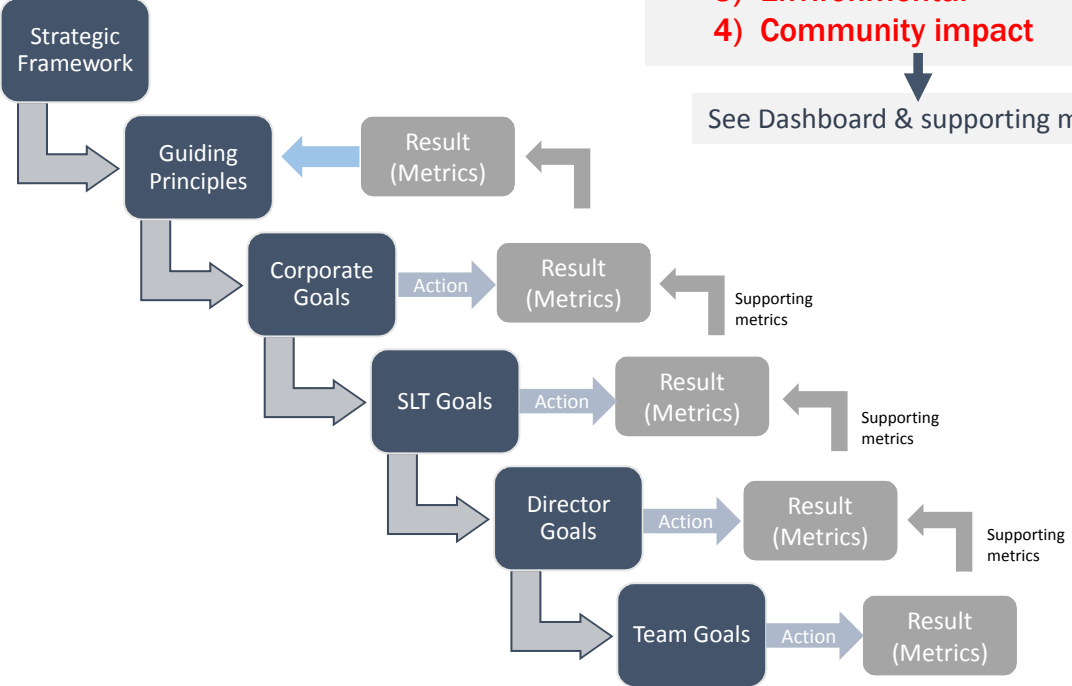
*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*

- Deliver an unparalleled positive customer experience
- Work together to elevate the entire team
- Innovate and evolve to match our customer's needs with market trends

# STAKEHOLDER ALIGNMENT

Alignment logic of **Strategic Framework** and **Guiding Principles** through day-to-day actions of employees

City Council Feedback  
 Employee Feedback  
 Administration Feedback  
 SLT Input  
 City Council Report on JEA  
 Customer Feedback



**Employee behavior tied to driving metrics that measure the 4 values outlined in the Guiding Principles:**

- 1) Customer
- 2) Financial
- 3) Environmental
- 4) Community impact

See Dashboard & supporting metrics

Employees aligned to Board and COJ



## **GUIDING PRINCIPLES**

ACCELERATING UTILITY INNOVATION

### **Corporate Measures**

*Our mission will be guided by and evaluated against how we as employees drive these four basic Corporate Measures of JEA's value*

The fundamental goal is to maximize each value both now and in the future:

- 1) Customer Value**
- 2) Financial Value**
- 3) Environmental Value**
- 4) Community Impact Value**

Employee behavior key to maximizing value



## **GUIDING PRINCIPLES**

ACCELERATING UTILITY INNOVATION

### **Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*

**→ Work together to elevate the entire team**

Core competencies accelerate results



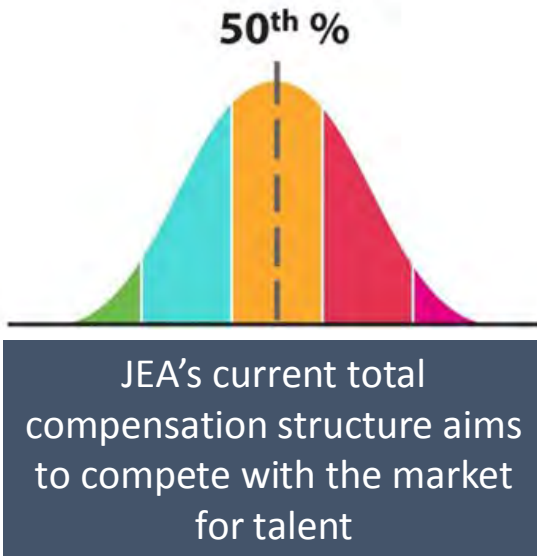
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# JEA Board Policy Manual

(Policy 2.7 adopted by JEA Board on June 17, 2014)



## JEA'S COMPENSATION PHILOSOPHY

“With respect to employment, compensation, and benefits to employees, consultants, contract workers and volunteers, the CEO shall not cause or allow jeopardy to financial integrity or to public image. Accordingly, the CEO will not:

Promote a compensation philosophy that is contradictory to JEA's philosophy of providing a total rewards package that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits.

Salary/wages will meet the market (50% percentile), which is where the majority of companies in the geographical area reside. The 50th percentile pays competitively for behavior that meets expectations. Additional consideration will be given to behaviors that exceeds expectations which are typically rewarded at the 75th percentile. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

# HOW DO WE DEFINE TOTAL COMPENSATION?

	BASE	+	SHORT TERM INCENTIVE	+	LONG TERM INCENTIVE
JEA	\$132.8		\$5.2		\$0.0
50% Percentile	\$124.9		\$10.5		\$5.5
DELTA ▲	<b>\$7.9</b>		<b>(\$5.3)</b>		<b>(\$5.5)</b>

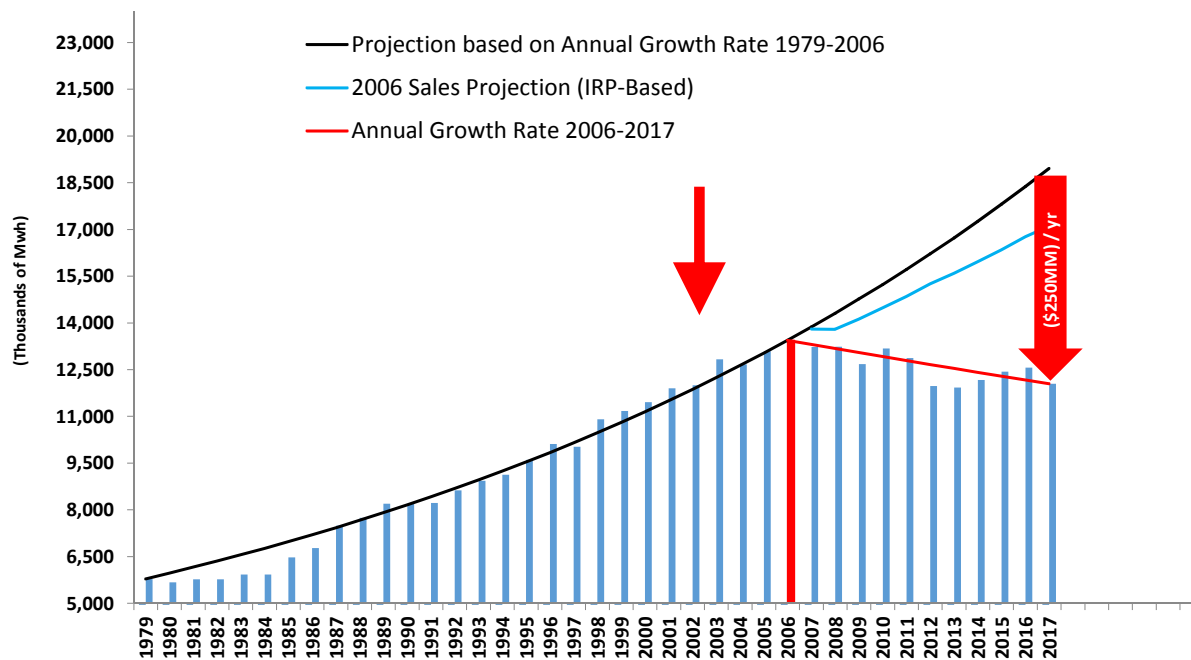
Above numbers exclude healthcare and retirement

Dollars above are in millions

JEA's total compensation structure does not reward value creation



## 2007 to 2017 JEA lost Avg. of \$130 MM / yr in FCF (\$1.4B of cash) vs IRP Case



### Industry Macro Trends Impacting JEA

#### Energy Efficiency (2000's tech trend)

- Mandates account for >90% of reduction in electric sales
- 30% lower sales in 2017 than forecasted back in 2006

#### Distributed Generation (2010's tech trend)

- Solar growth increasing in JEA territory 67% CAGR since FY 14
- >\$2.5MM of Net Income lost to distributed generation annually

#### Distributed Storage & iDER (2020's tech trend)

- Similar cost / performance trends to distributed generation being witnessed
- Storage will change the entire energy sector once cost parity with utility achieved

**WHY FOCUS AND COMPENSATION ALIGNMENT MATTERS**

## RECOMMENDED: JEA Board Policy Manual

(Revision to Policy 2.7 adopted by JEA Board on June 17, 2014)

“With respect to employment, compensation, and benefits to employees, consultants, ~~and contract workers and volunteers~~, the CEO shall ~~not cause or allow jeopardy to financial integrity or to public image. Accordingly, the CEO will not:~~ Promote a compensation philosophy ~~providing a total rewards package~~ that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits ~~that align with and drive JEA’s Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.~~

~~Total compensation Salary/wages~~ will meet the market (50% percentile), which is where the majority of companies in the ~~industry and~~ geographical area reside. ~~Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives.~~ The 50th percentile pays competitively for behavior that meets expectations. ~~Short term and long term incentives will align to and drive JEA’s Corporate Measures of Value.~~ Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

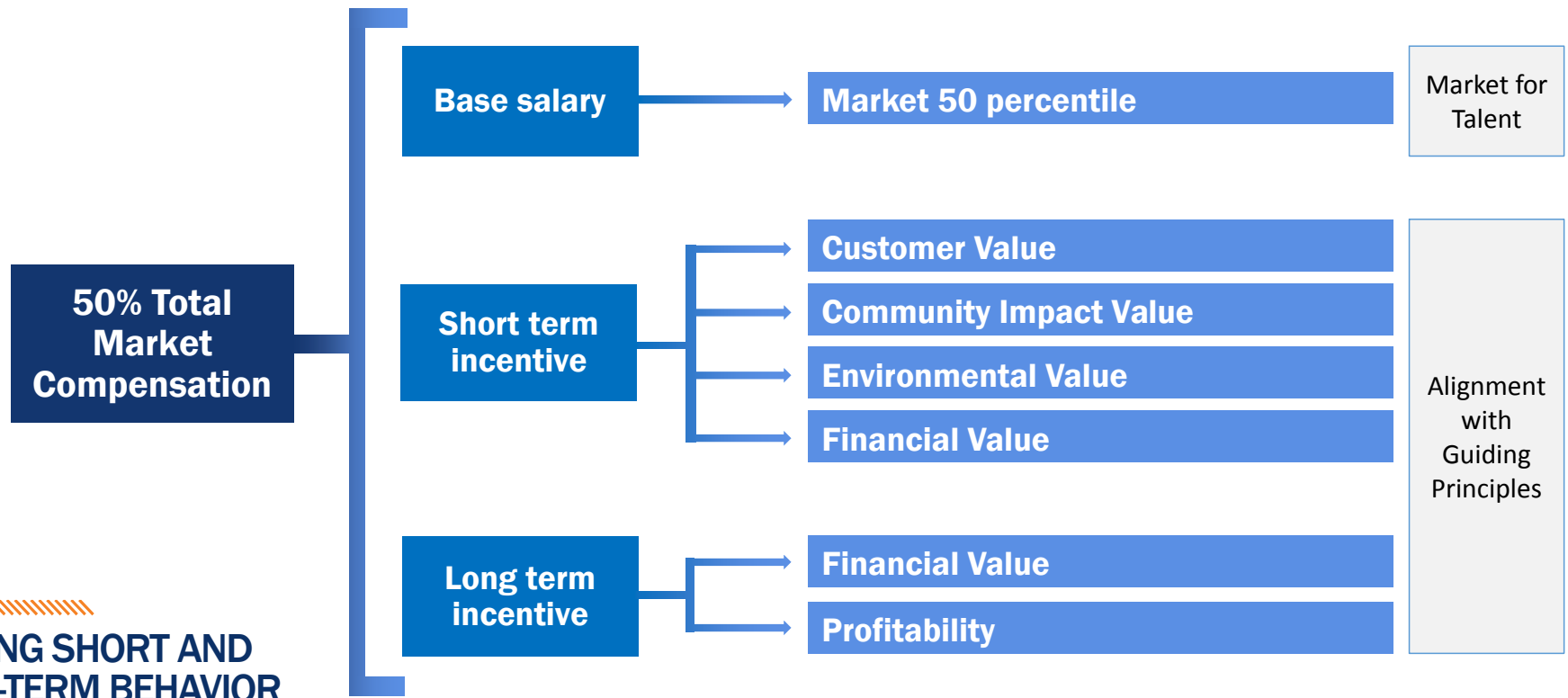
50<sup>th</sup> %



JEA’s total compensation structure should both compete with the market for talent & drive results aligned with “guiding principles”

////  
JEA’S COMPENSATION  
PHILOSOPHY

# Establish a Formal Compensation Policy to Align with: 1) Talent Market and 2) Guiding Principles



**DRIVING SHORT AND LONG-TERM BEHAVIOR**

ADAPTABLE  
CULTURE



# Cultural Values

Safety

Service

Growth<sup>2</sup>

Accountability

Integrity

*Ideas*





//////  
CULTURE IS  
CELEBRATED

## Driving Toward Success

*Willing to take appropriate and calculated risks and fail from time to time in order to achieve extraordinary results*



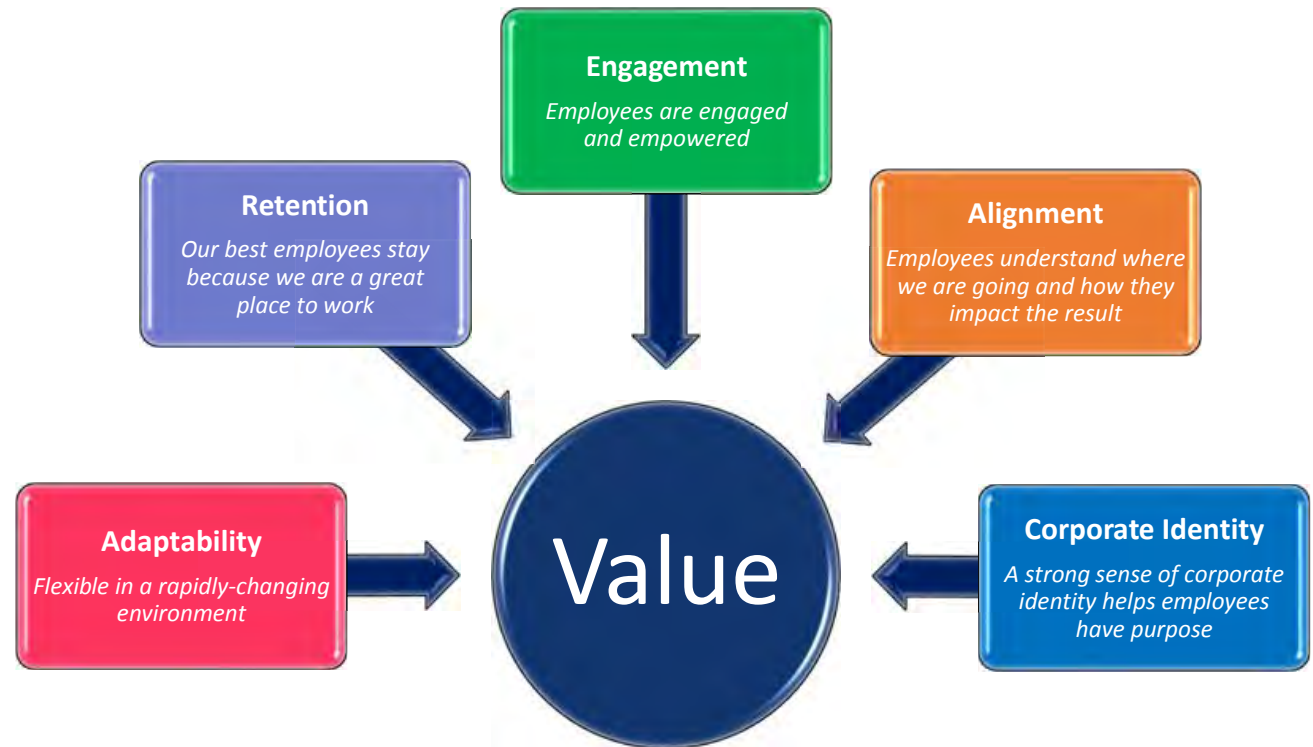
## Working Not to Fail

*Culture and individuals motivated by risk aversion striving not to fail rather than to succeed*

**WHERE ARE WE GOING?**

**Vision: Improve lives by accelerating innovation**

**Mission: Provide the best service by becoming the center of our customer's energy and water experience**





ACCELERATING AN  
INNOVATIVE CULTURE

## INTRODUCING THE

# 5 to 5 Innovation Incentive Program

- 5 to 5 is about culture
- Purpose of the **5 to 5 Innovation Incentive Program** is to encourage and reward employees for developing and submitting innovative *ideas* (*Ideas* being one of JEA's core values) that benefit JEA and our community.
- Employees who submit an *idea* that is implemented will be eligible for incentives ranging between **\$500 to \$5,000** depending on the scope, cost savings, and/or revenue generation associated with the submitted *idea* and corresponding results.
- *Ideas* will align with JEA's corporate measures:
  - *Customer Value*
  - *Financial Value*
  - *Environmental Value*
  - *Community Impact Value*





# Total Market Compensation Strategy

Compensation Committee  
June 2019





## **GUIDING PRINCIPLES**

ACCELERATING UTILITY INNOVATION

### **Core Competencies**

*The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision*



**Work together to elevate the entire team**

Core competencies accelerate results



## ELEVATE THE ENTIRE TEAM

1. Ensure JEA's corporate compensation philosophy is aligned with JEA's Guiding Principles
2. Encourage long-term culture of value creation
3. Establish formal compensation policy to align behavior to 4 Corporate Measures of Value and market based compensation
4. Ensure policy promotes collaboration to drive Vision and Mission

Employee incentives should drive "value" & "teamwork"

# Compensation Efforts to Date

---

January

February - June

---

Board Approval of:

- Guiding Principles
- Development of a Compensation Framework
- Extending CEO contract through 7/31/19
- Change to Board Policy Manual

Status Quo developed and presented to the Board

Total Compensation Framework developed with the assistance of Willis Towers Watson

Draft CEO Contract prepared

# JEA Board Policy Manual

(Revision to Policy 2.7 adopted by JEA Board on June 17, 2014)

“With respect to employment, compensation, and benefits to employees, consultants, and contract workers, the CEO shall promote a compensation philosophy that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits that align with and drive JEA’s Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.

