IN RE: HERSCHEL VINYARD - TERMINATION OF EMPLOYMENT AGREEMENT WITH JEA

SWORN STATEMENT
OF
HERSCHEL THOMAS VINYARD, JR.

DATE TAKEN: Wednesday, June 17, 2020
TIME: 1:06 p.m. - 8:23 p.m.
PLACE: 101 East Adams Street
Jacksonville, Florida

REPORTED BY: Marianne Branson, RPR, FPR
Court Reporter

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17
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HERSCHEL THOMAS VINYARD, JR.,
having been produced and first duly sworn as a witness, testified as follows:

THE WITNESS: Yes, ma'am.

MR. COXE: So before we start --

MR. WEDEKIND: Yes, sir.

MR. COXE: -- just a couple of observations. I mentioned to you before we started -- there's really no remedy for it now, so I'm not going to make it a big issue -- we don't understand why Sean Granat is here, because he's a fact witness in this whole process.

We do not understand why Lanny Russell is here, based on conversations between the Department of Justice and Mr. Busey. And I recognize that Mr. Busey told me that he had had a meeting with Mr. McElroy and Jason Gabriel on the subject of the Nixon Peabody memos to be a possible basis to terminate Mr. Vinyard for cause. And I asked Mr. Busey what he was doing there on an employment issue with JEA.

So I'm just going to make that clear for starters right now, okay. We can deal with those issues later if we have to, but we don't understand why those people are here. We don't

understand why this many people are here either, since you're recording it.

But be that as it may, if the General Counsel's got that many lawyers to send, that's fine.

MR. WEDEKIND: All right. Anything else?

MR. COXE: Not now.

MR. NUNN: Excuse me, Lee. We're having a little trouble with the audio. I'm not sure where the mic is.

MR. WEDEKIND: I'll try to move the mic to be a little bit more central. And we'll all try to do a good job of speaking up.

EXAMINATION

BY MR. WEDEKIND:

Q Will you please state your name and address for the record?

A Herschel Thomas Vinyard, Jr., 4447 Chippewa Drive, Jacksonville.

Q Mr. Vinyard, you understand that you are currently on administrative leave as the chief administrative officer of JEA?

A I do.

Q And that this interview is being conducted as part of an investigation to determine whether there

exists grounds to terminate your employment for cause?

A I do.

Q My name is Lee Wedekind. I'm with the law firm of Nelson Mullins. We have been retained by JEA, through OGC, to assist in the investigation.

I will be asking questions today. I have a number of documents that I'm going to be asking you questions about.

I would ask you to do a couple of things for me, please. If you would please make sure that you listen and understand my questions before you start answering. If you don't either hear me or understand what I'm trying to ask you, please ask me to either repeat or restate my question, and I will do that.

If you could please also work with me to make sure that our court reporter here gets a clean transcript of our conversation by not beginning your answer before I finish my question, I will work very hard not to ask my next question until after you've finished your answer. That way we're not talking over one another, and she has an opportunity to get down everything that we say.

This is not a deposition. It looks like one, but it isn't one. This is an interview. We are not operating under the Rules of Civil Procedure here, and

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so I might ask questions in a way that might not pass muster under particular procedural rules. For purposes of today, that's okay.

You are permitted to have witnesses here. You have two. They happen to also be lawyers. But I would not anticipate their having the opportunity to object to, for example, the form of my questions, like you would otherwise typically be able to do in a deposition, because, again, like I said, this is not a deposition.

MR. COXE: Could I interrupt you a second?

MR. WEDEKIND: Yes, sir.

MR. COXE: I understood you to say he had the opportunity to have witnesses here.

MR. WEDEKIND: A witness to observe the interview.

MR. COXE: Okay.

MR. WEDEKIND: That's set out in what I'm going to get to next.

MR. COXE: Okay.

BY MR. WEDEKIND:

Q And, Mr. Vinyard, you were provided a Garrity form. It's in front of Mr. Coxe right now. Have you had the opportunity to review that?

A I have.

Q Okay. Do you have any objections to signing it?

It requires your signature and execution. So if you wouldn't mind, please go ahead and sign that you acknowledge that this interview is being conducted and you're being provided your Garrity rights.

And then it has a space for me to sign it, as well as the investigator, and I will sign it as soon as you do.

MR. COXE: And just so we're clear, my advice to Mr. Vinyard was that he's welcome to sign it. It is not a suggestion that he needs Garrity protection, though.

So fire away.

THE WITNESS: (Signs document)

MR. COXE: By signing it.

MR. WEDEKIND: I understand. And just so the record is clear, Mr. McElroy has also signed it on behalf of JEA.

Mr. Vinyard has signed it. He's handed it to me. I'm going to sign it now. Thank you very much.

MR. COXE: Put it over here, and we'll get a copy.

BY MR. WEDEKIND:

Q Do you understand all the ground rules that I kind of laid out there?

A Yes, sir.

Q Okay. Any questions?

A No, sir.

Q Okay. Last thing, you understand that you have a duty to answer my questions honestly and completely; correct?

