

**From:** [Vinyard, Herschel T. - Chief Administrative Officer](#)  
**To:** ["CKise@foley.com"](mailto:CKise@foley.com)  
**Subject:** Emailing: JEA - Form of Long-Term Performance Unit Agreement AS REVISED (FINAL)  
**Date:** Monday, November 4, 2019 1:07:08 PM  
**Attachments:** [JEA - Form of Long-Term Performance Unit Agreement AS REVISED \(FINAL\).docx](#)

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Your message is ready to be sent with the following file or link attachments:

JEA - Form of Long-Term Performance Unit Agreement AS REVISED (FINAL)

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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. 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: [●]

**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