Total compensation will meet the market (50% percentile), which is where the majority of companies in the industry and geographical area reside. Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives. The 50th percentile pays competitively for behavior that meets expectations. Short term and long term incentives will align to and drive JEA’s Corporate Measures of Value. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs.”

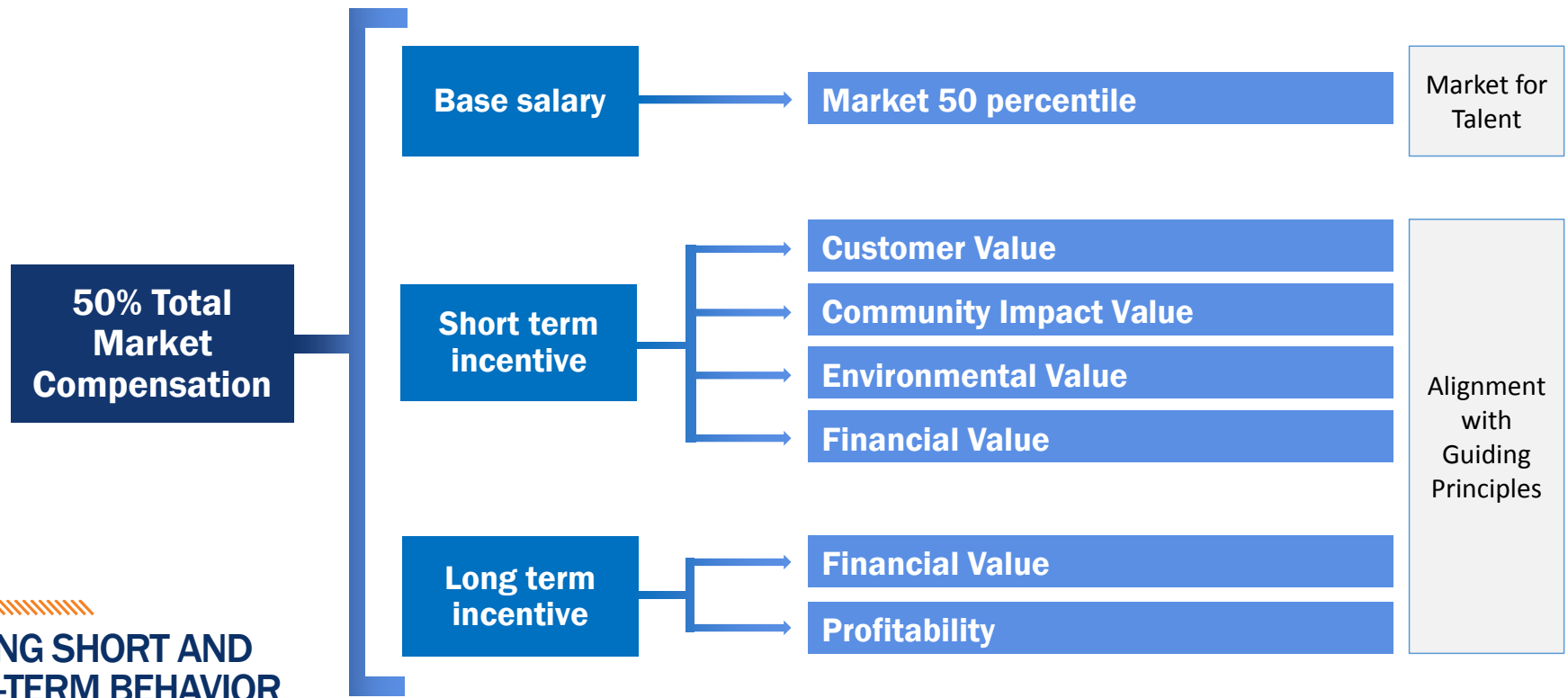
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JEA’s total compensation structure should both compete with the market for talent & drive results aligned with “guiding principles”

//////  
JEA’S COMPENSATION  
PHILOSOPHY

# Establish a Formal Compensation Policy to Align with: 1) Talent Market and 2) Guiding Principles



**DRIVING SHORT AND LONG-TERM BEHAVIOR**

## Compensation Benchmarking Summary

### ***Appointed Population vs. Market 50<sup>th</sup> Percentile Variances By Job Level***

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels
  - JEA provided performance bonuses to Appointed employees in April to begin closing the gap on base salary – the budget was 2.5%.

#### **Job Weighted:**

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
Total	-2%	-7%	-6%	--	-7%

## Short-Term Incentive Plan Practices

### ***Target Incentive Award Opportunities***

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to “close the gap” between market and JEA’s desired competitive positioning

Target Incentive Award Opportunities – By Job Level

Role/Career Level	Target STI Opportunities	
	Utilities	General Industry
Senior Directors	25%	24%
Managers	15%	13%
Supervisors	10%	9%
Senior Level Professionals	13-20%	11-18%
Entry-Mid Level Professionals	7-10%	5-8%
Non-exempt	5%	3-5%

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.



## Long-Term Incentive Plan Design

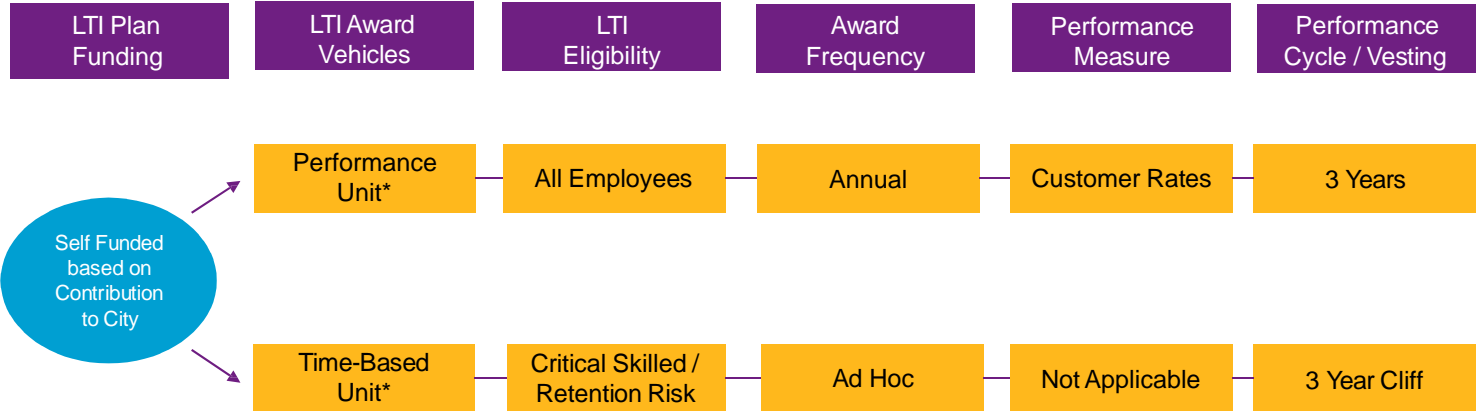
### *Introduction*

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

# Long-Term Incentive Plan Design

## Proposed Design

- Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:



\* Value of units tied to JEA Net Book Value.

# Long-Term Incentive Plan Design

## ***Proposed Design Details: Performance Unit***

### **Performance Unit**

<b>Plan Design Element</b>	<b>Plan Design Details</b>
Award Vehicle	<ul style="list-style-type: none"> <li>Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees would be eligible in order to drive collective focus on JEA long-term performance</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Annual</li> </ul>
Circuit Breaker	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded</li> </ul>
Performance Measures	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>
Performance Period	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul>
Payout Range	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

# Proposed Compensation Adjustments

## **Market Positioning Based on Proposed Pay Adjustments**

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

### **Job Weighted:**

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
<b>Executive</b>	-12%	45%	43%	-6%	40%	40%	-2%
<b>Director</b>	-1%	20%	18%	2%	5%	8%	1%
<b>Manager</b>	-2%	10%	13%	-3%	3%	--	-1%
<b>Individual Contributor</b>	-1%	7%	10%	-1%	3%	--	2%
<b>Bargaining Units</b>	11%	2%	7%	8%	1%	--	9%
<b>Total</b>	<b>3%</b>	<b>8%</b>	<b>12%</b>	<b>2%</b>	<b>3%</b>	<b>19%</b>	<b>3%</b>

Note: Market data provided by JEA.

# Compensation Plans

June	July	August	September	October
<p>Presentation to the Comp Committee - 6/18</p> <p>Presentation to the Board - 6/25</p>	<p>Hold Shade Meeting to discuss labor negotiations</p> <p>Develop economic strategy for negotiations</p>	<p>Finalize Comp Plan and begin installing components</p>	<p>Publicize Comp Plan to employees</p>	<p>Full implementation of Comp Plan</p>

Formalize Compensation Plan as directed by the Board

Conduct Bargaining Unit negotiations and finalize contracts

# Compensation Program Appendix for Compensation Committee Meeting

Prepared for JEA

June 18, 2019

# Table of Contents

Section	Page
Introduction	2
Compensation Philosophy Review	4
Evolution of JEA's Compensation Program	6
CEO Competitive Market Pricing	8
Compensation Benchmarking Summary	11
Short-Term Incentive Plan Practices	14
Long-Term Incentive Plan Design	22
Proposed Compensation Adjustments	29
Modernizing Total Rewards	33
Appendix	37

# Introduction

## Summary

- JEA engaged Willis Towers Watson (“WTW”) to complete the following:
  - Conduct a competitive market assessment for JEA’s entire employee population
  - Provide a summary of market practices related to short-term incentive plan design
  - Conduct a competitive market analysis of long-term incentive (“LTI”) plan design practices and develop a proposed design
- This report includes the following:
  - Confirmation of JEA’s current compensation philosophy
  - Review of the evolution of JEA’s compensation programs
  - Analysis of the compensation variances for JEA’s employee population
  - Analysis of the gaps to market for JEA’s Appointed population and Bargaining Units
  - Proposed LTI plan design
  - Total rewards market best practices



# Compensation Philosophy Review

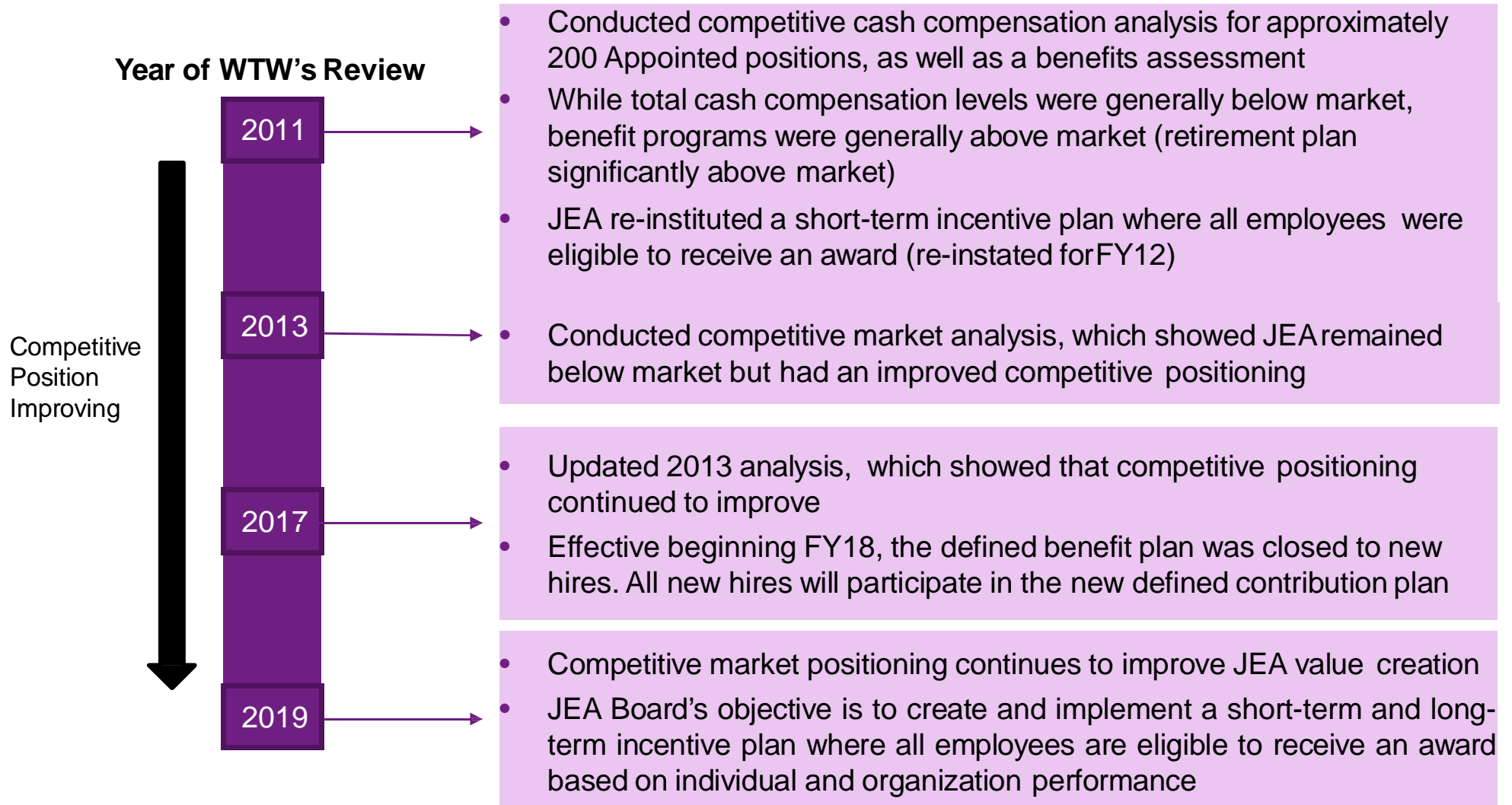
## JEA's Current Compensation Philosophy

- The following table summarizes JEA's current compensation philosophy, which guided WTW's review of JEA's competitive market assessments:

Compensation Philosophy Element	Details
<b>Alignment of Interest Between Employees, Stakeholders, and Organization</b>	JEA's compensation philosophy should support the overall business and board strategy with the ultimate goal of driving performance of the organization
<b>Market for Talent</b>	JEA's geographic market for talent varies by job level: <ul style="list-style-type: none"> <li><u>Individual Contributors/Managers</u> – local and regional scope</li> <li><u>Directors/Executives</u> – national scope</li> </ul>
<b>Target Competitiveness</b>	Targets the market 50 <sup>th</sup> %ile for all pay elements (Base Salary, Short-Term Incentive, and Long-Term Incentive)
<b>Pay Mix</b>	JEA's pay mix currently consists of base salary and a short-term incentive award, but JEA is implementing a long-term incentive plan in 2020 to align the interests of employees to JEA's Guiding Principles and four (4) Corporate Measures of Value (Customer, Community, Environmental and Financial)
<b>Industry Perspectives</b>	For <u>functional roles</u> – a 50/50 weighted mix of Utility/General Industry market data For <u>operational roles</u> – only Utility Industry market data

# Evolution of JEA's Compensation Program

## Timeline of Goals and Major Changes



# CEO Competitive Market Pricing

## Methodology

- To conduct the competitive market pricing for the CEO position, a peer group was developed reflecting:
  - Investor Owned Utilities (“IOUs”) and Public Power Utilities
  - Focus on electric and/or diversified utilities (electric and gas and/or water utilities)
  - Comparably-sized (revenues in a range of ½ to 2x JEA’s revenues of \$1.79B OR generation capacity in a range of ½ to 2x JEA’s generation capacity of 3,330 kWh)
  - Survey source: Willis Towers Watson’s *2018 Energy Services Industry Executive Compensation Database*
- Target TDC for the Combined Peer Group perspective is built up by using this formula:
  - Target TCC + (Base Salary \* ½ reported LTI opportunity %)
    - Given public power utilities do not typically provide LTI, market data is not shown for the public power peers; therefore, the Combined Peer Group perspective reflects 1/2 of the reported market data because the data are comprised of responses from both public power and IOUs (average of public power and IOUs)

# CEO Competitive Market Pricing

## Market Pricing Details

Chief Executive Officer		Competitive Market Data <sup>(5)</sup>		
Pay Component	Data Perspective	25th %ile	50th %ile	75th %ile
Base (\$000s)	Combined Peer Group	\$605.0	\$800.0	\$980.0
	Investor Owned Utility Peers	\$730.0	\$835.0	\$995.0
	Public Power Peers	\$475.0	\$580.0	\$920.0
Target Bonus % <sup>(1)</sup>	Combined Peer Group	48%	100%	108%
	Investor Owned Utility Peers	100%	100%	110%
	Public Power Peers <sup>(3)</sup>	---	---	---
Target TCC (\$000s)	Combined Peer Group	\$760.0	\$1,275.0	\$1,790.0
	Investor Owned Utility Peers	\$1,380.0	\$1,725.0	\$2,065.0
	Public Power Peers	\$515.0	\$720.0	\$985.0
LTI % <sup>(2)</sup>	Combined Peer Group	107%	125%	166%
	Investor Owned Utility Peers	213%	249%	331%
	Public Power Peers	---	---	---
Target TDC (\$000s)	Combined Peer Group <sup>(4)</sup>	\$1,515.0	\$2,270.0	\$3,010.0
	Investor Owned Utility Peers	\$2,845.0	\$3,970.0	\$5,110.0
	Public Power Peers	\$515.0	\$720.0	\$985.0

"---"= Data not available.

