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**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**

**WHEREAS**, the Board believes that it is in the best interest of JEA to adopt an employee protection and retention program in connection with investigation and pursuit of Scenario 3: the non-traditional utility response;

**WHEREAS**, the Board has reviewed the summary of the terms and conditions of the employee protection and retention program attached hereto as Exhibit 1 (the "Employee Protection and Retention Summary");

**WHEREAS**, such employee protection and retention program may require collective bargaining for certain represented employees;

**WHEREAS**, the Board believes that it is in the best interest of JEA to retain the talent necessary to effectively implement Scenario 3 (the non-traditional utility response) and to enter into employment agreements with employees of JEA that have a title of Vice President or higher; and

**WHEREAS**, the Board has reviewed the employment agreement with JEA's Chief Executive Officer and Managing Director (the "CEO") attached hereto as Exhibit 2 (the "CEO Employment Agreement") and the employment agreement with JEA's senior executive management team (other than the CEO) in substantially the form attached hereto as Exhibit 3 (the "Form Non-CEO Executive Employment Agreement").

**BE IT RESOLVED**, by the Board that:

1. The CEO or his designee shall have the authority to execute with each full-time employee who is actively employed with JEA on the date hereof or as otherwise recommended by the CEO and approved by the Chair of the Compensation Committee an employee protection and retention program agreement (the "Form Employee Protection and Retention Program Agreement") on the terms and conditions set forth on the Employee Protection and Retention Summary and to 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 CEO or his designee shall have the authority to, in consultation with the Office of General Counsel, make technical and clerical amendments to the Form Employee Protection and Retention Program Agreement, all of which do not increase the financial obligations or liability of JEA under the Form Employee Protection and Retention Program Agreement.

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Deponent Howard
Date 8/18/20 Rptr TL
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3. The Board hereby approves the CEO Employment Agreement and Form Non-CEO Executive Employment Agreement.

4. The Chair of the Board shall have the authority to (i) execute the CEO Employment Agreement, (ii) in consultation with the Office of General Counsel, make technical and clerical amendments to the CEO Employment Agreement, all of which do not increase the financial obligations or liability of JEA under the CEO Employment Agreement, and (iii) 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 Chair of the Board deems necessary or advisable to carry out the intent of this resolution.

5. The CEO or his designee shall have the authority to (i) execute Non-CEO Executive Employment Agreements in substantially the same form as the Form Non-CEO Executive Employment Agreement, (ii) in consultation with the Office of General Counsel, make technical and clerical amendments to the Non-CEO Executive Employment Agreements, all of which do not increase the financial obligations or liability of JEA under the Non-CEO Executive Employment Agreement, and (iii) 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.

6. This resolution shall be effective immediately upon its adoption.

Dated this 23rd day of July 2019.

JEA

By: _____
April Green, Chair

_____
Secretary

Form Approved:

_____
Office of General Counsel

# RESOLUTION 2019-09 EXHIBIT 1

## Employee Protection and Retention Summary

**RESOLUTION 2019-09 EXHIBIT 1**

**Employee Protection and Retention Summary**

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| **Overview** | Subject to the occurrence of a Recapitalization Event (as defined below) and the satisfaction of the conditions described below, each eligible employee may receive a cash payment equal to 100% of his annual base salary in effect on July 23, 2019. |
| **Documentation** | An eligible employee will be required to sign an agreement with JEA. |
| **Eligible Employees** | All full-time employees who are actively employed with JEA on July 23, 2019 are eligible to receive a cash payment.<br>Any exceptions to the above must be recommended by JEA's CEO and approved by the Chair of the Compensation Committee. |
| **Payments and Vesting Generally** | The cash payment will vest in three equal installments (each, an "Installment") on the closing date (the "Closing Date") of the Recapitalization Event, the first anniversary of the Closing Date and the second anniversary of the Closing Date (each, a "Vesting Date"). Except as otherwise described herein, an eligible employee must be employed on the Vesting Date for each Installment to vest.<br>Each Installment will be paid to an eligible employee as soon as reasonably practicable after each applicable Vesting Date, but no later than 30 days thereafter. |
| **Termination of Employment** | If an eligible employee experiences an involuntary termination of employment (as described below) prior to the applicable Vesting Date, such employee will receive 100% of the cash payment (to the extent unpaid) and any such amount will be paid to such employee at the same time as each Installment would have been paid had there been no termination of employment.<br>An involuntary termination means a termination of employment by JEA without cause or due to the eligible employee's death or disability. |
| **Recapitalization Event** | "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. |

