Morgan, Belinda S.

From: Guyer, Richard E.
Sent: Sunday, July 7, 2019 5:04 PM
To: Morgan, Belinda S.; Hyde, Kevin E.
Subject: RE: Performance Units
Attachments: JEA - Form of Performance Unit Agreement.doc

Kevin and Belinda,

Attached please find a draft of the performance unit agreement for JEA. Per Kevin's instructions, I've attempted to weave in the applicable provisions from JEA's employee benefit bond proposal. Accordingly, my understanding of the performance grant is as follows: employee is granted a pre-determined amount of performance units (either electric or water or both). The performance units are then redeemed for cash at the end of 2020 based on a formula which increases $10 for each 1% of the applicable enterprise value change percentage in excess of the target.

Please let me know if you have any comments or suggestions for this draft.

Best,
Richard

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From: Morgan, Belinda S. <BMorgan@foley.com>
Sent: Wednesday, July 3, 2019 4:08 PM
To: Hyde, Kevin E. <KHyde@foley.com>
Cc: Guyer, Richard E. <RGuyer@foley.com>
Subject: RE: Performance Units

That sounds good – thanks, Kevin.

Richard – I'll generally be around this (long) weekend if you have any questions I can help with as you're doing the first draft of the agreement.

Belinda

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From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Wednesday, July 3, 2019 2:40 PM
To: Morgan, Belinda S. <BMorgan@foley.com>
Cc: Guyer, Richard E. <RGuyer@foley.com>
Subject: RE: Performance Units

Belinda:

I am copying Richard Guyer who has agreed to take a first stab but we would love your review and input. We are trying to avoid the word bonus but the concept is the same. Feel free to reach out to Richard in the Jacksonville office. Thanks to both for working on this in a quick turnaround.

I will take care of the public employee piece, i.e. Florida law allows us to do this.

-Kevin E. Hyde

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From: Morgan, Belinda S. <BMorgan@foley.com>
Sent: Wednesday, July 3, 2019 2:33 PM
To: Hyde, Kevin E. <KHyde@foley.com>
Subject: RE: Performance Units

Kevin,

I'm happy to help, and have worked on option plans and incentive unit plans before, but nothing similar for a public agency. To be honest, I'm not exactly sure how this would work as I wouldn't think there would be any sort of stock/equity units to which the plan would apply. Is this really more of a bonus arrangement, but each individual gets a certain number of "units" which determines his/her piece of a bonus pool? We could definitely do something like that.

I'm also not sure how the "exercise" component would apply since the arrangement would presumably be subject to 457(f) – as a result, the participants would be required to include the value of the deferred bonus in income as soon as they vested in it, which would take away the benefit of being able to determine when to exercise the unit.

I have a call with Sam Hoffman at 2pm Central today, though, and can ask if he's ever drafted something along this line. If so, he may have already considered the issues I've noted above, and have a way around those.

Belinda

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From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Wednesday, July 3, 2019 1:00 PM
To: Morgan, Belinda S. <BMorgan@foley.com>
Subject: Performance Units

Belinda:

A public agency client wants to create a "bonus" program for its employees. They are calling them performance units, essentially a grant of options to exercise. Is this something you have drafted before or could you help draft? I can handle the niceties of Florida public sector law – which allows employees to be paid bonuses – but I need a good starting place from which to work. If not you, let me know who you would recommend. And of course the client is in a rush over the July 4th weekend. Early next week would be fine.

-Kevin E. Hyde

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JEA
Performance Unit Agreement

THIS AGREEMENT (this "Agreement") is made by and between JEA ("JEA"), and [Recipient Name] (the "Employee") this _____ day of _____ (the "Grant Date").

WITNESSETH:

WHEREAS, JEA desires to grant to the Employee performance units representing the potential to receive a cash payment based on the achievement of certain performance criteria, in consideration for the Employee's service to JEA and its affiliates.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do agree as follows:

1. **Grant.**

(a) **Performance Units**. Subject to the terms and conditions of this Agreement, the Employee is hereby granted Performance Units with the following terms and conditions as of the Grant Date:

Number of Performance Units:	[_____] Electric Performance Units (the "Electric Performance Units")
	[_____] Water/DES Performance Units (the "Water/DES Performance Units" and, together with the Electric Performance Units, collectively, the "Performance Units")
Performance Period:	October 1, 2019 – September 30, 2020

(b) **Cash Settlement of Performance Units**. As soon as reasonably practicable after the end of the Performance Period, JEA shall deliver to the Employee an amount of cash (the "Exchange Amount") equal to the number of Performance Units granted to the Employee pursuant to this Agreement multiplied by the applicable Performance Measure for the Performance Period as determined in accordance with Section 1(c). Such settlement of Performance Units shall occur no later than December 15, 2020. After the delivery by JEA of the Exchange Amount, the Employee will have no remaining Performance Units.

(c) **Performance Measure**.

(i) Defined Terms.

"City Contribution" means any cash, in kind or other payment or contribution paid to the City of Jacksonville (excluding public service taxes and franchise fees).

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"Electric Base Year Value" means One Billion Six Hundred Sixty-Seven Million Six Hundred Fifty-Five Thousand and 00/100 Dollars ($1,667,655,000).

"Electric Current Year Value" means the sum of (i) the net position of the Electric Enterprise Fund (as determined in JEA's audited financial statements for the fiscal year 2020) plus (ii) all City Contribution paid during the Performance Period plus (iii) any refunds, rebates and/or distributions to customers during the Performance Period.