(1) Target bonus percentages are represented as a percentage of base salary.

(2) Long-term incentive (LTI) percentages are represented as a percentage of base salary. LTI figures are based on ASC 718 (FAS 123R) "accounting values". Given public power utilities do not typically provide LTI, market data is not shown for the public power peers; therefore, the Combined Peer Group perspective reflects 1/2 of the reported market data because the data are comprised of responses from both public power and IOUs (average of public power and IOUs).

(3) Only 4 public power peers report a target bonus opportunity (sample size less than 5 is too small to report data). Responses range from 8-35% with an average of 22%.

(4) Target TDC for the Combined Peer Group perspective is built up by using Base Salary, Target TCC, and LTI % data.

(5) Market data greater than \$100,000 rounded to the nearest \$5,000.

# Compensation Benchmarking Summary

## *Methodology*

- The following page contains a summary of WTW's review of JEA's competitive market data for its Appointed population (including 13 executives)
- WTW reviewed the most current incumbent and market data provided by JEA
  - Market data for the positions below the Director-level reflect a -5% geographic differential to account for the cost of labor of Jacksonville, FL vs. the US national average
  - Analysis of competitive positioning focused on market data at the 50<sup>th</sup> percentile

## Compensation Benchmarking Summary

### *Appointed Population vs. Market 50<sup>th</sup> Percentile Variances By Job Level*

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels

#### Job Weighted:

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
<b>Total</b>	<b>-2%</b>	<b>-7%</b>	<b>-6%</b>	<b>--</b>	<b>-7%</b>

# Short-Term Incentive Plan Practices

## *Introduction*

- JEA re-instated a broad-based short-term incentive plan several years ago, both to address competitive pay levels, as well as to reinforce specific messages related to performance expectations
- The following pages summarize market practices related to short-term incentive plan design
  - As appropriate, JEA may consider these practices as they continue to evolve their incentive plan design
  - Key design features covered include eligibility, target award opportunities, payout ranges, bonus pool funding, performance measures and performance range
- The market practices information has been summarized from survey research, as well as our consulting experiences

# Short-Term Incentive Plan Practices

## *Eligibility*

- Eligibility for short-term incentive plans is typically broad for both the Utility and General Industries, with prevalence actually higher in the Utility Industry (particularly at the lower job levels)
- Over 60% of organizations in the industry extend eligibility to the lower exempt and non-exempt roles
  - Lower roles may not have an expressed target opportunity, but they may be part of a “sharing program” based on organizational performance
  - In some cases, overall funding and participation at lower levels may be discretionary



## Short-Term Incentive Plan Practices

### *Target Incentive Award Opportunities*

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to “close the gap” between market and JEA’s desired competitive positioning

Target Incentive Award Opportunities – By Job Level

Role/Career Level	Target STI Opportunities	
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Senior Directors	25%	24%
Managers	15%	13%
Supervisors	10%	9%
Senior Level Professionals	13-20%	11-18%
Entry-Mid Level Professionals	7-10%	5-8%
Non-exempt	5%	3-5%

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.

# Short-Term Incentive Plan Practices

## *Payout Ranges*

- Payout ranges reflect the total award opportunity as a percentage of the target award, and represent the minimum award opportunity if threshold performance is achieved, and the maximum opportunity if maximum performance is achieved
- Payout ranges are typically 50% of target at threshold performance and 200% of target at maximum performance
  - In WTW's consulting experience, public power utilities typically have a maximum payout of 150% of target
- In most cases (and based on the specific performance standards), organizations will interpolate actual performance between threshold, target and maximum to provide appropriate incentive to improve performance at every possible increment
- Note that it is important to calibrate the payout range with the performance range to ensure that the awards are aligned with the probability of achievement

# Short-Term Incentive Plan Practices

## ***Bonus Pool Funding***

- There are two primary approaches to determine bonus pool funding:
  1. Sum-of-targets: specific target opportunities are defined (typically by role or grade) and the sum of these targets determines the bonus “pool” (the aggregated award which would be generated at target performance)
  2. Financial results-based formula: typically a financially-driven formula (e.g., bonus pool equals 10% of profits above a specific threshold)
- The sum-of-targets approach is typically the most common in both the Utility and General Industries
  - Prevalence for financial results-based formulas increases slightly for broad-based plans that are separate from executive plans because there is often a greater requirement that they be self-funding
- Particularly for sum-of-target plans, circuit breakers are a common design feature
  - A circuit breaker represents a single performance measure (typically a financial measure) that must be reached before any incentive award is paid regardless of performance in other measures
  - In other words, if the circuit breaker financial performance isn’t achieved, it shuts down the entire plan regardless of performance on other performance measures
  - Note that a financial circuit breaker may be set at levels below threshold levels for payout
- Another design feature is a modifier, which can be used to adjust the initial funding up or down based on another important measure (e.g. determine pool based on financial performance, and then modify by operational or customer performance measures)

# Short-Term Incentive Plan Practices

## *Performance Measures*

- Performance measures send an important message about what an organization must achieve, and how individual employees can contribute to those objectives
- We consider it a best practice to have a portfolio of performance measures to balance expectations across financial, operational and customer service categories
  - However, in order to ensure appropriate focus, we typically see 4-6 performance measures, with each measure having at least a 10% weight
- It is typical for organizations in both the Utility and General Industries to include at least one profit or income measure, with profit / operating income being the most common in both industries
- For non-financial performance measures, environmental health and safety, as well as operating / strategic measures are the most common in the Utility Industry
- Individual performance measures are also common in the Utility and General Industries
  - These measures help create line-of-sight to broader corporate measures

# Short-Term Incentive Plan Practices

## *Performance Range*

- Performance ranges reflect the minimum acceptable performance as a percentage of target performance, and the maximum performance recognized as a percentage of target performance
- Narrow performance ranges are typically used for measures where results are not expected to vary significantly from target (e.g., revenues)
- Wider performance ranges are typically used for measures where performance can fluctuate significantly year to year (e.g., profitability)
- In the Utility Industry, performance ranges for profitability at minimum is typically set to be 90% of target and for maximum is typically set to be 115% of target
- An important consideration in establishing the performance range is the probability of achievement
  - A best practice is to set threshold performance goals where the probability of achievement is 80-90% to ensure appropriate motivation
  - Similarly, probability of achievement for target performance should be 50-60% and 10-20% for maximum performance
  - As noted earlier, it is important to calibrate the performance range with the payout range

# Long-Term Incentive Plan Design

## Introduction

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

# Long-Term Incentive Plan Design

## Market Practices Summary

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Prevalence</b>	LTI plans are used selectively	All 13 IOU peers have an LTI plan	LTI plans are very prevalent with almost all IOUs using an LTI plan
<b>Eligibility</b>	For those Public Power Utilities with an LTI plan, eligibility typically limited to select executives	Typically executives down to director level positions	Typically executives down to director level positions
<b>Target Opportunity (% of Base Salary)</b>	Varies widely based on the organization, but targets will be lower than IOU levels	Median for CEOs: 230% Median for NEOs*: 110% Median for Directors: NA	Median for CEOs: 240% Median for NEOs*: 75% Median for Directors: 15-25%
<b>Award Frequency</b>	Annual awards with overlapping cycles are most common	All 13 peers grant annual awards with overlapping cycles	98.1% of organizations grant annual awards and overlapping cycles are the most common

NEOs\* = Named Executive Officers, as disclosed in the IOU's proxy statement.

## Long-Term Incentive Plan Design Market Practices Summary (continued)

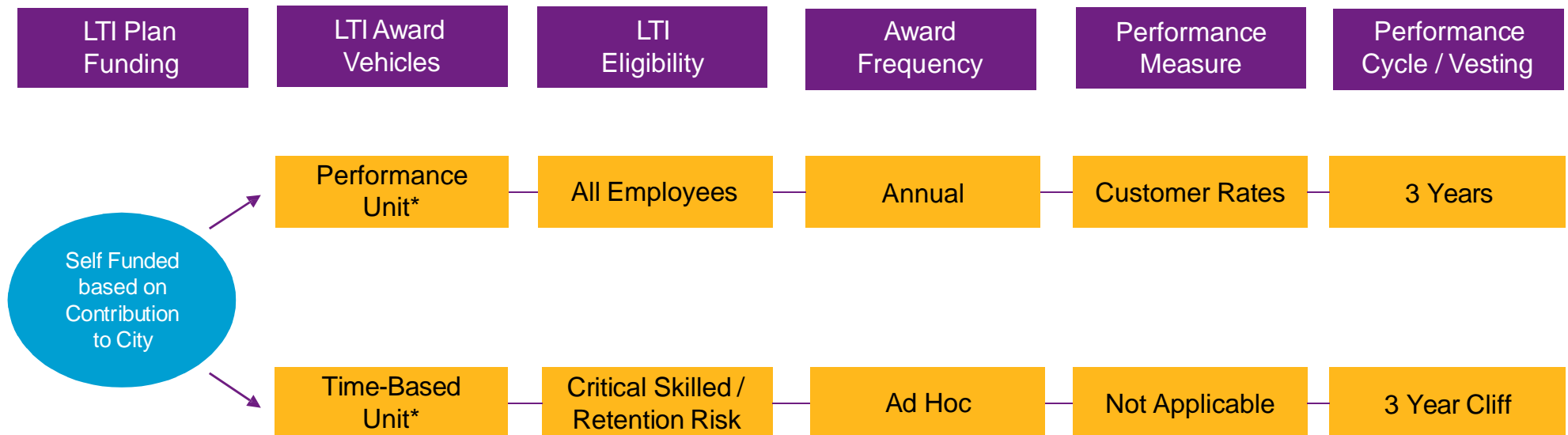
Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
<b>Award Vehicles</b>	Cash-based performance plans	100% of peers use performance plans 69% use restricted stock No peers use stock options	93% of organizations use performance plans 66% use restricted stock 16% use stock options
<b>Performance Metrics</b>	Financial and operational	TSR (100%) EPS (38%) Operational (15%)	TSR (64%) EPS (22%) Other operational metrics are also common
<b>Performance Metrics Weights</b>	Operational metrics weighted more heavily than financial metrics	TSR and financial metrics weighted more heavily than operational metrics	Not available
<b>Performance Range</b>	More conservative compared to IOUs	Relative TSR: 28 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum	Relative TSR: 25 <sup>th</sup> %ile at threshold, 50 <sup>th</sup> %ile at target, and 90 <sup>th</sup> %ile at maximum
<b>Payout Range</b>	Threshold: 50% of Target Maximum: 150% of Target	Threshold: 0-50% of Target Maximum: 150-200% of Target	Threshold: 50% of Target Maximum: 200% of Target



# Long-Term Incentive Plan Design

## Proposed Design

- Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:



\* Value of units tied to JEA Net Book Value.

# Long-Term Incentive Plan Design

## Proposed Design Details: Performance Unit

### Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees would be eligible in order to drive collective focus on JEA long-term performance</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Annual</li> </ul>
Circuit Breaker	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded</li> </ul>
Performance Measures	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>
Performance Period	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul> <p>The diagram illustrates two overlapping 3-year performance cycles. The first cycle starts in 2019 and ends in 2021, with target establishment from 2019 to 2021 and award payout in 2022. The second cycle starts in 2020 and ends in 2022, with target establishment from 2020 to 2022 and award payout in 2023.</p>
Payout Range	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

# Long-Term Incentive Plan Design

## Proposed Design Details: Time-Based Unit

### Time-Based Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Time-Based Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees eligible, but awards targeted to <b>critically skilled employees or employees viewed as retention risk</b>; awards generally intended for Manager level positions and below in order to enhance employee retention</li> <li>Target 10% of employees below the Director level (approximately 1,500 including Bargaining Units) or approximately 150 employees below the Director level to receive awards each year</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Retention award values range from 10% to 20% depending on criticality of role and/or retention need</li> </ul>
Award Pool Funding	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established each year with intent for contribution level to ensure LTI plan, covering both Performance Unit and Time-Based Unit awards, is self funded</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Ad hoc awards</li> </ul>
Vesting Period	<ul style="list-style-type: none"> <li>3-year cliff vesting period</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Time-Based Unit awards to employees below the Director level based on current incumbent base salaries* is \$1.2M</li> </ul>

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

## Proposed Compensation Adjustments

### Competitive Pay Gaps to Market by Pay Element

- The following exhibit summarizes the current gaps to market for JEA's population (excluding the M&C roles due to lack of incumbent data) by each pay element:
  - JEA's base salary, target TCC, and target TDC show variances comparing incumbent pay to market for the Appointed population
  - Bargaining Units' pay elements and JEA target bonus % are based off of pay structures (many of the Bargaining Units are in step structures)
- Gaps to market exist at target bonus % and long-term incentive %, particularly for the executives and directors, which lead to higher variances to market at target TCC and target TDC

#### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA	Market	JEA	JEA	Market	JEA
Executive	-12%	10%	43%	-28%	--	40%	-42%
Director	-1%	8%	18%	-8%	--	8%	-13%
Manager	-2%	7%	13%	-6%	--	--	-6%
Individual Contributor	-1%	7%	10%	-1%	--	--	-1%
Bargaining Units	11%	2%	7%	8%	--	--	8%
Total	3%	5%	12%	-1%	--	19%	-2%

Note: Market data provided by JEA.

# Proposed Compensation Adjustments

## Proposed Base Salary, Target Bonus and Long-Term Incentive Adjustments

- **Base Salary:** assess individual competitive position to market; for individual positions well below market, JEA could bring positions to within the competitive range of the market median within two to three years, assuming performance expectations are being met
- **Target Bonus % and LTI % (as % of salary):** the tables below summarize JEA's current average target bonus and LTI incentive opportunities and proposed target values
  - The incentive targets below are intended to close the gap to market for target total direct compensation within the first year in order to align with the Board's compensation philosophy
  - **Note:** when material gaps to market exist, typical market practice is to make incremental adjustments over a multi-year period (2 to 3 years) to close the gap to market. Company performance, cost considerations and stakeholder optics will influence the level of pay adjustment and the timeframe over which pay is brought to market

Level	Target Bonus %			LTI Opportunity %			Total At Risk Compensation		
	Current	Market	Proposed	Current	Market	Proposed	Current	Market	Proposed
Executive	10%	43%	45%	--	40%	40%	10%	83%	85%
Director	8%	18%	20%	--	8%	5%	8%	26%	25%
Manager	7%	13%	10%	--	--	3%	7%	13%	13%
Individual Contributor	6%	10%	7%	--	--	3%	6%	10%	10%
Bargaining Units	2%	7%	2%	--	--	1%	2%	7%	3%

- **Estimated Cost Impact:** estimated incremental cost impact of proposed target bonus and LTI adjustments to bring JEA compensation to the market median is **\$5.8M**; see details below for cost breakdown:
  - Target Bonus Cost: **\$2.4M** based off current incumbent base salaries
  - LTI Cost: **\$3.4M** based off current incumbent base salaries for performance unit award (total cost of **\$4.6M** if time-based unit award is included)

Note: Market data provided by JEA.

# Proposed Compensation Adjustments

## Market Positioning Based on Proposed Pay Adjustments

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

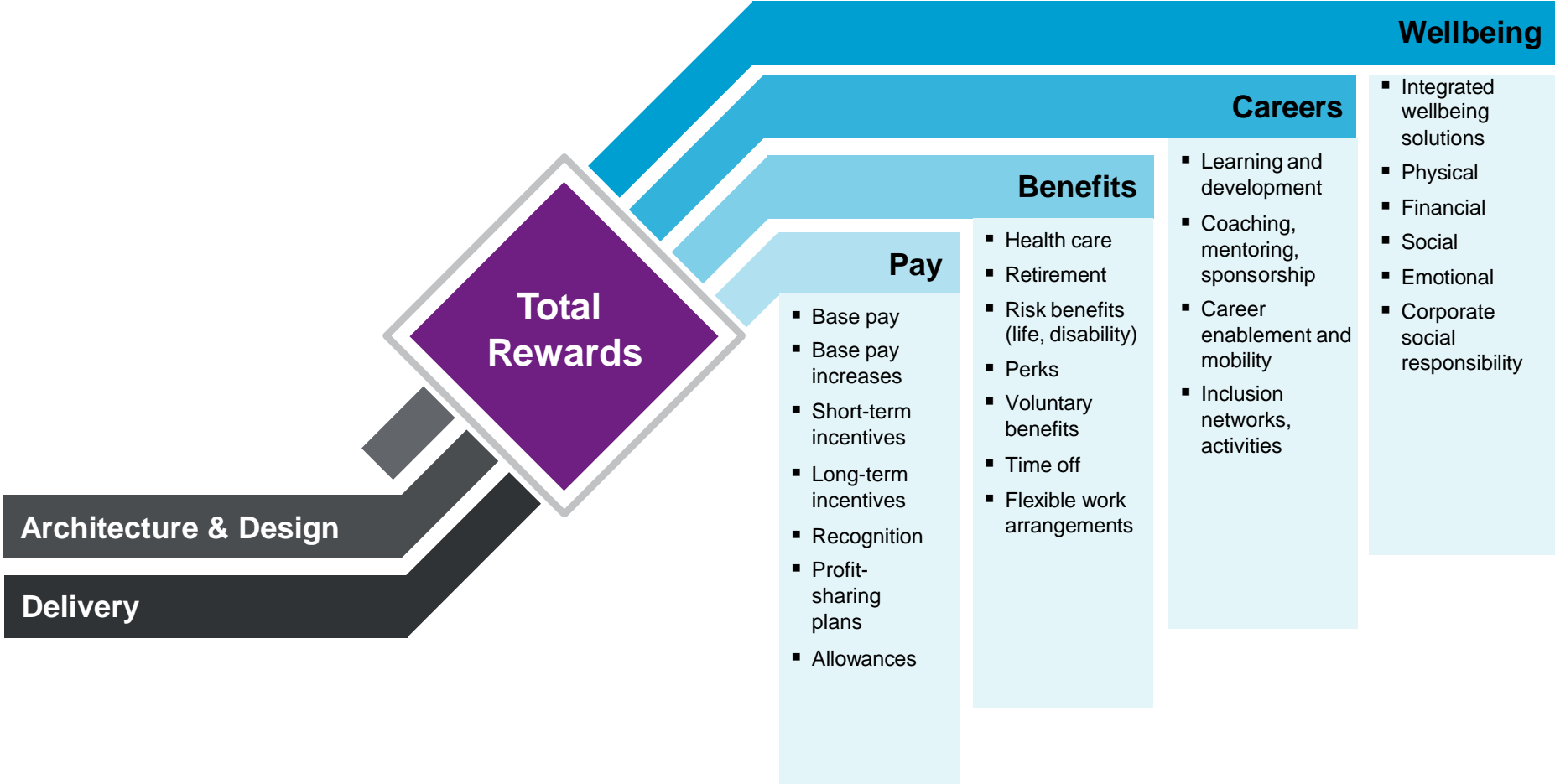
### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
Executive	-12%	45%	43%	-6%	40%	40%	-2%
Director	-1%	20%	18%	2%	5%	8%	1%
Manager	-2%	10%	13%	-3%	3%	--	-1%
Individual Contributor	-1%	7%	10%	-1%	3%	--	2%
Bargaining Units	11%	2%	7%	8%	1%	--	9%
<b>Total</b>	<b>3%</b>	<b>8%</b>	<b>12%</b>	<b>2%</b>	<b>3%</b>	<b>19%</b>	<b>3%</b>

Note: Market data provided by JEA.