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| **Conditions to Receipt** | An eligible employee will receive the cash payment if: (i) he executes an agreement; (ii) the Recapitalization Event occurs no later than December 31, 2021; (iii) the employee is continuously employment with JEA (except as set forth above); (iv) the employee executes and does not revoke a release of claims in favor of JEA and the City of Jacksonville; (v) the employee complies with the covenants set forth below; and (vi) the conditions in Section 215.425(3), Florida Statutes are satisfied. |
| **Employee Covenants** | 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.<br><br>If an eligible employee breaches or threatens to breach these covenants, JEA will not pay such employee the cash payment (to the extent unpaid) and/or such employee will promptly repay all or any portion of the cash payment previously paid to him, as applicable. |
| **Miscellaneous** | Any payments made to an eligible employee will be paid less applicable withholding taxes.<br><br>The agreements will be subject to Sections 409A and 457(f) of the Internal Revenue Code (the "Code") and will be construed and interpreted accordingly.<br><br>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.<br><br>If or as required, JEA will collectively bargain the applicable agreements with unions representing covered bargaining unit employees of JEA.<br><br>If any payments under 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. |

**RESOLUTION 2019-09 EXHIBIT 2**

**CEO Employment Agreement**

**EXECUTION VERSION**

# 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.

**ATTEST:**

_____

**JEA**

_____
April Green, Chair

Date: _____

**WITNESSES:**

_____

_____

_____
Aaron F. Zahn, Employee
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.

_____
Ryan Wannemacher, Chief Financial Officer

Approved:

_____
Lynne Rhode, Chief Legal Officer

## EXHIBIT A

### Position Profile

| | |
|---|---|
| **Position Title** | Managing Director & Chief Executive Officer (CEO) |
| **Location** | Jacksonville, Florida |
| **Reports To** | 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. |
| **Reporting Structure** | *Current Reporting Structure under the CEO:*<br>• President & Chief Operating Officer<br>• Chief Financial Officer<br>• Chief Public & Shareholders Affairs Officer<br>• Chief Administrative Officer<br>• Chief Innovations and Transformation Officer<br>• Chief Information Officer |
| **Position Summary** | 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 & 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.<br><br>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.<br><br>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. |
| **Responsibilities** | • Provide strategic leadership for the organization by developing and |

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 [NAME], 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 [TITLE], 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)[1] 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 [NUMBER] ([NUMBER])-month anniversary thereof (the "Consulting Period"),

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[1] Note to Draft: To be increased to 60 days for group terminations.

Service Provider 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].[2] 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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[2] 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:

[NAME]
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:**

_____

_____

_____
[NAME], 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[__].

_____
[NAME], Chief Financial Officer

Approved:

_____
[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 [NAME], 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)[3] 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

[3] 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:[4]

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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[4] 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:

[NAME]
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.**

_____
**[NAME]**

**RESOLUTION 2019-09 EXHIBIT 3**

**Form Non-CEO Executive Employment Agreement**

**EXECUTION VERSION**

# EMPLOYMENT AGREEMENT FOR [TITLE]

**THIS EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered 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 "JEA" or "Employer"), and [NAME], 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 [TITLE] 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 [TITLE] 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 August 1, 2019 (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 [TITLE] of JEA. 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 shall be commensurate with Employee's position together with any responsibilities and duties assigned by the Board or JEA's Chief Executive Officer.

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 $[AMOUNT].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 $[AMOUNT].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 [NUMBER] ([NUMBER]) 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 A 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 five (5) 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 [NUMBER] ([NUMBER]) months in accordance with the terms of the Separation and Transition Agreement substantially in the form of Exhibit A 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 or her 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 Executive 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 Executive 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:

[NAME]
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 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 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.

**ATTEST:**

_____

**JEA**

_____
April Green, Chair

Date: _____

**WITNESSES:**

_____

_____

_____
[NAME], Employee
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.

_____
Aaron F. Zahn, Managing Director & Chief Executive Officer

Approved:

_____
Lynne Rhode, Chief Legal Officer

**EXHIBIT A**

**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 [NAME], 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 [TITLE], 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)[1] 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 [NUMBER] ([NUMBER])-month anniversary thereof (the "Consulting Period"),

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[1] Note to Draft: To be increased to 60 days for group terminations.

Service Provider 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].[2] 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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[2] 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 Executive 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 Executive 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:

[NAME]
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:**

_____

_____

_____
[NAME], 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[__].

_____
[NAME], Managing Director & Chief Executive Officer

Approved:

_____
[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 [NAME], 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)[3] 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

[3] 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:[4]

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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[4] 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 Executive Officer and JEA's Chief Legal Officer.[5] 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 Executive 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:

[NAME]
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.

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[5] Note to Draft: To update applicable signatories accordingly.

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], Managing Director & Chief Executive 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.**

_____
**[NAME]**