"Electric Value Change Percentage" means the quotient of the Electric Current Year Value divided by the Electric Base Year Value expressed as a percentage.

"JEA Value Target" means one hundred five percent (105%).

"Performance Measure" means the applicable amount calculated according to Section 1(c)(ii).

"Water Base Year Value" means One Billion Two Hundred Eighty-Seven Million Nine Hundred Seventy-Seven Thousand and 00/100 Dollars ($1,287,977,000).

"Water Current Year Value" means the sum of (i) the net position of the Water and Sewer Fund and District Energy System (as determined in JEA's audited financial statements for the fiscal year 2020) plus (ii) all City Contribution paid during the Performance Period plus (iii) any refunds, rebates and/or distributions to customers during the Performance Period.

"Water Value Change Percentage" means the quotient of the Water Current Year Value divided by the Water Base Year Value expressed as a percentage.

(ii) Performance Measure Calculation. The applicable Performance Measure for each Performance Unit will be calculated as follows:

(A) The initial Performance Measure for each Performance Unit shall be $0.00 per Performance Unit.

(B) The Performance Measure of each Electric Performance Unit will increase $10.00 for each 1.0% of the Electric Value Change Percentage in excess of the JEA Value Target.

(C) The Performance Measure of each Water/DES Performance Unit will increase $10.00 for each 1.0% of the Water Value Change Percentage in excess of the JEA Value Target.

(d) **Registration**. The Performance Units will be held in book entry by JEA as registrar and paying agent.

2. **Termination.**

(a) **Effect of a Termination of Employment**. If the Employee's employment with JEA or any affiliate of JEA is terminated at the option of the Employee for any reason prior to the end of the Performance Period, or is terminated by JEA (or its affiliate, as applicable) for Cause (as defined in such Employee's employment agreement) prior to the end of the Performance Period, then the Employee shall no longer be entitled to receive any Exchange Amount hereunder.

(b) **Termination Upon Employee's Death**. The Employee's entitlement to the Exchange Amount shall be terminated if, prior to the end of the Performance Period, the Employee's employment or service terminates due to death or as a result of the Employee becoming totally and permanently disabled (within the meaning of Internal Revenue Code Section 409A).

(c) **Termination Following Payment of Exchange Amount**. In the event that the Employee is paid any Exchange Amount pursuant to this Agreement, this Agreement shall terminate.

3. **No Right to Continue as an Employee**. Neither this Agreement nor the grant of the Performance Units shall constitute or be evidence of any agreement or understanding, express or implied, that the Employee has a right to continue as an employee of JEA or any of its affiliates for any period of time, or at any particular rate of compensation.

4. **Taxes.** The Employee (and not JEA or any of its affiliate) shall be responsible for the Employee's federal, state, local or foreign tax liability and any of the Employee's other tax consequences that may arise as a result of the transactions contemplated by this Agreement. The Employee shall rely solely on the determinations of the Employee's own tax advisors or the Employee's own determinations, and not on any statements or representations by JEA or any of its agents, with regard to all such tax matters. To the extent that the receipt or settlement of the Performance Units, or other event, results in income to the Employee for federal, state or local income tax purposes, the Employee shall deliver to JEA or its affiliate at the time JEA or its affiliate is obligated to withhold taxes in connection with such receipt, settlement or other event, as the case may be, such amount as JEA or its affiliate requires to meet its withholding obligation under applicable tax laws or regulations, and if the Employee fails to do so, JEA shall have the right and authority to deduct or withhold from other compensation payable to the Employee an amount sufficient to satisfy its withholding obligations.

5. **Miscellaneous**.

(a) **Section 409A**. In the event that the Performance Units or Exchange Amount granted hereunder are deemed to constitute deferred compensation within the meaning of Internal Revenue Code Section 409A, such Performance Units or Exchange Amount, as applicable, shall comply with the requirements of Internal Revenue Code Section 409A and the provisions of such Code Section shall be deemed incorporated herein by reference to the extent required by law.

(b) **Assignment**. Neither this Agreement nor the rights or obligations of Employee hereunder may be assigned without the prior, express written consent of the Managing Director and CEO of JEA (the "Administrator") and the Chair of the Compensation Committee of JEA.

(c) **Interpretation.** This Agreement shall be interpreted by the Administrator and any interpretation by the Administrator of the terms of this Agreement and any determination made by the Administrator pursuant to this Agreement shall be final, binding and conclusive.

(d) **Amendment**. This Agreement may be amended only by written consent signed by both the Employee and JEA, unless the amendment is not to the Employee's detriment.

(e) **Waiver**. The failure of JEA to enforce any provision of this Agreement at any time shall in no way constitute a waiver of such provision or of any other provision hereof.

(f) **Successors**. This Agreement shall be binding upon and inure to the benefit of Employee and Employee's heirs and personal representatives and JEA and its successors and legal representatives.

(g) **Counterpart Signatures**. This Agreement may be executed and accepted in one or more counterparts for the convenience of the parties, each of which will be deemed an original and all of which, taken together, shall constitute one and the same instrument. Delivery of a facsimile of a manually executed counterpart hereof via facsimile transmission or by electronic mail submission, including but not limited to an Adobe file format document (also known as a PDF file), shall be as effective as delivery of a manually executed counterpart hereof.

6. **Entire Agreement**. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes in their entirety all prior undertakings and agreements of JEA and Employee with respect to the subject matter hereof. Employee expressly warrants that Employee is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein.

[Signature page follows]

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BY SIGNING BELOW AND ACCEPTING THIS AGREEMENT, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN.

JEA

By: _____
Title:

_____
Recipient