# Modernizing Total Rewards

*Integrated Total Rewards strategy, architecture & design and delivery for a superior Talent Value Proposition*



Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

# Modernizing Total Rewards

## Key themes emerging in the market with implications for Total Rewards

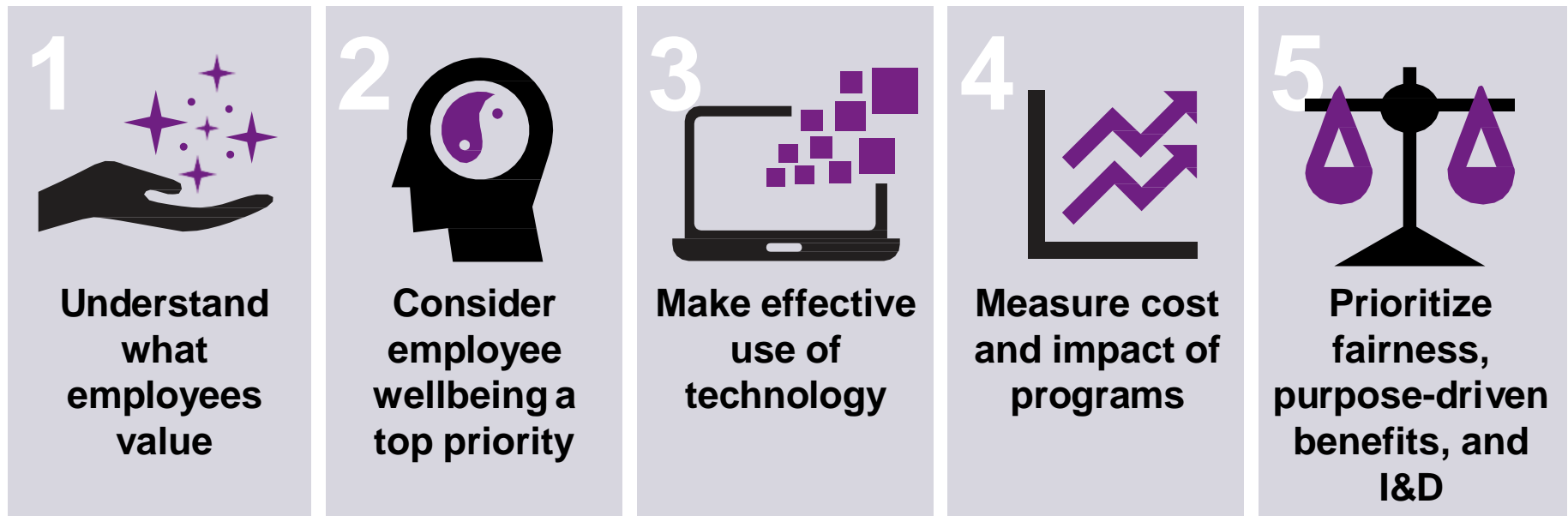
<b>1. Future focused</b> Emerging work dynamics and skills and multi-generational workforce re-write the deal 	<b>2. Technology Advancements</b> Expansion of <i>digitization</i> of the Total Rewards delivery and experience 	<b>3. Optimising cost and risk of TR</b> Analytics and data measurement 
<b>4. Segmentation</b> More tailored Total Rewards with increased choice 	<b>5. Consumerism and flexibility</b> Expansion of worker choice and <i>voluntary benefits</i> 	<b>6. Transparency</b> Legislative and social media increase public scrutiny 
<b>7. Inclusion and diversity</b> Total rewards that enable an inclusive culture and diverse workforce 	<b>9. Talent experience</b> Emphasis on <i>workplace differentials</i> that enhance the environment and Talent Value Proposition 	<b>10. Good governance</b> Being <i>agile and nimble</i> to adapt to changing, fast-moving business strategies 

Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey



# Modernizing Total Rewards

***Our findings identify five areas critical to meeting employees' Total Rewards expectations and delivering a consumer-grade experience***



Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

**RESOLUTION 2019-10**

**A RESOLUTION APPROVING LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION**

**WHEREAS**, in accordance with Board Policy 2.7, the Compensation Committee directed JEA management in January 2019 to develop a compensation policy to align with talent market and guiding principles, JEA management presented to the Compensation Committee and the Compensation Committee approved in June 2019 the framework for a compensation plan, including a long-term incentive plan;

**WHEREAS**, at its June 2019 Board meeting, the Board approved the framework of JEA’s long-term compensation plan and authorized JEA management to develop the plan and present it to the Board at the July 2019 Board meeting for final approval;

**WHEREAS**, the Board believes that it is in the best interest of JEA to adopt a long-term performance unit plan in connection with annual performance reviews and general operation of JEA; and

**WHEREAS**, the Board has reviewed the summary of the terms and conditions of the Long-Term Performance Unit Plan, which summary is attached hereto as Exhibit 1 (the “Long-Term Performance Plan Summary”).

**BE IT RESOLVED**, by the Board that:

1. The Chief Executive Officer and Managing Director (the “CEO”) or his designee shall have the authority to (i) implement a long-term performance unit plan (the “Long-Term Performance Unit Plan”) on the terms and conditions set forth on the Long-Term Performance Plan Summary, (ii) execute with each actively employed eligible full-time employee, any full-time JEA employee as otherwise recommended by the CEO and approved by the Administrator of the Long Term Performance Unit Plan, and each actively employed eligible full-time attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA an agreement under the Long-Term Performance Unit Plan, (iii) in consultation with the Office of General Counsel, make technical and clerical amendments to the Long-Term Performance Unit Plan and/or the Form Long-Term Performance Agreement, all of which do not increase the financial obligations or liability of JEA under the Long-Term Performance Unit Plan and/or the Form Long-Term Performance Agreement, and (iv) take, or cause to be taken, any and all action and to prepare, execute and deliver, or cause to be prepared, executed and delivered, any and all documents that the CEO or his designee deems necessary or advisable to carry out the intent of this resolution.
2. The Chair of the Compensation Committee of the Board be, and hereby is, appointed as the Administrator of the Long-Term Performance Unit Plan with full power and authority to administer the Long-Term Performance Unit Plan in accordance with the terms

therewith.

3. The 2019 Redemption Price Schedule under the Long-Term Performance Unit Plan for the Performance Units to be purchased by Participants in January 2020 attached hereto as Exhibit 2 is hereby approved.
4. This resolution shall be effective immediately upon its adoption.

Dated this 23<sup>rd</sup> day of July 2019.

JEA

By: \_\_\_\_\_  
April Green, Chair

\_\_\_\_\_  
Secretary

Form Approved:

\_\_\_\_\_  
Office of General Counsel

**RESOLUTION 2019-10 EXHIBIT 1**  
**The Long-Term Performance Plan Summary**

**RESOLUTION 2019-10 EXHIBIT 1**

**Long-Term Performance Plan Summary**

<b>Overview</b>	<p>Subject to the satisfaction of the conditions described below, each eligible employee may purchase a specified number of performance units from JEA on January 15th of each year. Eligible employees will be notified in and will execute the Long-Term Performance Unit Plan Agreement in Q4 of calendar year 2019 that they may purchase performance units and the first purchase date will be January 15, 2020.</p> <p>Each performance unit represents a potential right to receive a cash payment equal to the redemption price (as described below) for such unit.</p>
<b>Documentation</b>	<p>All eligible employees will be subject to a plan and will be required to sign an agreement with JEA.</p>
<b>Eligible Employees</b>	<p>All (i) full-time employees who are actively employed with JEA for at least three months prior to the purchase date and (ii) full-time attorneys from the Office of the General Counsel of the City of Jacksonville who are dedicated exclusively to JEA for at least three months prior to the purchase date are eligible to purchase performance units.</p> <p>Any exceptions to the above must be recommended by JEA's CEO and approved by the administrator (as described below).</p>
<b>Pool</b>	<p>A total of 100,000 performance units are available for purchase under the plan.</p>
<b>Purchase Price Payment</b>	<p>Each performance unit will have a purchase price of \$10.00.</p> <p>To pay the purchase price, an eligible employee will elect to defer a portion of his or her pay equal to the aggregate purchase price for the performance units.</p> <p>Each eligible employee may elect to defer his or her pay in a lump sum or equal installments during the payroll periods as selected by such employee and such employee's pay will be deferred at such time as such pay would otherwise have been paid but not for the deferral election.</p> <p>An eligible employee will elect to defer in the calendar year prior to the year in which the compensation is earned.</p>
<b>Performance Period</b>	<p>Each performance period will be a three-year period that is used to calculate the redemption price (if a Recapitalization Event occurs, the performance period will be truncated and will end on the closing date of such Recapitalization Event).</p>

<b>Redemption Price</b>	<p>An eligible employee will receive a cash payment equal to the redemption price for each performance unit that such employee purchases. The redemption price will include the purchase price paid by an eligible employee for such unit.</p> <p>The redemption price will increase by \$100.00 per performance unit for each Value Change Percentage increase of 1% in excess of the “Challenge Value Target” and will decrease by \$0.50 per performance unit for each “Value Change Percentage” decrease of 1% below the Threshold Value Target, but the redemption price will not be less than \$0.00 per performance unit.</p> <ul style="list-style-type: none"> <li>• The “Challenge Value Target” will be 110% for the first performance period and the “Threshold Value Target” will be 90% for the first performance period.</li> <li>• The “Value Change Percentage” means a percentage equal to the “Current Year Value” divided by the “Base Year Value.”</li> <li>• “Current Year Value” means, with respect to each performance period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such performance period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA’s customers during the 12-month period prior to the end of the performance period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (i) – (iii).</li> <li>• For the first performance period, “Base Year Value” is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA’s audited financial statements when available.</li> </ul> <p>JEA’s Chief Financial Officer will calculate the redemption price.</p> <p>The administrator will certify the redemption price as soon as practicable following the completion of JEA’s audit for the applicable performance period, but in no event later than 30 days thereafter (or, if a Recapitalization Event occurs, no later than 30 days following the closing date of such Recapitalization Event).</p>
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<p><b>Payments and Vesting Generally</b></p>	<p>The performance units will vest on the earlier to occur of (i) the first anniversary of the last day of the performance period and (ii) the date on which a Recapitalization Event occurs (the “Vesting Date”). Except as otherwise described herein, an eligible employee must be employed on the Vesting Date for the performance units to vest.</p> <p>Payments will be paid to an eligible employee no later than 30 days after the redemption price has been certified by the administrator as described above.</p>
<p><b>Termination of Employment</b></p>	<p>If an eligible employee experiences an involuntary termination of employment (as described below) prior to the applicable Vesting Date, such employee will receive a payment in respect of all of his performance units. Any amounts payable to a terminated eligible employee in respect of his performance units will be paid to such employee at the same time as the amounts would have been paid had there been no termination of employment.</p> <p>An involuntary termination means a termination of employment by JEA without cause or due to the eligible employee’s death or disability.</p> <p>An eligible employee will forfeit his performance units and aggregate purchase price on a termination of employment that is not involuntary.</p>
<p><b>Retirement Eligible Employees</b></p>	<p>If an eligible employee becomes a retirement eligible employee (as described below) and retires, in each case, prior to the applicable Vesting Date, such employee’s performance units will vest on the applicable Vesting Date.</p> <p>An eligible employee is retirement eligible if such employee has attained one of the retirement milestones as described in the General Employees Retirement Plan.</p>
<p><b>Recapitalization Event</b></p>	<p>“Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least 50% of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.</p>
<p><b>Conditions to Receipt</b></p>	<p>An eligible employee will receive the cash payment in respect of his performance units if: (i) he executes an agreement; (ii) the employee is continuously employment with JEA (except as set forth above); (iii) the employee executes and does not revoke a release of claims in favor of JEA and the City of Jacksonville; (iv) the employee complies with the covenants set forth below; and (v) the conditions in Section 215.425(3), Florida Statutes are satisfied.</p>

<p><b>Employee Covenants</b></p>	<p>Each eligible employee must (i) devote his best efforts to faithfully discharge his duties on behalf of JEA and not take any action that would be contrary to the best interests of JEA, (ii) not disclose confidential JEA information (except as required by applicable law or to perform his job duties) or (iii) not make any unauthorized public statements about, among others, JEA and government officials of the City of Jacksonville.</p> <p>If an eligible employee breaches or threatens to breach these covenants, such employee will forfeit his unvested performance units and JEA will not pay to such employee any amount in respect of his performance units (including any purchase price paid by such employee for the performance units) and/or such employee will promptly repay all or any portion of the cash payment previously paid to him in respect of his performance units, as applicable.</p>
<p><b>Administrator</b></p>	<p>The Chair of the Compensation Committee will be the administrator.</p>
<p><b>Miscellaneous</b></p>	<p>Any payments made to an eligible employee will be paid less applicable withholding taxes.</p> <p>The plan and agreements will be subject to Sections 409A and 457(f) of the Internal Revenue Code (the “Code”) and will be construed and interpreted accordingly.</p> <p>The agreements will be governed by the laws of the State of Florida and subject to arbitration in Duval County in the State of Florida.</p> <p>If or as required, JEA will collectively bargain the plan and applicable agreements with unions representing covered bargaining unit employees of JEA.</p> <p>If any payments under the plan or an agreement to an eligible employee are subject to any excise tax, interest or penalties under the Code (the “Penalties”), JEA will pay to such employee an amount equal to the full amount of the Penalties. JEA will not pay to an eligible employee any amount in respect of Penalties caused by such employee’s breach of his or her agreement or such employee’s failure to comply with applicable law.</p>



**RESOLUTION 2019-10 EXHIBIT 2**

**2019 Redemption Price Schedule under the Long-Term Performance Unit Plan**

## RESOLUTION 2019-10 EXHIBIT 2

### Long-Term Performance Unit Plan – 2019 Redemption Price Schedule

#### SCHEDULE A 2019 REDEMPTION PRICE SCHEDULE

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means 110%.

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (a), (b) and (c), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means 100%.

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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<sup>1</sup> For 2019, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.



## **JEA LONG-TERM PERFORMANCE UNIT PLAN**

### **RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville (“JEA”), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees’ proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA’s Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

### **SECTION 1 PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this “Plan”) is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA’s customers and the community it serves and the City of Jacksonville.

### **SECTION 2 CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) “Administrator” means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA’s interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) “Agreement” means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) “Applicable Law” means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) “Board” means the Board of Directors of JEA.

(e) “Cause” means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for “cause” (or words of like import), “cause” as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define “cause” (or words of like import):

(i) ~~(i)~~ the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) ~~(ii)~~ the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) ~~(iii)~~ the Participant willfully fails to perform the Participant’s duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) ~~(iv)~~ the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) ~~(v)~~ the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any

termination of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) “Involuntary Termination” means, with respect to a Participant, a termination of the Participant’s employment by any member of the JEA Group without Cause or due to such Participant’s death or Disability.

(m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.

(n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.

(o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier of the third anniversary of the Purchase Date or Closing Date.

(p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.

(q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.

(r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.

(s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.

(t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.

(u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.

(v) “Vesting Date” means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

**SECTION 3**  
**ADMINISTRATION; CERTIFICATION**

(a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants. The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

**SECTION 4**  
**EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS**



- (a) Effective Date. This Plan is effective as of July 23, 2019 (the “Effective Date”).
- (b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

## **SECTION 5**

### **VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant’s Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA’s annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant’s employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant’s Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to a termination of employment for Cause or a resignation of employment shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such unvested Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant’s Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The

Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

## **SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To receive a Purchase Price under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

## **SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his

or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

## **SECTION 8 AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## **SECTION 9 MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns.

