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Sent: Monday, December 23, 2019 6:17 PM
To: April Green (agreeen@mebusinesssolutions.com); Dykes, Melissa H. - Interim Managing Director CEO
Cc: Wilson, Scott; Hodges, Lawsikia
Subject: JEA Legal Advisor

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Dear April & Melissa –

• **Future of JEA Legal Advisor Role**

I write to notify you of a solution going forward with respect to the designated JEA legal advisor position. In developing this solution it is important to examine the deficiencies of the previous set-up where Lynne Rhode (who was hired by OGC and assigned to advise JEA) was ensconced in JEA management; deficiencies that were revealed in Lynne's recent resignation email where she erroneously claims, among other things, that our office was fully informed and engaged in all manners regarding representation of JEA. Lynne is a unfortunate example of what can happen when an attorney loses sight of his/her role and responsibilities as not only an attorney but an attorney for OGC, which is an attorney for the entire consolidated government and not any one entity. Having reflected on what has transpired since Lynne first joined OGC a mere eight months ago, I write to explain the nature of the events as well as to set forth a solution to ensure this does not happen again in the future.

Going forward, attorneys assigned to JEA will be housed at City Hall. This includes bringing Miriam Hill back to OGC, though she will still maintain her current full-time assignment to JEA matters. The next hired JEA-designated attorney will also be housed accordingly. JEA notably has a lot of legal needs, however, I believe this model best serves JEA and ultimately the City at large, considering our current format of government. It restores the provision of legal services to the more traditional model that has served the City well over the years.

• **June 17, 2019 OGC Memo**

Prior to the July 23, 2019 Board meeting, OGC had provided general guidance to JEA regarding employee incentive plans; essentially a guide on how a public agency could develop an employee incentive plan in compliance with Sec. 215.425, Fla. Stat. The Employment section of our office was asked for legal guidance by JEA, and we provided it in our memo dated June 17, 2019. Our understanding from JEA was that the employee incentive plan they were developing would be structured in compliance with the statute.

• **July 22, 2019 OGC Memo**

Importantly, the day before the July Board meeting, on July 22, 2019, Lynne and JEA's CAO came to OGC at the behest of JEA's CEO, with a draft memo for OGC's approval regarding the Board's authority to approve the resolutions on the agenda. We (Lawsikia Hodges and I) had reservations about the memo and insisted that it be revised to reflect the Board's authority to – as a policy matter – approve any one of the Strategic Options. We also insisted on the inclusion of language reflecting the fact that OGC had not yet reviewed (independently from JEA's legal advisor and the two firms

hired as special counsel to JEA) the legality of the plan or any of the underlying documents associated with the resolutions. The draft memo was revised to specifically include language that such business decision would be “subject to applicable laws” as well as the following: that the “scope of this memorandum [from OGC] 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 OGC pursuant to the course of action approved by the JEA Board.” Emphasis added. See Memo from OGC dated July 22, 2019.

That is, at the time of the July 23, 2019 Board meeting, OGC was relying on the assurances and legal counsel of JEA’s Legal Advisor (Lynne Rhode) in conjunction with special outside counsel (2 premier national law firms), who were drafting the plan’s underlying documentation. Lynne – as well as JEA management – knew that when OGC approved the July 22 memo, OGC had not rendered any opinion as to the legality of the plan or its underlying documents (as our memo states). They also knew that OGC planned to independently review the plan prior to its implementation to ensure its compliance with the Charter and any other applicable laws.

At the July 23, 2019 Board meeting, the following exchange took place between Lynne Rhode and Alan Howard:

[2:54:12 – 2:54:20] A. Howard: And I assume that this has been passed by the OGC. I know we’ve got some legal constraints over statutory plans . . . yes?

[2:54:20 – 2:54:21] L. Rhode: Yes sir.

While Mr. Howard’s statement/question to Lynne was compound in nature, a more accurate approach by Lynne to answering the question would have been to mirror the July 22 memo, by stating that while the Board could – as a policy decision for JEA – legally approve proceeding with one of the presented Strategic Options, that the review and preparation of the documents associated with the resolutions was prepared and approved by outside counsel, and that OGC hadn’t made any legal determination as to the legality of those documents at that time, and reserved the right to do so subsequently.

• November 12, 2019 OGC Memo

Such legal review by OGC occurred during the weeks that followed as OGC raised many questions and concerns regarding the details of the plan which are evident in the subsequent Foley and Pillsbury memos which were written in an attempt to address OGC’s raised issues/concerns. Of course, ultimately, despite legal opinions from specialized counsel that supported the legality of the plan – put aside policy for the moment – OGC ultimately concluded that this plan could not be implemented and recommended that it be dissolved, as there remained outstanding legal issues under federal, state and local law. Each of these issues and concerns were shared with JEA. See Memo from GC dated November 12, 2019.

• Questions & Concerns

Lynne was aware of our concerns including, specifically, our concern with her being included as a part of this plan and working on it despite her potential financial gain. This particular sensitive issue which bore ethical issues for Lynne was brought up with her personally and with JEA management, on more than one occasion.

Unfortunately, even after OGC’s ultimate legal conclusion regarding the legality of the PUP, Lynne still maintained, as recently as a fact-finding meeting conducted by OGC on December 19, that she still believed that the PUP was completely legal. This is despite the fact that Lynne admitted to OGC attorneys that she had done very little to independently research the issues and had, instead, simply relied on outside counsel’s opinions, which OGC had called into question. While I have no problem with individual attorneys at OGC having their own view or opinion (I, in fact, encourage internal debate), once I arrive at an ultimate conclusion, that is the determination that must be relayed to the client.

Once OGC's vetting revealed the serious problems with the PUP, Lynne should have represented appropriately the ultimate opinion of OGC. Instead, she acted on her own personal legal opinions, opinions which, in my view, were ill-conceived, inadequately researched, and wrong. The documents that were presented at the Council-held PUP investigatory meeting on December 16 only evidenced further the disconnect between Lynne's opinions and representations to JEA versus OGC's review and positions on the matter.

I believe we have a good solution going forward and look forward to working with you to accomplish it.

Please do not hesitate to contact me with any questions or concerns.

Thanks, Jason G.

Jason R. Gabriel

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