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To: JEA

Date: October 10, 2019

Re: ITN#127-19 - Approval Timeline

**ATTORNEY-CLIENT
PRIVILEGED**

A successful bid received pursuant to ITN# 127-19 (the “ITN”) requires approval of the JEA Board, City Council, and ultimately, Jacksonville voters. Pursuant to your request, below is a timeline of those approvals, working backwards from a proposed referendum date.

Referendum

Section 21.04(p) of the JEA Charter requires approval of both the Jacksonville City Council (“Council”) and a referendum to approve the transfer of any function or operation “which comprises more than 10% of the total of the utilities system by sale, lease, or otherwise” to another utility. For the purposes of this memorandum, we assume a successful bidder under the ITN will acquire 10% or more of the assets of JEA. Therefore, any successful bid must receive approval by referendum, unless the Council amends Section 21.04(p) of the JEA Charter. Section 21.04(p) also provides that the referendum must approve “the terms and conditions of the sale.” Other observers have commented that the “terms and conditions of the sale” language is so ambiguous as to make it impossible to determine the exact procedure and potential outcome of the required referendum.¹

It is possible that City Council could amend Section 21.04(p) of the JEA charter to remove the referendum requirement. However, such an action is likely to be politically unpalatable.

Ballot Preparation

In a telephone conversation with Mike Hogan, Duval County Supervisor of Elections, we have confirmed that the Supervisor of Elections’ office will require 120 – 150 days in advance of a special referendum to prepare the ballot and coordinate all logistics for a special referendum vote. Mr. Hogan emphasized that 120 days is the bare minimum. If the only open items is ballot language for a scheduled election, Mr. Hogan has indicated that 90-100 days advance notice of the ballot language is required.

¹ See Memorandum of Pillsbury Winthrop Shaw Pittman LLP dated September 12, 2019, *Project Scampi-Regulatory Issues Relating to New or Amended Franchise Agreements and Territorial Boundary Agreements*.

City Council Approval

City Council approval of a bill to approve a transaction negotiated in response to the ITN is estimated to take 30-60 days. The Council meets on the second and fourth Tuesday of each month. However, a bill of this magnitude would likely be heard by the Council's Finance Committee, Rules Committee (which has jurisdiction over charter revisions, government reorganization, consumer affairs), and the Transportation, Energy, and Utilities Committee (which has direct jurisdiction over JEA). The committee hearing process, together with first and second readings of the bill, and final approval, combined with public hearings could result in a longer approval timeline.

If this is an omnibus bill that includes multiple elements: approval of a bid, amendment of the Charter to clarify the scope of the "terms and conditions of the sale" subject to referendum, and/or a new franchise agreement, then the City Council approval process could take even longer.

In addition, if the successful bid includes a purchase of water and/or wastewater systems of JEA, the City Council must also comply with the requirements of Section 180.301, Florida Statutes, regarding sale or privatization of a water, sewer, or wastewater reuse utility. That statute enumerates a number of factors which the Council must specifically consider and requires a public hearing.

JEA Board Approval

At the conclusion of the ITN process, the JEA Board is required to approve a bidder. That approval would follow the bid process and any appeals. The foregoing and following timeline does not take into account the time associated with the procurement process which takes place prior to JEA Board approval. Nor does the foregoing or following timeline take into account any bid protests or appeals, which are the subject of a separate chart attached hereto.

Finally, the foregoing and following timeline do not take into account proceedings before the Florida Public Service Commission re rate structure, proposed rates and any shared service territory consent. Those proceedings should follow the referendum but would be a condition to closing on any successful bid pursuant to the ITN.

Conclusion

The minimum timeline from JEA Board approval to a referendum date would be approximately 187 days and could be 224 days or longer. The greatest risk for delay after JEA Board Approval is City Council approval. The greatest risk for delay prior to JEA Board approval are delays associated with bid protests and appeals.

Recap of Timeline

Date	Action	Comment
Referendum Date	Vote by citizens	
120 days prior to Referendum Date or 100 days prior to a scheduled election date	Supervisor of Elections ballot deadline	Supervisor of Elections indicates this could take up to 150 days for a special election; if it is only finalizing ballot language for a scheduled election, then it could be as short as 100 days.
150 – 180 days prior to Referendum Date	City Council Approval	City Council hearing and approval process will take 30 – 60 days minimum given the public interest and potential referral to three committees of City Council
180 – 210 days prior to Referendum Date	Introduction of bill in City Council	Depending on date of JEA Board Approval and timing of next scheduled Council meeting there could be a 1 – 2 week delay in filing of the bill
187 – 224 days prior to Referendum Date	JEA Board Approval	This would follow the bid award and any appeals process