(i) ~~(e) Successors and Assigns~~.—This Plan and any ~~Agreement~~Agreements shall be binding on and shall inure to the benefit of JEA and its successors (including any

~~organization~~organization(s) that succeeds to ~~substantially all~~a substantial portion of the assets and business of JEA) and assigns, and the term “JEA” whenever used in this Plan and any ~~Agreement~~Agreements shall mean and include any such successors or assigns. This Plan and any ~~Agreement~~Agreements shall be assigned to and assumed by any successor of JEA (including any ~~organization~~organization(s) that succeeds to ~~substantially all~~a substantial portion of the assets and business of JEA); and this Plan and any applicable Agreements may be assigned in part to and assumed by any successor of a substantial portion of the assets and business of JEA as determined by the Administrator in its sole discretion, which such determination shall be final and binding on JEA, the Participants (and their respective beneficiaries) and any such successor. Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any ~~Agreement~~applicable Agreements shall become the rights and obligations of such successor. Further, JEA shall require any successor (~~including any organization that succeeds to substantially all of the assets and business of JEA~~) to assume expressly and agree to perform this Plan and any ~~Agreement~~applicable Agreements in the same manner and to the same extent that JEA would be required to perform this Plan and any ~~Agreement~~such Agreements if no such succession had taken place. This Plan and any Agreements shall be administered in a manner which best reflects the spirit and purpose of this Section 9(e)(i), and the Board may amend or clarify this Plan and/or any Agreements to reflect the spirit and purpose of this Section 9(e)(i) in accordance with the amendment procedures set forth in Section 8(a).

(ii) Neither this Plan nor any ~~Agreement~~Agreements nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant’s estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the “AAA”) in accordance with the AAA’s then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the

“Arbitrator”). Each party further agrees to pay its or his own arbitration costs, attorneys’ fees, and expenses, unless otherwise required by the AAA’s then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys’ fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant’s termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the “Penalties”), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant’s breach of this Plan or any Award Agreement or such Participant’s failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

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**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

- (a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>
- (b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period (or, in the case of a Recapitalization Event, JEA’s Net Position as shown on JEA’s audited financial statements immediately following the Closing Date), (ii) the aggregate consideration paid, ~~distributed, credited~~ directly or otherwise ~~provided~~ transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

- (e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

<b>Summary report:</b> <b>Litera® Change-Pro for Word 10.5.0.0 Document comparison done on</b> <b>8/26/2019 5:13:10 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> JEA - Long-Term Performance Unit Plan.docx	
<b>Modified filename:</b> JEA - Long-Term Performance Unit Plan(1).docx	
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<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>49</b>





**JEA BOARD MINUTES**  
**July 23, 2019**

The JEA Board met in regular session on Tuesday, July 23, 2019, on the 19<sup>th</sup> Floor, 21 W. Church Street, Jacksonville, Florida. Present were April Green, Camille Lee-Johnson, Alan Howard, Reverend Fredrick Newbill, Kelly Flanagan, and Andy Allen. John Campion was absent and excused.

**Agenda Item I – Welcome**

- A. The meeting was called to order at 9:00 AM by Chair April Green.
- B. A Moment of Reflection was observed by all.
- C. The Pledge of Allegiance was led by Chair Green.
- D. Adoption of Agenda – The agenda was approved on motion by Vice Chair Newbill and second by Mr. Howard.
- E. Introductions were made by board members present, Aaron Zahn, and Lynne Rhode.
- F. The Safety Briefing was given by Aaron Zahn, Managing Director/Chief Executive Officer.
- G. Sunshine Law/Public Records Statement – Lynne Rhode, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

**Agenda Item II – Comments / Presentations**

- A. Comments from the Public – All information for speakers on file.
  - Jennifer Stokes: JEA employee and PEA vice chair. Comments on Strategic Planning. Asked that Staff keeps the employees in mind during decision making.
  - Cathleen Crowe: JEA employee and President of AFSCME. Comments on Strategic Planning. Invited the SLT and Board of Directors to a union meeting to discuss their union's contribution to JEA.
  - Ronnie Burris: Business Manager of LIUNA Local 630 and JEA retiree. Comments on Strategic Planning. Asked that thought is put into decisions that are made and do whatever it takes to protect the employees.
  - Jesse Ferraccio: Vice President of IBEW Local 2358 and JEA employee. Comments on Strategic Planning. Asked that decisions made about the future of JEA's detriment of the employee and stated that they are more than willing to work with the SLT to protect the employees.
  - Randy Hilton: President of PEA and JEA employee. Comments on Strategic Planning.
- B. Comments from Council Liaison – Councilman Danny Becton stated that he is glad to be the liaison for the board. He also stated that JEA is a crossroad and it is unacceptable to ignore the facts that we must innovate. He is looking forward to this opportunity.

**Agenda Item III – Operations (Discussion/Action)**

- A. **Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On motion by Secretary Johnson and second by Mr. Howard, Appendix A and Appendix B were approved.

Appendix A: Board Meeting Minutes May 28, 2019 – approved

Appendix B: Approval of Bond Counsel - approved

- B. **Monthly Reports and Updates** – The following monthly reports and updates are submitted to the Board as information only. These items require no explanation, discussion, presentation or action.

Appendix C: Monthly Financial Statements – received for information

Appendix D: Monthly FY19 Communications & Engagement Calendar and Plan Update – received for information

Appendix E: Sole Source & Emergency Procurement/Procurement Appeals Board Report – received for information

Appendix F: Corporate Campus Update – received for information

- C. **Monthly Financials and Operations Dashboard** – Melissa Dykes, President/COO discussed the details of financial dashboards, highlighting some of the metrics. JEA is in the first quartile of residential customer satisfaction in the JD Power Residential Index; improved to 28 of 142 metrics for residential customer satisfaction amongst National utilities. JEA is in the second quartile of business customer satisfaction index, therefore JEA will not meet that goal. The water pressure metric is not likely to be met as well. In addition, capital spending is on track. Also nitrogen into the river is doing well; the last 12 months have been the lowest in the history of JEA.
- D. **Strategic Planning** – Aaron Zahn, Managing Director/CEO introduced the presentation and the flow of presenters. Melissa Dykes, President/COO recapped the past presentations and Lynne Rhode, Chief Legal Officer read the disclaimer. Ms. Dykes stated that Scenario 2A shifts responsibility back to JEA but at the cost of operations. Ms. Dykes explained the sensitivity analysis and outlined the process and timeline of Scenario 2A. Highlighted the implementation plan located in the appendix.

Mr. Zahn stated that he went out to speak to customers and they are actively investing in alternative energy distribution.

Herschel Vinyard, Chief Administrative Officer presented Scenario 2B, the analysis on the constraints and the significant legal barriers. Mr. Vinyard explained what Public Policy is and the difficulties of competing in the private sector. Mr. Vinyard highlighted several laws that make it difficult for JEA to compete. Mr. Vinyard asked that the Board of Directors allow Staff to pursue the removal of legal barriers and allow Staff to come back with a granular strategy in a few months.

Ryan Wannemacher, Chief Financial Officer, presented Scenario 3. Mr. Wannemacher stated that Scenario 2A and 2B puts JEA on a controlled declined shrinkage. Mr. Wannemacher highlighted the options in Scenario 3. Scenario 3A would give ownerships to the customers, Scenario 3B would consider an IPO, and Scenario 3C would be private placement, Scenario 3D technology conversion, 3E oil and gas conversion, and Scenario 3F would be utility conversion. Mr. Wannemacher stated the first priority is the employee. Mr. Wannemacher provided a timeline and flow of a non-government structure. Mr. Wannemacher asked that the Board of Directors approve a minimum set of requirements that must be achieved by any investor for recapitalization. Kevin Hyde of Foley & Lardner joined the presentation to further explain the pension protection and provided two

examples, but stated that employees will be provided specific details on their situations.

Mr. Zahn stated should the board approve Scenario 3 there would be a recommendation for retention payments and accelerated service, base rate freeze approval, an open and competitive process, and a commitment from the Board of Directors and management team to investors.

Lynne Rhode, Chief Legal Officer read Resolution 2019-06 and solicited a motion to pursue Scenario 2A and 2B and motion to adopt Resolution 2019-06. Ms. Rhode then read Resolutions 2019-07, 2019-08, and Resolution 2019-09 and solicited a motion to adopt 2019-07, 2019-08, and Resolution 2019-09.

Chair Green stated that the Board has reviewed the documents extensively. Scenarios felt very corporate, specifically Scenario 3 and felt the importance of the employees and the community. The board had an open discussion on all of the presentation. Mr. Zahn stated that the minimum requirements were deliberated by staff and business partners.

Motion was made and passed to amend Resolution 2019-07 number 4. On motion by Secretary Johnson and second by Vice Chair Newbill amended Resolution 2019-07 was approved unanimously.

#### RESOLUTION 2019-07

#### A RESOLUTION AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO INVESTIGATE AND PURSUE SCENARIO 3: THE NON-TRADITIONAL UTILITY RESPONSE

Resolution 2019-08 on motion by Vice Chair Newbill and second by Alan Howard was approved unanimously.

#### RESOLUTION 2019-08

#### A RESOLUTION APPROVING THE REQUEST FOR INTRODUCTION OF PENSION REVISION LEGISLATION TO THE CITY COUNCIL UNDER SCENARIO 3 (THE NON-TRADITIONAL UTILITY RESPONSE) AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE INTRODUCTION OF THE LEGISLATION

Resolution 2019-09 on motion by Vice Chair Newbill and second by Secretary Johnson was approved unanimously.

#### RESOLUTION 2019-09

#### A RESOLUTION APPROVING EMPLOYEE PROTECTION AND RETENTION PROGRAM AND APPROVING CEO AND NON-CEO EXECUTIVE EMPLOYMENT AGREEMENTS UNDER SCENARIO 3 (THE NON-TRADITIONAL UTILITY RESPONSE) AND AUTHORIZING ACTION TO PURSUE IMPLEMENTATION OF SUCH PROGRAM AND EXECUTION OF SUCH AGREEMENTS

#### Agenda Item VI – Committee Report

- A. Total Compensation and Employee Benefits – Jon Kendrick, Chief Human Resource Officer, presented the Total Compensation Strategy. The goal is to elevate the entire team by ensuring the compensation philosophy align with the guiding principles, encourage long-term culture value, establish a formal compensation policy to align behavior to the four corporate measures of value, and ensure policy promotes collaboration to drive

vision and mission. Ryan Wannemacher, Chief Financial Officer presented the Long-Term Performance Units Program and how they will be beneficial to both the employees and JEA.

Lynne Rhode, Chief Legal Officer read Resolution 2019-10. On motion by Alan Howard and second by Vice Chair Newbill Resolution 2019-10 was approved unanimously.

RESOLUTION 2019-10

A RESOLUTION APPROVING LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION

Agenda Item VII – Other Business

- A. Old Business – N/A
- B. Other New Business – Alan Howard thanked everyone for their time and the opportunity
- C. Open Discussion – None
- D. Managing Director/CEO's Report – Mr. Zahn extended gratitude to Lynne Rhode and the entire Executive Team for their efforts to get the material and presentations together. Mr. Zahn thanked the Board of Directors for their work as well.
- E. Chair's Report – Chair Green reiterated Mr. Zahn's message and also reiterated that there was no vote to sell JEA. The board gave leadership the direction to go back and pursue an unconstrained non-traditional response to make JEA better for the employees, customers, and community as a whole.

Agenda Item VIII – Closing Considerations

- A. Announcements – Next Board Meeting – August 27, 2019
- B. Adjournment

*With no further business claiming the attention of the Board, Chair Green adjourned the meeting at 12:00.*

APPROVED BY:

SECRETARY \_\_\_\_\_  
DATE: \_\_\_\_\_

Board Meeting recorded by:

Madricka T. Jones, Executive Staff Assistant

## Long-Term Incentive Plan Design Market Practices Summary

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
Prevalence	LTI plans are used selectively	All 13 IOU peers have an LTI plan	LTI plans are very prevalent with almost all IOUs using an LTI plan
Eligibility	For those Public Power Utilities with an LTI plan, eligibility typically limited to select executives	Typically executives down to director level positions	Typically executives down to director level positions
Target Opportunity (% of Base Salary)	Varies widely based on the organization, but targets will be lower than IOU levels	Median for CEOs: 230% Median for NEOs*: 110% Median for Directors: NA	Median for CEOs: 240% Median for NEOs*: 75% Median for Directors: 15-25%
Award Frequency	Annual awards with overlapping cycles are most common	All 13 peers grant annual awards with overlapping cycles	98.1% of organizations grant annual awards and overlapping cycles are the most common

NEOs\* = Named Executive Officers, as disclosed in the IOU's proxy statement

# Long-Term Incentive Plan Design

## Proposed Design Details: Performance Unit

### Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	<ul style="list-style-type: none"> <li>Performance Unit: value of unit tied to JEA Net Book Value, unit valuation formula to be determined</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>All employees would be eligible in order to drive collective focus on JEA long-term performance</li> </ul>
Target Award Opportunity (as % of base salary)	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets). Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>
Award Frequency	<ul style="list-style-type: none"> <li>Annual</li> </ul>
Circuit Breaker	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle, intent is for contribution level to ensure LTI plan is self funded</li> </ul>
Performance Measures	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>
Performance Period	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul>
Payout Range	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>
Estimated Cost	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>

*- recommendation to cap by Willis, Tower, Watson.*

\*Bargaining Unit costs calculated based on step structure data if incumbent data are not available

**Council Auditor's Office  
Questions and Concerns on the Performance Unit Plan**

**Concerns:**

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.



8A

TAB A

QUESTIONS AND ANSWERS ABOUT THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN

**INTRODUCTION<sup>1</sup>**

Below are a number of frequently asked questions ("FAQs") regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

Where the context so requires, references to "JEA" refer to JEA, its affiliates, assigns, subsidiaries and successors.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR PARTICIPATION IN THE PLAN.**

**GENERAL PLAN PROVISIONS**

Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA and share in the financial [health]<sup>2</sup> of JEA.

Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA (including any full-time OGC attorney) who has been employed by JEA for at least three months prior to the Purchase Date (as described in Q&A 3) is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

( Any exceptions to the above eligibility requirements must be recommended by JEA's Chief Executive Officer (the "CEO") and approved by the Chair of the Compensation Committee (the "Committee Chair") of the Board of Directors of JEA (the "Board"). )

<sup>1</sup> JEA to confirm whether all the references to "performance" must be changed to "PLP". This was done reflected in the hand mark on revised (8/2/19).

<sup>2</sup> JEA to confirm whether this should not be a reference to success.

Q3: How does the Plan work?

A3: Each eligible employee may purchase a specified number of performance units (the "Performance Units") as set forth in the employee's Long-Term Performance Unit Agreement from JEA on January 15 of each year (the "Purchase Date") by electing to defer a portion of the employee's pay equal to the aggregate purchase price (the "Purchase Price") for the Performance Units that the employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

Q4: Who administers the Plan?

A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions the Committee Chair deems necessary or advisable for the administration of the Plan. All decisions, interpretations, and other actions of the Committee Chair will be final and binding.

Q5: How many Performance Units are reserved under the Plan?

A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan. However, only 30,000 Performance Units will be available for purchase by eligible employees on the Purchase Date.

**ALLOCATION OF PERFORMANCE UNITS**

Q6: What is a Performance Unit?

A6: Each Performance Unit represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

Q7: How are Performance Units allocated under the Plan?

A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement.

The Committee Chair may delegate the Committee Chair's authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees

To discuss the purchase terms (not the vesting schedule) of Performance Units, please refer to Section 3(d) of the Plan as amended on 03/03/2010. 4449-0000-0000-0000-0000

8C

(other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

**Q8:** How many Performance Units must I purchase to participate in the Plan?

**A8:** You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated.

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

**Q9:** How is the Purchase Price determined?

**A9:** Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

**Q10:** Will I be required to pay the Purchase Price for my Performance Units?

**A10:** Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Agreement will be equal to \$40.00 (\$10.00 x four Performance Units).

**Q11:** How do I pay the Purchase Price for my Performance Units?

**A11:** To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you.

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019. If you do not make this election by December 31, 2019, you will not be eligible to purchase Performance Units on January 15, 2020.

**Q12:** Under what circumstances will I forfeit the Purchase Price that I pay for my Performance Units?

**A12:** If prior to the Vesting Date (as described in Q&A 13) your employment with JEA is terminated for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, you will forfeit the entire amount of the Purchase

8D

Price that you paid for the Performance Units that have not vested as of the date of your termination or voluntary termination, as applicable, of employment.

Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the "Vesting Date"). Except as otherwise described in Q&A 18, you must be employed with JEA on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price for vested Performance Units.

JEA will pay the Redemption Price to you for your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the "Performance Period").

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the "2020/2023 Performance Period"), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each "Value Change Percentage" increase of 1% in excess of the "Challenge Value Target" and will decrease by \$0.50 per Performance Unit for each "Value Change Percentage" decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the "Redemption Price").

- For the 2020/2023 Performance Period, the "Challenge Value Target" will be 110% and the "Threshold Value Target" will be 90%.
- The "Value Change Percentage" means a percentage equal to the "Current Year Value" divided by the "Base Year Value."
- "Current Year Value" means, with respect to the Performance Period, the sum of (a) JEA's Net Position, as shown on JEA's audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA's Net Position as shown on JEA's audited financial statements immediately following the closing date

of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA's customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) - (c).

- For the 2020/2023 Performance Period, "Base Year Value" is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA's audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>7</sup>

**Example:** [To come]<sup>8</sup>

Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each "Value Change Percentage" decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

Q16: Who will calculate the Redemption Price?

A16: JEA's Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA's audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions include as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D.

<sup>7</sup> Consistent with JEA's whether the Purchase Price will be adjusted for participation even if the performance metrics are not attained. There is a substantial risk that the actual performance will be less than the target performance.

<sup>8</sup> Not provided.

9A

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or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

**SECTION 8  
AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

**SECTION 9  
MISCELLANEOUS**

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns.

9B

This Plan and any Agreement shall be assigned to and assumed by any successor of JEA (including any organization that succeeds to substantially all of the assets and business of JEA). Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any Agreement shall become the rights and obligations of such successor. Further, JEA shall require any successor (including any organization that succeeds to substantially all of the assets and business of JEA) to assume expressly and agree to perform this Plan and any Agreement in the same manner and to the same extent that JEA would be required to perform this Plan and any Agreement if no such succession had taken place. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum

Rhode, Lynne C. (City of Jacksonville)

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**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Friday, August 23, 2019 10:11 AM  
**To:** Wannemacher, Ryan F - Chief Financial Officer  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville), KHyde@foley.com; MKirwan@foley.com  
**Subject:** PUP


Hi Ryan,

I hope you are well.

I just spoke with Michael Kirwan at Foley and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us? It would be helpful to see your calculations (even if rough) so that we can reconcile the calculations to the formula and adjust the formula in the PUP, if necessary.

Thank you,  
Jessica

Jessica Lutrin | Partner  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street | New York, NY 10019-6131  
t +1.212.858.1090  
jessica.lutrin@pillsburylaw.com | website bio [pillsburylaw.com]

 [pillsburylaw.com]

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**Council Auditor's Office**  
**Performance Unit Plan (PUP) Value in the Event of a Recapitalization of JEA**

Category	Base Year Value
Performance Period	2018-19*
Net position	2,976,663,000
City Contribution	132,802,000
Aggregate Consideration paid to customers	-
<b>Total Base Year Value</b>	<b>\$3,109,465,000</b>

Category	Performance Period	Recapitalization Event Calculation					
		TBD	TBD	TBD	TBD	TBD	TBD
Net position		-	-	-	-	-	-
Net to City*		3,000,000,000	4,000,000,000	5,000,000,000	6,000,000,000	7,000,000,000	8,000,000,000
Net to Customers		400,000,000	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
<b>Recapitalization Value</b>		<b>\$ 3,400,000,000</b>	<b>\$ 4,400,000,000</b>	<b>\$ 5,400,000,000</b>	<b>\$ 6,400,000,000</b>	<b>\$ 7,400,000,000</b>	<b>\$ 8,400,000,000</b>

Category	Value Change Percentage Calculation					
Value Change Percentage (VCP)	109.34%	141.50%	173.66%	205.82%	237.98%	270.14%
Challenge Value Target (CVT)	110.00%	110.00%	110.00%	110.00%	110.00%	110.00%
Threshold Value Target (TVT)	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Percentage Above (Below) CVT	(0.66%)	31.50%	63.66%	95.82%	127.98%	160.14%

Category	Redemption Price Calculation						
\$100 per 1% Above CVT			3,150.00	6,366.00	9,582.00	12,798.00	16,014.00
\$10 if VCP = TVT	10.00	-	-	-	-	-	-
(.50) for each 1% Below TVT	-	-	-	-	-	-	-
<b>Redemption Price (Per PUP)</b>	<b>\$ 10.00</b>	<b>\$ 3,150.00</b>	<b>\$ 6,366.00</b>	<b>\$ 9,582.00</b>	<b>\$ 12,798.00</b>	<b>\$ 16,014.00</b>	

Category	Redemption Cost to JEA					
PUPs Authorized	100,000	100,000	100,000	100,000	100,000	100,000
PUPs Issued	100,000	100,000	100,000	100,000	100,000	100,000
PUPs Issue Revenue (\$10 Issue Price)	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>PUPs Cost to JEA</b>	<b>\$ 1,000,000</b>	<b>\$ 315,000,000</b>	<b>\$ 636,600,000</b>	<b>\$ 958,200,000</b>	<b>\$ 1,279,800,000</b>	<b>\$ 1,601,400,000</b>
<b>Amount to City</b>	<b>3,000,000,000</b>	<b>4,000,000,000</b>	<b>5,000,000,000</b>	<b>6,000,000,000</b>	<b>7,000,000,000</b>	<b>8,000,000,000</b>
<b>Net Cost of PUP to JEA</b>	<b>-</b>	<b>314,000,000</b>	<b>635,600,000</b>	<b>957,200,000</b>	<b>1,278,800,000</b>	<b>1,600,400,000</b>
<b>Net to City</b>	<b>3,000,000,000</b>	<b>3,686,000,000</b>	<b>4,364,400,000</b>	<b>5,042,800,000</b>	<b>5,721,200,000</b>	<b>6,399,600,000</b>

<b>Amount to PUPs Holders for Each Additional Billion</b>		315,000,000.00	321,600,000.00	321,600,000.00	321,600,000.00	321,600,000.00
<b>% of Additional Billion to PUP holders</b>		31.50%	32.16%	32.16%	32.16%	32.16%

\*Amounts are based on JEA's Monthly Financial Statements for September 2019, which are unaudited.

^Future City contributions are not taken into account due not knowing the timing of when a Recapitalization Event will occur. This is a more conservative approach.

<u>Date</u>	Chronology Concerning Planned Unit Performance Plan
7/23/2019	JEA Board approval of PUPs Plan
① 8/9/2019	Questions emailed to JEA from Council Auditor's Office about PUPs Plan
② 8/14/2019	In response to Council Auditor email, JEA emailed PUPs Plan documents to Council Auditor's Office, but did not answer the questions
③ 10/30/2019	Council Auditor's Office requests meeting with JEA on PUPs Plan
④ 10/30/2019	Council Auditor's Office emails questions from 8/09/19 to JEA again
10/31/2019	JEA's Chief Financial Officer, Chief of Governmental Affairs, and Chief Administrative Officer come to Council Auditor's Office and meet with Council Auditor and Council Auditor staff regarding PUPs Plan
⑤ 10/31/2019	Following the meeting, the Council Auditor's Office emails questions and concerns about PUPs Plan to JEA
⑥ 11/6/2019	Council Auditor's Office sends follow up email to JEA asking for status of response to questions
⑦ 11/7/2019	Council Auditor's Office sends email to JEA's Chief Financial Officer with sample calculation of the value of a Performance unit asking for agreement on methodology and calculation
⑧ 11/13/2019	Council Auditor receives email from JEA's Chief Financial Officer stating "We have decided to not move forward with the implementation of the performance units at this time". Attached was a letter from Aaron Zahn to Jason Gabriel dated 11/12/19 about postponing indefinitely the implementation of the plan.
⑨ 11/13/2019	Council Auditor's Office sends email to JEA again asking for confirmation that the sample calculation methodology is correct in the email we sent previously.
⑩ 11/13/2019	JEA CFO responds with updated spreadsheet stating methodology is correct. JEA inserts numbers into spreadsheet and points out a formula error in a cell
⑪ 11/14/2019	Council Auditor's Office responds to JEA CFO email with additional question and calculation
⑫ 11/14/2019	JEA CFO responds to Council Auditor's Office email that this was a DRAFT plan that is not being finalized or implemented. (Includes Aaron Zahn letter to Jason Gabriel)
⑬ 11/18/2019	Council Auditor releases Memorandum on JEA Performance Unit Plan
⑭ 11/18/2019	Email from JEA to Council Auditor with letter attached from April Green stating we were already planning to address the indefinite postponement of the Plan at the 12/17/19 Board Meeting

12B

Billy, Kyle

② From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
Sent: Wednesday, August 14, 2019 5:19 PM  
To: Rodda, Jeffrey; Crawford, Juli E. - Director Financial Planning & Analysis; Orfano, Joseph E. - Treasurer  
Cc: Peterson, Phillip; Billy, Kyle  
Subject: RE: Performance Unit Plan (PUP) Questions  
Attachments: scan\_rhodlc\_2019-08-14-13-24-00.pdf; scan\_rhodlc\_2019-08-14-13-21-11.pdf

Attachment is on left page.

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Jeff,

Attached are the latest drafts of the plan documents and award agreement that was approved by the board. This will answer many of these questions.

As we are still working on a number of other pressing items, can we circle up in a few weeks on any additional questions you may have after reviewing these documents?

I appreciate it.

Thank you,  
Ryan

① From: Rodda, Jeffrey <JRodda@coj.net>  
Sent: Friday, August 9, 2019 12:38 PM  
To: Crawford, Juli E. - Director Financial Planning & Analysis <crawjie@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
Cc: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>  
Subject: Performance Unit Plan (PUP) Questions

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Juli,

I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

over

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JEA0790

## ① Council Auditor Questions

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor  
Office of the Council Auditor  
117 West Duval Street  
Suite 200  
Jacksonville, Florida 32202  
Office: 904-255-5477  
Direct: 904-255-5487  
Fax: 904-255-5478  
E-Mail: [jrodda@coj.net](mailto:jrodda@coj.net)

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

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**JEA LONG-TERM PERFORMANCE UNIT PLAN**

**RECITALS:**

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

**SECTION 1  
PURPOSE**

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

**SECTION 2  
CERTAIN DEFINITIONS**

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) "Administrator" means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA's interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) "Agreement" means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) "Applicable Law" means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) "Board" means the Board of Directors of JEA.

(e) "Cause" means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for "cause" (or words of like import). "cause" as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define "cause" (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant's duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) "JEA Group" means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) "Participant" means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) "Performance Period" means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier of the third anniversary of the Purchase Date or Closing Date.
- (p) "Performance Unit" means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) "Purchase Date" means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA's annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) "Purchase Price" means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) "Recapitalization Event" means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) "Redemption Price" means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the "Redemption Price Schedule"); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) "Retirement Eligible Employee" means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) "Vesting Date" means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

### SECTION 3 ADMINISTRATION; CERTIFICATION

- (a) Appointment; Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants.



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The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

#### SECTION 4 EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

**SECTION 5**  
**VESTING; REDEMPTION PRICE**

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to termination for Cause or resignation shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

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**SECTION 6**  
**PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS**

(a) Purchase of Performance Units. To receive a Purchase Price under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

**SECTION 7**  
**CONDITIONS TO RECEIPT OF PAYMENT**

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

**SECTION 8**  
**AMENDMENT AND TERMINATION OF PLAN**

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no

such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

## SECTION 9 MISCELLANEOUS

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

126

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining; Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

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**SCHEDULE A**  
**[YEAR] REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) “Base Year Value” means \$[AMOUNT].<sup>1</sup>

(b) “Challenge Value Target” means [PERCENT].<sup>2</sup>

(c) “Current Year Value” means, with respect to each Performance Period, the sum of (i) JEA’s Net Position, as shown on JEA’s audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) “Value Change Percentage” means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) “Threshold Value Target” means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

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**THIS LONG-TERM PERFORMANCE UNIT AGREEMENT** (this "Agreement") is made effective as of the [ ] day of [ ], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [ ] (the "Participant").

**RECITALS:**

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

1. **Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

2. **Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant's pay-for-performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that Participant defers hereunder are unfunded and

[ID NUMBER]



unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

**3. Payment of Redemption Price.** The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

**4. Conditions to Receipt of the Performance Units.** The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to Participant the aggregate Purchase Price of such Performance Units).

**5. Covenants.** The Participant shall comply with the following covenants:

**THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.**

(a) **Cooperation.** The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) **Confidentiality.**

(i) **Protection of Information.** The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has

12 J

expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited to, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

6. **Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

7. **Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

8. **Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

9. **Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

10. **Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

11. **Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

*[Signature page follows]*

12K

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

JEA

By \_\_\_\_\_

Name: [●]

Title: [●]

PARTICIPANT

\_\_\_\_\_  
Name: [●]

*[Signature Page to Long-Term Performance Unit Agreement]*

[ID NUMBER]

JEA0807

**SCHEDULE I**

**Purchase of Performance Units and Deferral Election**

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]  
Participant First Name: [•]  
No. of Performance Units Available for Purchase (the "Available Performance Units"): [•]  
Purchase Price per Performance Unit: \$10.00  
No. of Performance Units Participant Purchases: \_\_\_\_\_  
(capped at the number of Available Performance Units):  
Aggregate Purchase Price: \_\_\_\_\_  
(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$ \_\_\_\_\_ of my pay for services to be rendered in [YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE] \_\_\_\_\_

Equal installments from pay to be paid over the next [TWO] pay periods commencing with the payroll period on [DATE] \_\_\_\_\_

\_\_\_\_\_  
NAME SIGNATURE DATE

[ID NUMBER]

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Billy, Kyle

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**Subject:** FW: PUP Review and Questions  
**Location:** Council Auditor's Conference Room  
  
**Start:** Thu 10/31/2019 9:00 AM  
**End:** Thu 10/31/2019 10:00 AM  
**Show Time As:** Tentative  
  
**Recurrence:** (none)  
  
**Meeting Status:** Not yet responded  
  
**Organizer:** Rodda, Jeffrey

-----Original Appointment-----

**From:** Rodda, Jeffrey  
**Sent:** Wednesday, October 30, 2019 9:24 AM  
**To:** Billy, Kyle; Reber, Heather; Taylor, Kim; Peterson, Phillip; Wannemacher, Ryan F. ([wannrf@jea.com](mailto:wannrf@jea.com))  
**Subject:** PUP Review and Questions  
**When:** Thursday, October 31, 2019 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Council Auditor's Conference Room

4

**Billy, Kyle**

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**From:** Rodda, Jeffrey  
**Sent:** Wednesday, October 30, 2019 2:43 PM  
**To:** Wannemacher, Ryan F. (wannrf@jea.com); Hall, Sherry  
**Cc:** Billy, Kyle; Rebar, Heather; Taylor, Kim; Peterson, Phillip  
**Subject:** Questions for PUPs.

Ryan,

You have these from before, but I am sending them again just in case.

Here are our questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

Regards,

Jeff Rodda

Public Accounts Auditor  
Office of the Council Auditor  
117 West Duval Street  
Suite 200

12 M

Jacksonville, Florida 32202  
Office: 904-255-5477  
Direct: 904-255-5487  
Fax: 904-255-5478  
E-Mail: [jrodda@coi.net](mailto:jrodda@coi.net)



5

**Billy, Kyle**

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**From:** Reber, Heather  
**Sent:** Thursday, October 31, 2019 3:13 PM  
**To:** wannrf@jea.com; Hall, Sherry; vinyht@jea.com  
**Cc:** Billy, Kyle; Taylor, Kim; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian  
**Subject:** PUP Meeting  
**Attachments:** Additional Questions and Initial Concerns on the PUP.docx

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486

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**Council Auditor's Office  
Questions and Concerns on the Performance Unit Plan**

**Additional Questions:**

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of \$808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the \$10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
  - a. Will the "in-kind" contributions be included in any of the redemption price schedule calculations?
  - b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
  - c. What will happen to forfeited Performance Units?
  - d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

over

**Council Auditor's Office  
Questions and Concerns on the Performance Unit Plan**

**Concerns:**

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.

120

6

**Billy, Kyle**

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**From:** Taylor, Kim  
**Sent:** Wednesday, November 06, 2019 2:23 PM  
**To:** wannrf@jea.com; Hall, Sherry; vinyht@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather  
**Subject:** RE: PUP Meeting

Good Afternoon,

I just wanted to follow up on our questions regarding the PUPs. Can you please give us a status update on when you anticipate we will get responses. Thank you.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Reber, Heather  
**Sent:** Thursday, October 31, 2019 3:13 PM  
**To:** wannrf@jea.com; Hall, Sherry; vinyht@jea.com  
**Cc:** Billy, Kyle; Taylor, Kim; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian  
**Subject:** PUP Meeting

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,  
Heather Reber, C.P.A.  
Council Auditor's Office  
P: 255-5486

7

**Billy, Kyle**

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**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** wannrf@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; vinyht@jea.com  
**Subject:** PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA.XLSX

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

JEA0816

12P

7

For JEA

Category	Base Year Value	Current Year Value
Performance Period	2014-15	2017-18
Net position	2,166,909,000	2,755,309,000
City Contribution	111,688,000	116,620,000
Customer Credits	110,000,000	-
<b>Current/Base Year Total Value</b>	<b>\$ 2,388,597,000</b>	<b>\$ 2,871,929,000</b>

Value Change Percentage	120.23%
Challenge Value Target	110.00%
Target Value Threshold	100.00%
Percentage Above Challenge Value Target	10.23%

Value per Performance Unit	\$ 1,023.50
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128

8

Billy, Kyle

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**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Wednesday, November 13, 2019 11:41 AM  
**To:** Rodda, Jeffrey; Billy, Kyle; Reber, Heather; Peterson, Phillip; Taylor, Kim  
**Cc:** Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** Performance Units  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

All,

We have decided to not move forward with the implementation of the performance units at this time.

Please see the attached letter from Aaron.

Thank you,  
Ryan

Get Outlook for iOS

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

JEA0818

8

21 West Church Street  
Jacksonville, Florida 32202-1119

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.



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Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:

  
Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors

9

**Billy, Kyle**

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**From:** Taylor, Kim  
**Sent:** Wednesday, November 13, 2019 3:22 PM  
**To:** wannrf@jea.com  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; vinyht@jea.com  
**Subject:** RE: PUP Sample Calculation

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,  
Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@jea.com](mailto:wannrf@jea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@jea.com](mailto:vinyht@jea.com)  
**Subject:** PUP Sample Calculation

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

JEA0821

125

10

**Billy, Kyle**

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**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Wednesday, November 13, 2019 5:18 PM  
**To:** Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA - updated with JEA projections.xlsx

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kim,

Attached is the updated spreadsheet. Your methodology is correct. I went ahead and filled in the table with FY2019 unaudited and our projected FY2022 numbers so you can see how we are looking at it.

There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Taylor, Kim  
**Sent:** Wednesday, November 13, 2019 3:21 PM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry L.; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

From: Taylor, Kim  
Sent: Thursday, November 07, 2019 1:08 PM  
To: [wannrf@jea.com](mailto:wannrf@jea.com)  
Cc: Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinvht@jea.com](mailto:vinvht@jea.com)  
Subject: PUP Sample Calculation

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

12T

For JEA

Category	Base Year Value	Current Year Value
Performance Period	2019	2022
Net position	2,976,663,000	3,350,788,657
City Contribution	132,802,000	121,794,000
Customer Credits	-	-
<b>Current/Base Year Total Value</b>	<b>\$ 3,109,465,000</b>	<b>\$ 3,472,582,657</b>

Value Change Percentage	111.68%
Challenge Value Target	110.00%
Target Value Threshold	100.00%
Percentage Above Challenge Value Target	1.68%

Value per Performance Unit	\$ 167.78
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**Billy, Kyle**

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**From:** Reber, Heather  
**Sent:** Thursday, November 14, 2019 11:45 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** Performance Unit Calc Example for JEA - updated with JEA projections.xlsx

Ryan,

Thanks for looking at our calculation and correcting our formula. I have a few questions concerning the calculation/methodology, if a recap event was to occur. Would the proceeds to the City be used to calculate the Current Year Value? Let's say that the net proceeds to the City would be \$4B or \$5B, then as part of the calculation would the customer rebates of \$400M would be added back in? See attached calculation as an example.

Heather Reber, C.P.A.

**From:** Wannemacher, Ryan F. - Chief Financial Officer [<mailto:wannrf@jea.com>]  
**Sent:** Wednesday, November 13, 2019 5:18 PM  
**To:** Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kim,

Attached is the updated spreadsheet. Your methodology is correct. I went ahead and filled in the table with FY2019 unaudited and our projected FY2022 numbers so you can see how we are looking at it.

There was one formula error in cell C16 which I corrected in the attached spreadsheet.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** [Taylor, Kim](#)  
**Sent:** Wednesday, November 13, 2019 3:21 PM  
**To:** [Wannemacher, Ryan F. - Chief Financial Officer](#)  
**Cc:** [Billy, Kyle](#); [Peterson, Phillip](#); [Rodda, Jeffrey](#); [Parks, Brian](#); [Reber, Heather](#); [Hall, Sherry L.](#); [Vinyard, Herschel T. - Chief](#)

12 U

**Administrative Officer**  
**Subject: RE: PUP Sample Calculation**

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan,

Although we did get your email earlier today concerning the PUPs, would you mind still confirming that the sample calculation methodology is correct in the email we sent you last Thursday.

Thank you,  
Kim

Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville  
Ph: (904) 255-5488  
Fax (904) 255-5478

**From:** Taylor, Kim  
**Sent:** Thursday, November 07, 2019 1:08 PM  
**To:** [wannrf@lea.com](mailto:wannrf@lea.com)  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Reber, Heather; Hall, Sherry; [vinyht@lea.com](mailto:vinyht@lea.com)  
**Subject:** PUP Sample Calculation

Ryan,

We wanted to send a sample calculation to you of the value of a Performance unit to make sure you agree with the methodology and the calculation. Could you please provide us your comments on the attached example that compares FYE 2018 to FYE 2015. Thank you in advance.

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11

For JEA

Category	Base Year Value	Current Year Value	Current Year Value	Current Year Value
Performance Period	2019	2022	2022	2022
Net position	2,976,663,000	3,000,000,000	4,000,000,000	5,000,000,000
City Contribution	132,802,000			
Customer Credits	-	-400,000,000	-400,000,000	-400,000,000
nt/Base Year Total Value	\$ 3,109,465,000	\$ 3,400,000,000	\$ 4,400,000,000	\$ 5,400,000,000

Value Change Percentage	109.34%	141.50%	173.66%
Challenge Value Target	110.00%	110.00%	110.00%
Target Value Threshold	100.00%	100.00%	100.00%
Percentage Above Challenge Value Target	-0.66%	31.50%	63.66%

Value per Performance Unit	\$ -	\$ 3,150.34	\$ 6,366.33
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#10.00  
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Billy, Kyle

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**From:** Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>  
**Sent:** Thursday, November 14, 2019 1:48 PM  
**To:** Reber, Heather; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation  
**Attachments:** 2019-11-12 Plan Letter to OGC - vFINAL.pdf

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Heather,

As noted in my previous email, you have been notified that this was a DRAFT plan that is not being finalized or implemented. In addition, as Aaron's letter noted, as a long-term incentive plan it would be moot in any recapitalization scenario. No other questions or answers are necessary at this time.

Thank you,  
Ryan

Ryan Wannemacher  
Chief Financial Officer  
Direct: (904) 665-7223

**From:** Reber, Heather  
**Sent:** Thursday, November 14, 2019 11:46 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer; Taylor, Kim  
**Cc:** Billy, Kyle; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian; Hall, Sherry L.; Vinyard, Herschel T. - Chief Administrative Officer  
**Subject:** RE: PUP Sample Calculation

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Kim Taylor, CPA  
Assistant Council Auditor  
Council Auditor's Office/City of Jacksonville

12W

Ph: (904) 255-5488  
Fax (904) 255-5478

---

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12

21 West Church Street  
Jacksonville, Florida 32202 3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

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Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors

124

13

**Billy, Kyle**

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**From:** Billy, Kyle  
**Sent:** Monday, November 18, 2019 11:53 AM  
**To:** CAUDIT  
**Subject:** Notice of Release of Memorandum on JEA Performance Unit Plan  
**Attachments:** Memorandum on JEA Performance Unit Plan to Council Members - Final.pdf

Good Morning,  
The attached Memorandum on JEA Performance Unit Plan was released on November 18, 2019. A copy of the report is attached for your convenience. Please contact me if you have any questions.

Kyle Billy, C.P.A.  
Council Auditor  
City of Jacksonville  
(904) 255-5500

13

OFFICE OF THE COUNCIL AUDITOR  
Suite 200, St. James Building



MEMORANDUM

<b>Date:</b>	November 18, 2019
<b>To:</b>	All Council Members
<b>From:</b>	Kyle S. Billy, Council Auditor
<b>Subject:</b>	JEA Performance Unit Plan

This memorandum is about the JEA "Long-term Performance Unit Plan" (Plan) approved by the JEA Board on July 23, 2019. The Plan concerns me due to its significant potential cost to JEA and the potential reduction of proceeds to the City from a Recapitalization Event.

Members of my staff and I met with JEA officials on October 31, 2019, to discuss the proposed Plan. This discussion was based on the resolution approved by the JEA Board on July 23, 2019, and other documents (drafts of the JEA Long-Term Performance Unit Plan and the Long-Term Performance Unit Agreement) received on August 14, 2019, and on questions submitted by my office on August 9, 2019. During the meeting on October 31, 2019, JEA officials indicated that there had been some changes to the documents based on our initial set of questions. They also indicated that there could be additional changes made in the future based on our discussions at that meeting. Later that day, we sent JEA a summary of outstanding and additional questions. Included in the list were questions asking for a legal opinion on whether the Plan requires City Council approval and whether it is required to be collectively bargained. While waiting for responses to our questions, I prepared to issue a memo notifying City Council of my concerns due to the timing of the rollout of the Plan (JEA planned to distribute the Plan agreements to employees in December and sell the first Performance Units in January of 2020.) However, on November 13, 2019, I received a copy of a letter from JEA's Managing Director and CEO to the City's General Counsel (see Attachment A) stating that implementation of the Plan has been postponed indefinitely. While the postponement alleviates my immediate concerns, the Plan has not been formally rescinded by the JEA Board. That is why I am still issuing this memo. Below is information about the Plan and support for why the Plan should be formally rescinded or amended by the JEA Board.

**PURPOSE OF THE PLAN**

The stated purpose of the Performance Unit Plan is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville." The purpose further states "JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville."

122

**HOW DOES THE PLAN WORK?**

Employees may purchase Performance Units for \$10 each through payroll deduction and then, after the three-year Performance Period, JEA will pay each Participant of the plan the Redemption Price per Performance Unit. The JEA Board has authorized a pool of 100,000 Performance Units.

As seen on Schedule A to JEA's Long-Term Performance Unit Plan (See Attachment B), the Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target (10% increase over the Base Year Value for the performance period) and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Base Year Value for the performance period. The scenarios below show JEA's minimum cost, maximum cost, cost based on recent financial performance, cost based on JEA projections, and cost based on various Recapitalization Event scenarios.

**Minimum Cost: Zero.** The minimum cost is zero because the Redemption Price may be equal to or less than the Purchase Price.

**Maximum Cost: Unlimited.** The maximum cost is unlimited because there is no cap on the value of a Performance Unit.

**Cost Based on Recent Financial Performance: \$101,350,000.** Based on the Fiscal Year 2018 audited financial statements (Current Year Value) compared to the Fiscal Year 2015 audited financial statements (Base Year Value), the Redemption Price of a Performance Unit would be \$1,023.50. If 100,000 Performance Units had been issued for this period, the net cost to JEA would be \$101,350,000 (\$102,350,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on JEA Projections: \$15,778,000.** Based on Fiscal Year 2019 unaudited financial statements and Fiscal Year 2022 forecasted amounts provided by JEA's Chief Financial Officer, the Redemption Price of a Performance Unit would be \$167.78. If 100,000 Performance Units are issued for this period, the net cost to JEA would be \$15,778,000 (\$16,778,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on Various Recapitalization Event Scenarios:** We ran additional calculations to demonstrate the possible costs of the Plan if a Recapitalization Event occurs.

(A)	(B)	(C)	(D)	(E)	(F)
Net Proceeds to City Before Payment of Performance Units	Purchase Price Per Performance Unit	Increase in Value Per Performance Unit	Redemption Price (B + C)	Total Payout on 100,000 Performance Units (D * 100,000 Units)	Net Proceeds to City After Payment of Performance Units (A - E)
\$3 billion	\$10	\$0	\$10	\$1.0 million	\$3.0 billion
\$4 billion	\$10	\$3,140	\$3,150	\$315.0 million	\$3.7 billion
\$5 billion	\$10	\$6,356	\$6,366	\$636.6 million	\$4.4 billion



### **OVERALL WEAKNESSES AND CONCERNS**

In addition to estimating the potential cost of the Plan, we also reviewed the Plan for weaknesses and concerns and have compiled the following list:

1. The Performance Unit Plan has not been vetted and approved by City Council.
2. There is no cap to the value of a Performance Unit.
3. The Challenge Value Target is too easy to achieve. (Looking at JEA's audited financial statements for the past ten years (2019 is based on unaudited financial statements), we determined that JEA has hit this target in 9 out of the past 10 three-year periods. See Attachment C).
4. The value of a Performance Unit is affected by changes in rates.
5. The value of a Performance Unit is affected by newly adopted Governmental Accounting Standards and changes in accounting policies which are not tied to the actual performance of JEA. Changes like these can cause significant fluctuations. Examples include:
  - a. Accounting Standards Change: The Fiscal Year 2014 financial statements were restated for comparison purposes for Fiscal Year 2015 to show the unfunded pension liability. The change resulted in a decrease in the Net Position of \$352,105,000 for Fiscal Year 2014.
  - b. Accounting Policy Change: The Fiscal Year 2015 financial statements included a change in accounting policy which had a net positive change of \$151,490,000 in Net Position for Fiscal Year 2015.
6. The value of a Performance Unit would be affected by the sale of JEA assets such as real estate or JEA's fiber network. (Real estate is recorded in the financial statements at historical cost. Therefore, the sale of the SJRPP site or any other JEA real estate not held for investment purposes would increase the value of the Performance Units.)
7. The value of a Performance Unit would increase due to developer contributions or even contributions from the City. (For example, when developers complete a subdivision, they may deed over the utility infrastructure to JEA. This would increase the value of the Performance Units. If the City donated assets to JEA, it would increase the value of the Performance Units.)
8. The value of a Performance Unit would be affected by in-kind contributions from JEA to the City (e.g. nitrogen credits).
9. The Plan is not limited strictly to JEA employees. The Plan specifically includes "each actively employed eligible attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA." In addition, the CEO can recommend and the Plan Administrator (Chair of JEA Compensation Committee) can approve participants that are not JEA employees.
10. The Plan Administrator has the ability to delegate any or all responsibilities to any member of JEA's senior executive management. (This could create a conflict of interest and should be reviewed by the City Ethics Officer.)
11. JEA's CFO, who is eligible to participate in the Plan, is responsible for calculating the Redemption Price.
12. If any payments under the plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the full amount of the penalties. (This could further increase the cost of the plan.)

**WEAKNESSES AND CONCERNS THAT APPLY TO A RECAPITALIZATION EVENT**

1. The value of a Performance Unit can increase significantly due to a Recapitalization Event. (If 100,000 Performance Units were sold as authorized, over \$300 million would be distributed to the holders of Performance Units for every billion dollars in proceeds over \$3 billion that the City receives.)
2. There is no prohibition in the Plan to offering Performance Units to employees after an ITN award has been made and the value of a Performance Unit is known, should a Recapitalization Event occur.

**OVERALL CONCLUSION**

The Plan is potentially a very costly use of JEA resources that would be magnified by a Recapitalization Event. Regarding a Recapitalization Event, the City Council should keep in mind that plans have already been approved by the JEA Board to help retain and protect employees, including guaranteeing to the employees three years of substantially comparable compensation and benefits in effect at the Closing Date, providing an additional year's pay spread over two years, and providing a pension for years of service not worked by employees who are not eligible for retirement at the time of a Recapitalization Event. Although JEA leadership has decided to postpone indefinitely the implementation of the Plan, the JEA Board has not taken action to formally rescind the Plan or modify it to correct its weaknesses.

**RECOMMENDATION**

I recommend that you request that the JEA Board take action to formally rescind the Performance Unit Plan or make the following changes to the Plan.

1. If the Plan is not rescinded, the City Council should request a legal opinion as to whether the Plan requires City Council approval.
2. Put a cap on the maximum redemption value of a Performance Unit and a cap on the overall payout of the Plan.
3. Increase the Challenge Value Target.
4. Exclude the following from impacting the value of a Performance Unit.
  - a. Recapitalization Event
  - b. Change in rates charged by JEA
  - c. Newly adopted accounting standards and changes in accounting policy
  - d. Sales of JEA assets
  - e. City contributions to JEA
  - f. Developer contributions to JEA
  - g. In-kind contributions from JEA to the City (e.g. nitrogen credits)
5. Prohibit the delegation of Plan responsibilities to those eligible to participate in the Plan.
6. Limit Plan participation to JEA employees.
7. Require JEA's external auditor to calculate or certify the Redemption Price for Performance Units.
8. Eliminate the provisions whereby if any payments under the Plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the excise tax, interest, or penalties.

**Attachments:**

**Attachment A - Letter from Aaron Zahn to Jason Gabriel**

**Attachment B - Schedule A to JEA Long-Term Performance Unit Plan**

**Attachment C - Graph Depicting the Value Change Percentage Compared to the Challenge Value Target Percentage**

**CC: JEA Board of Directors**

**Aaron Zahn, Managing Director and Chief Executive Officer, JEA**

**Ryan Wannemacher, Chief Financial Officer, JEA**

**Herschel Vinyard, Chief Administrative Officer, JEA**

**Sherry Hall, Chief Government Affairs Officer, JEA**

12 BB

**Attachment A**

21 West Church Street  
Jacksonville, Florida 32202 3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

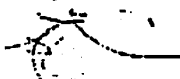
Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:



Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors

**Attachment B**

**SCHEDULE A  
YEARLY REDEMPTION PRICE SCHEDULE**

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) "Base Year Value" means \$[AMOUNT].<sup>1</sup>

(b) "Challenge Value Target" means [PERCENT].<sup>2</sup>

(c) "Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) "Value Change Percentage" means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) "Threshold Value Target" means [PERCENT].<sup>3</sup>

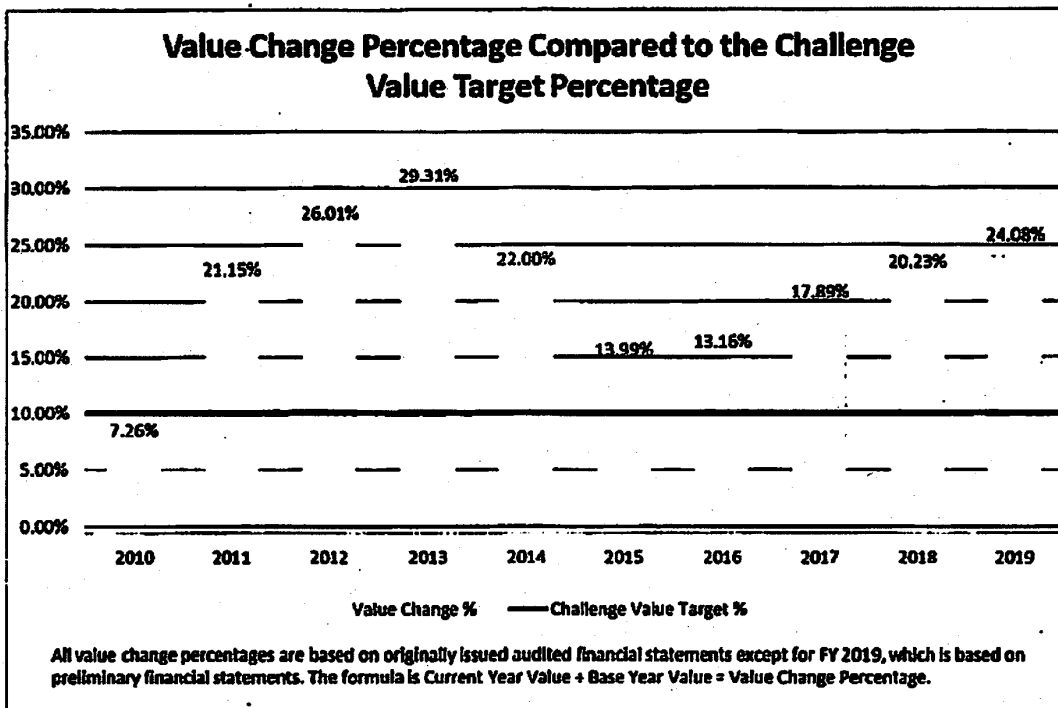
Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

**Attachment C**



(14)

12 PD

**Billy, Kyle**

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**From:** Jones, Madricka L - Executive Staff Assistant <joneml@jea.com>  
**Sent:** Monday, November 18, 2019 2:46 PM  
**To:** Billy, Kyle  
**Cc:** Hall, Sherry  
**Subject:** Letter from Board Chair April Green  
**Attachments:** Letter from Board Chair April Green.pdf

**EXTERNAL EMAIL:** This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good afternoon,

Please see the attached letter from JEA Board of Directors Chair April Green.

Kind regards,

Madricka Jones  
Executive Staff Assistant to  
Aaron Zahn, Managing Director/CEO and  
JEA Board of Directors  
Direct: (904) 665-7784  
Mobile: (904) 502-1602  
Fax: (904) 665-4238



Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.



14

21 West Church Street  
Jacksonville, Florida 32202-3139

**FROM:** April Green, JEA Board Chair  
**TO:** Kyle S. Billy, Council Auditor  
**CC:** JEA Board, Jacksonville City Council  
**Attachment:** Aaron Zahn Letter



**RE:** PUPs Already Planned for JEA Agenda on December 17 Meeting

In regard to your memo dated today, November 18, 2019, we were already planning to address the indefinite postponement of the Long-Term Performance Unit Plan at the upcoming December 17, 2019 JEA Board meeting. As you know, it is not uncommon to have one, instead of two, meetings of the JEA Board during the months of November and December. This year, we are meeting on December 17<sup>th</sup> and as such we did not have a November meeting opportunity to formally postpone the Plan.

Moreover, as your memo stated, we announced to all employees and members of the media last week that our CEO had written to the City of Jacksonville's General Council that we indefinitely postponed the implementation of the Performance Unit Plan.

In specific, your memo addresses the value of the Performance Units in the event of a decision for JEA to be recapitalized. JEA CEO Aaron Zahn's November 12<sup>th</sup> letter addressed that with the following statements:

**"Should the Board choose Scenarios 3, 4, or 5 [Community Ownership Plan; Initial Public Offering (IPO) Plan; or, Strategic Alternative from ITN 127-19] the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA."**

Again, our letter to the City said this decision was made based on the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As our CEO stated, choosing Scenarios 3, 4, or 5 would make the Plans unnecessary. Therefore, we believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board. Thanks so much for your concern and please don't hesitate to contact me directly with any future concerns.

Sincerely,

April Green, JEA Board

Rhode, Lynne C. (City of Jacksonville)

From: Mailis, Patricia L. - Director, Employee Services  
Sent: Thursday, September 12, 2019 2:36 PM  
To: Rhode, Lynne C. (City of Jacksonville)  
Cc: Kendrick, Jonathan A. - VP & Chief Human Resources Officer  
Subject: Confidential - Feedback on PUPs Plan Docs

SALES REPLY  
...  
...

Hi Lynne,

I reviewed the PUP docs from the v9/10. From an employee and benefits perspective, **here are some concerns:**

- 1) The documents read very legalize. Typically there is a Plan document that is very legal and formal in nature (which is appropriate), however, the employee letter and an exhibit(s) would be highlights of interest with references to see the Plan doc. The exhibit should include an example of the how the benefit is calculated: metrics, calculation and potential results. Referencing the Financial Statements is not appropriate.
- 2) The Plan does not provide clear calculation of how monies will grow.
- 3) **The goals for the Plan as a Retention Tool don't align with a tool where an employee is investing their dollars.** There is no Company investment. Usually when there is an investment from the employee it is to ensure success and ownership in the company. **The Plan appears to hold employees captive.** Understand there are Plans that have provisions to vest, but this is typically where there is an investment made by the company, not the employee. While there are typically penalties associated with certain investments for early withdrawal, e.g., timeframes to retain the investment, I do believe that most investments tools have forfeiture rules, whereby a person may receive a refund, but not a return of your money at \$0 (unless it is a stock and it crashes). Employees who separate from the company whether for cause or voluntarily should have the right to a refund of their money or if the value is less than their purchase, the decreased value. Increased value can have the caveat of vesting or retention.

Example: If an employee voluntarily or involuntarily terminates, they will be refunded 100% of the value of the units at the purchase price. They will not be eligible for any increase in the value. If the value has decreased, the person may only receive the value of the units as of the termination date.

- 4) Does this Plan comply with all applicable non-qualified IRS rules for government Deferred Compensation plans

Pat Mailis  
City of Jacksonville  
Human Resources  
2019-09-12 11:11





14

**Luster, Jill R. - Executive Staff Assistant**

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**From:** Rhode, Lynne C. (City of Jacksonville)  
**Sent:** Monday, December 9, 2019 3:57 PM  
**To:** Luster, Jill R. - Executive Staff Assistant  
**Subject:** Fwd: JEA - Performance Unit Plan - Enrollment Material

Begin forwarded message:

**From:** "Kendrick, Jonathan A. - VP & Chief Human Resources Officer" <kendja@jea.com>  
**Date:** December 9, 2019 at 10:31:42 AM EST  
**To:** "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>  
**Subject:** FW: JEA - Performance Unit Plan - Enrollment Material

FYI

**From:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Sent:** Monday, November 4, 2019 3:28 PM  
**To:** Kendrick, Jonathan A. - VP & Chief Human Resources Officer <kendja@jea.com>  
**Subject:** FW: JEA - Performance Unit Plan - Enrollment Material  
**Importance:** High

Jon,

See below. Mass Mutual cannot pull this off in 4-6 weeks.

Would you still like for us to proceed to the plan for administration as discussed last week with Mass Mutual RetireSmart online access as go-live in March 2020? We will commence work with them now and if we can start the implementation project sooner, we will do this.

I am also awaiting the proposed contract for the work associated with the administration.

Pat

**From:** Scheetz, Michael <mscheetz@massmutual.com>  
**Sent:** Monday, November 4, 2019 2:11 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
**Subject:** JEA - Performance Unit Plan - Enrollment Material  
**Importance:** High

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pat:

*Is this why the Plan was going to be postponed?  
Adam's email came out 11/29*

15

**From:** Kyle, Gina A. - Manager Media Relations  
**To:** "Michael Munz"  
**Cc:** "Melissa Stone"  
**Subject:** statement for edits  
**Date:** Wednesday, December 4, 2019 5:06:44 PM

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JEA received full authorization from the board for the development of a long term performance unit plan during its July 2019 board meeting, as noted is resolution #\_\_\_\_\_. As previously stated, JEA management and the board requested the formal opinion of the state Attorney General on October 1 to ensure that no conflicts existed. JEA did not then, and still does not see any conflicts with the manner in which the plan was developed. As a reminder, the plan was cancelled by CEO Aaron Zahn prior to the requested opinion on November 13, when it was determined during discussions with legal counsel to be conflicting with the boards ongoing consideration of strategic alternatives and the related ITN process. The plan is scheduled to be rescinded during the Monday, December 9 board meeting.

**Gina Kyle, MBA**

Manager, Media Relations

Direct: (904) 665-7974

Mobile: (904) 305-0502

Media: (904) 665-5500

Media: media@jea.com

**JEA0847**

To: Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>  
Subject: FW: A Proposal for JEA Non-Qualified Plan

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

See previous page. This is an email from 11/8/19

Pat:

I am forwarding to your attention the proposal for the annual recordkeeping for the Non-Qualified Performance Unit Plan. Since we do not know the number of participants that will participate in the plan, we had to make some assumptions. We extracted from the database a list of employees with compensation over \$150,000 with the assumption this group of employees are the most likely to contribute. Based on that extraction we arrived at 37 participants for pricing purposes.

Let me know if you have any follow up questions.

Regards,

**Michael M. Scheetz**  
Client Engagement Manager | Government Markets  
Workplace Solutions  
**MassMutual**  
100 Bright Meadow Boulevard | Enfield, CT 06082  
☎ (813) 244-0058

MassMutual.com [massmutual.com] RetireSmart [retiresmart.com] Facebook [facebook.com]  
Twitter [twitter.com] LinkedIn [linkedin.com]

**From:** Girard, Chad <CGirard@MassMutual.com>  
**Sent:** Friday, November 08, 2019 10:19 AM  
**To:** Scheetz, Michael <mscheetz@massmutual.com>  
**Subject:** FW: A Proposal for JEA Non-Qualified Plan

Please let me know if you need anything else.

**Chad Girard**  
Sales Consultant  
Workplace Solutions & Strategic Distribution

**MassMutual**  
C: (413) 386-5658  
100 Bright Meadows Blvd  
Enfield, CT 06082



## Transcript from July 23, 2019 Board Meeting re PUP

[2:40:51] Green: Next we have the total compensation employee benefits review by chair miss Johnson.

Johnson: Thank you madam chair and you're absolutely right I feel like getting to this section is kind of we've moved the boulder right, certainly addressing you again after having gone through and worked with management to develop the program that's again in line with our strategy guiding principles and working with third party consultant Towers Watson, I'm actually just so everything can be transparent and clear I'm going to turn it over to Mr. Wanamaker to just kind of take us through the specifics of the performance unit program and certainly the long-term performance plan that Chair Howard wanted, or excuse me, that Board Member Howard wanted to get into so

[2:41:47] Man to Wanamaker's left: Actually I'm going since I popped up Adam chair, members of the board over the last several months as Mr. Howard referred to we've looked at total compensation going back to January and even beyond and you have us some tasks to do to develop that program and we have done so looking at base salary, looking at short-term incentives. The first few slides, remind you of the core competencies that we helped to develop that and the primary one has worked together to elevate the entire team total compensation is a key driver in that effort so to elevate the entire team we had these four principles obviously ensure that our compensation philosophies aligned with our guiding principles to encourage that long-term culture of value creation and to establish the formal comp policy to align our behavior to the four core measures the CCF, and finally make sure it promotes collaboration to drive the vision and mission of JEA so employee incentives should drive value and team work. As referred to previously in January you made a resolution or adopted a change to the board policy manual to address the comp program to, to direct us to come in line with a 50 percent of the market and also a focus on long term incentives so we did a lot of that work and have now arrived at the long term incentive in June you directed us to develop program and that's highlighted at the bottom of that slide is the final component of the program so as we research the feasibility of long term incentives we discovered several, several things and it became apparent there was no definitive answer in Florida law regarding long term incentives for government entities so rather than become mired in discussions regarding whether something qualifies as compensation or not whether it's subject to collective bargaining or not, we simply designed a program that's an employee benefit as opposed to a compensation program and it's provides employees an opportunity to purchase performance units and participate in the future growth of JEA. They will directly add value to JEA obviously as employees and in purchasing these performance units and at this point I will turn it over to Mr. Wanamaker to explain how the performance units work.

[2:44:03] Wanamaker: So what we're proposing is the adoption of a performance unit plan which would be a new benefit program that will enable employees to participate in both the upside and the downside as the business changes so employees will be eligible to purchase performance units for ten dollars per unit and the units will increase or decrease in value based



on the financial performance of JEA over a 3 year period. Employees would be required to remain employed through the end of that performance period to receive any benefit from any of (someone coughs and I can't decipher what is said). The first performance period would be fiscal years 2020 to 2022 and it's recommended that 30,000 performance units be made available for purchase. In your packet you'll find a full summary of the details in this program but I wanted to walk through the board, but walk the board through some of the mechanics of how this would work, this first performance period so the performance units would increase or decrease in value based upon the performance, the financial performance of JEA and before employees would see any benefit from this program JEA would be required to exceed a challenge target for value over the course of the performance period so for the first period, for the first performance period, this three-year period employees would need to increase the value of JEA by at least 300 million dollars before they would receive any benefit so between now and 2022 they'd have to exceed 300 million dollars at increased value. If they increase value by more than that 300 million, they would be eligible to receive 10% of the value that's generated above 300 million so for example, if employees increased the value of JEA by 600 million dollars would represent a substantial increase of over 20% in the value of JEA over that 3 year period these performance units would be eligible for 5% of the 600 million dollars in value that was created. This would equal 30 million dollars or an average of about 10 million dollars per year over that performance period. To put that in perspective it represents a little more than 6% of our total annual payroll. On the flip side, if the value of JEA was less than it is today, at the end of the performance period, the value of the performance units would decline in value and employees would experience a loss at the end of the performance period. In the event that the employees increase the value of JEA but it does not exceed the 300 million, then they would receive no gain or loss and would simply receive their money back at the end of the performance period. There's a resolution on this item so I'll turn it over to Ms. Rhode read that now.

[2:47:18]: Rhode: Madam Chair, (Yes) This is resolution 2019-10 a resolution approving long term performance unit plan and related documentation and authorizing the CEO to take any and all action to pursue the implementation of such plan and related documentation whereas in accordance with board policy 2.7 the compensation committee directed JEA management in January 2019 to develop a compensation policy to align with talent market and guiding principles. JEA management presented to the Compensation committee and the conferencing compensation committee approved in June 2019 the framework for compensation plan including a long term incentive plan whereas at its June 2019 board meeting the board approved the framework of JEA's long-term compensation plan and authorized JEA management to develop the plan and present it to the board at the July 2019 board meeting for final approval whereas the board believes that it is in the best interest of JEA to adopt a long-term performance unit plan in connection with annual performance reviews and general operation of JEA and whereas the board has reviewed the summary of the terms and conditions of the long-term performance unit plan which summary is attached hereto is exhibit 1 the long-term performance plan summary be it resolved by the board that number 1 the chief executive officer and managing director of the CEO or his designee shall have the authority to implement a long term performance

unit plan on the terms and conditions set forth on the long term performance plan summary execute with each actively employed eligible full-time employee any full-time JEA employee as otherwise recommended by the CEO and approved by the administrator of the long-term performance unit plan and each actively employed eligible full-time attorney from the office of the general counsel the City of Jacksonville whose dedicated exclusively JEA an agreement under the long-term performance unit plan in consultation with the Office of General Counsel make technical and clerical amendments to the long-term performance unit plan and/or the form long term performance agreement all of which do not increase the financial obligations or liability of JEA under the long-term performance unit plan and/or the form long-term performance agreement and take or cause to be taken any and all action and to prepare, execute, and deliver or cause to be prepared executed and delivered any and all documents that the CEO or his designee deems necessary or advisable to carry out the intent of this resolution number 2 the chair of the compensation committee of the board be and hereby is appointed as the administrator of the long-term performance unit plan with full power and authority to administer the long-term performance unit plan in accordance with the terms there with 3 the 2019 redemption price schedule under the long-term performance unit plan for the performance units to be purchased by participants in January 2020 attached hereto as exhibit 2 is hereby approved number 4 this resolution shall be effective immediately upon its adoption.

[2:50:41] Green: (I think) John thank you so much for coming in and picking up the ball and jumping right in and bringing us here today and thank you Board Member Johnson for all the work that you've done sharing the compensation committee. Can I get a motion to approve resolution 2019-10

Johnson: Motion

Guy to Zahn's Right: 2<sup>nd</sup> the motion

Green: Any discussion?

Silence then laughter.

Green: is this your last board meeting?

[2:51:36] A. Howard: Yes, this is my last Board meeting. So what happens if JEA shrinks? Scenario 3 is not successful and the value of the enterprise shrinks it's worthless are we under water?

[2:51:48] Wanamaker: So to the extent that the value of JEA decreases as it shrinks employees would experience a loss on their purchase of these performance units and so I mean they would, they would decline in value.

A. Howard: and they're not tradable right? It doesn't say that but you can't transfer. Non-transferable.

Wanamaker: Yes, that's correct.

A. Howard: What happens on termination of employment for any reason?

[2L52:20] Wanamaker: So if it's a termination and I want to make sure I'm speaking correctly so look at it miss Rhode on this, if it's a termination with cause, they would lose those performance units. To the extent that it is without cause there's a different provision for that but I don't, can you refresh me on that.

[2:52:43] Rhode: Yes,

A. Howard: It's in the summary, do they go back to the pool?

[2:52:48] Wanamaker: If they're terminated with cause?

A. Howard: It doesn't say, it just says involuntary termination but it doesn't say what happens to the units. If they don't get paid out because they're vested, do they go back into the pool is my question, I think they must.

[2:53:03] Rhode: I believe so.

Wanamaker: Yes, they would.

Zahn: They'd go back to the company.

Wanamaker: Right, are you asking if they'd be eligible to purchase somebody else?

A. Howard: Yes, yes

Wanamaker: Yeah, no that's right

A. Howard: follow up to my non-transferrable question.

Wanamaker: Correct, correct yes.

A. Howard: Okay, I think I understand how it works and then there's accelerated vesting upon a recapitalization of that?

Wanamaker: Correct.

A. Howard: Also, where it said there were a hundred thousand units, is it 30 thousand per performance period?

Wanamaker: So the plan document contemplates a program however the 30 thousand is all that would be authorized under the current fiscal year performance period.

A. Howard: Ok so there might be subsequent periods where the courts authorized 400 thousand issue another 10, 15.

Wanamaker: Correct.

Zahn: The idea is that this, you know, absent of the conversation of today this is really a continuation of the conversation the board of directors has been having since January of 2019 and so it's a follow up presenting a plan that would effectively live in perpetuity on an annual basis just as other plans.

A. Howard: And I assume that this has been passed over to OGC, I know we've got some legal constraints over statutory plans.

Rhode: Yes, sir.

A. Howard: Thank you Madam Chair.

[2:54:31] Flanagan: Ryan, could you walk us through how at a macro level, the valuation will occur?

Wanamaker: Yes, so there will be a threshold that's set at the end of the fiscal year based on our audited financial results, there will be a formula that's laid out in the program that is a combination of the net position of JEA from the balance sheet, the total of any city contribution over the last 12 months as well any distribution to customers over the last 12 months and so that will be kind of be that, that floor if you will that's indicated by the red bar there that forecasted value from there there'll be a challenge target that's set above that and that's the 300 million dollars that I reference in the presentation and at the end of the performance period we would do the same calculation with the same audited financial results to determine that value at the end of that performance period.

Zahn: To be very clear, none of the metrics utilized are subjective, they're all audited financial numbers that can be verified by an independent auditor.

Flanagan: If I can ask a follow up, are there any implications of scenario 3 as passed today and how that interacts with this plan?

Wanamaker: So the only implication and Mr. Howard referenced it, would be that if there is a transaction, recapitalization event, the performance period would end at the closing of that recapitalization event so you would perform that calculation at that time.

Green: Any further discussion

Howard: it has the salutary effects of a retention program during this time of uncertainty.

Zahn: Sure.

Green: All in favor of resolution of 2019-10 signify by saying aye.

Collective room: Aye.

Green: Those not in favor do the same.

Green: So moved.