A To the best of my ability, yes, absolutely.

Q Okay. And to me that means that if there is a point that you understand I'm trying to make but I'm doing it somewhat inartfully and you have information that is responsive to my request, I ask that you provide all responsive information.

Can you do that?

A To the best of my ability, absolutely.

Q Thank you. All right. Can you please give me all of the cell phone numbers that you have used in the last two years?

A Only one. 904-504-0510.

Q And that is your personal cell phone?

A That's correct.

Q And how about all of the email addresses that you have used in the last two years?

A So my JEA address, which is vinyht@jea.com.

Q Do you have only one JEA email address?

A Yes.

Q How about personal email addresses?

A I don't use personal email addresses for business.

Q Never?

A I don't -- if it was, it was an accident. But never -- almost never.

Q Do you have personal email addresses?

A I do have a personal email address.

Q One?

A One.

Q Can you tell me the domain?

A Gmail.

Q All right. What did you do to prepare for today's interview?

A I reviewed some emails. Obviously I chatted with my lawyers. I reviewed documents. Normal, I guess, deposition prep.

Q Did you go back and read the transcript of your interview from January that was done in connection with the Zahn investigation.

A I did.

Q Did you review any other transcripts?

A I did not.

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1 Q What emails did you look at?
2 A Well, emails with -- to the extent that they
3 were publicly available or that we had them, with Lynne
4 Rhode, with Ryan Wannemacher.
5 MR. COXE: Lee, is your question emails
6 between him and other people or the universe of
7 emails?
8 MR. WEDEKIND: The universe of emails that he
9 reviewed in preparation for this interview.
10 THE WITNESS: I don't have an exhaustive list
11 of emails that I've looked at.
12 BY MR. WEDEKIND:
13 Q Were there a bunch of them or a handful?
14 A A handful.
15 Q Okay. What did the emails relate to, any
16 specific topics?
17 A Well, for Lynne Rhode, certainly work on the
18 long-term incentive plan.
19 Q What about Ryan?
20 A Same. And the same with -- just a couple of
21 emails with Pillsbury and with Nixon Peabody.
22 Q Okay.
23 A I'm sure I reviewed emails with Lawsikia
24 or -- and maybe others in OGC.
25 Q And all of the emails that you looked at

1 would generally fall under the umbrella of relating to
2 the PUP?
3 A Or the long-term incentive plan.
4 Q Or the LTIP?
5 A Uh-huh.
6 Q Okay. Did you speak with anybody other than
7 your lawyers?
8 A I spoke with Lynne Rhode. I spoke with Ryan
9 Wannemacher, and I spoke with Melissa Dykes.
10 Q When did you have those conversations?
11 A On Friday.
12 Q All three?
13 A Yes.
14 Q In person?
15 A No.
16 Q All over the phone?
17 A Yeah.
18 Q What did you and Lynne Rhode discuss?
19 A The long-term incentive plan. And the same
20 with Ryan, and the same with Melissa.
21 Q Anybody else that you spoke with other than
22 those three people and your lawyers?
23 A No.
24 Q Did you talk with Aaron Zahn?
25 A I did not.

1 Q Did you talk with Kevin Hyde?
2 A I talked to Kevin, don't know about this --
3 if I talked to him about this deposition.
4 We are in a Bible study together. So I don't
5 think he -- I don't know if he knows that I'm being
6 deposed today.
7 Q Interviewed. But yeah.
8 A Yes.
9 Q I've slipped a couple times, too.
10 What did you and Melissa Dykes talk about?
11 A We talked about my objection to the PUP plan
12 at Club Continental.
13 Q Does she remember your objection?
14 A She know that -- she knows that I objected at
15 that time and multiple times thereafter.
16 Q Was she -- well, I'll get into that more
17 later. What about your conversation with Ryan?
18 A The same. I don't think Ryan mentioned that
19 he heard me say anything at Orange Park, but he did
20 hear me say on multiple times that I had -- that I
21 objected to the plan.
22 Q When we talk about -- just I want to make
23 sure that we have our verbiage down.
24 When we talk about the LTIP, or the PUP, or
25 the plan, do you use those terms interchangeably, or do

1 they mean different things to you?
2 A They mean different things to me. The long-
3 term incentive plan was something that was being
4 explored, I think, far beyond -- well, before I arrived
5 at JEA. I think the -- when I say the performance unit
6 plan, or PUP, that was a -- I guess a distinct type of
7 long-term incentive plan that was first discussed, to
8 my knowledge, in Orange Park.
9 Q When we talk about Orange Park and Club
10 Continental, that is the meeting that was had at Club
11 Continental in Orange Park from July 10th to July 12th
12 of 2019; is that right?
13 A Yes, sir.
14 Q Tracking the evolution of this plan -- I
15 guess I'll say it this way, tracking the evolution of
16 the PUP, at first it was discussed broadly as an LTIP
17 and later evolved into what ultimately became the PUP.
18 Is that a fair way to say it?
19 A I think so.
20 Q Okay. My understanding is that you started
21 work at JEA as the CAO on April 1st, 2019?
22 A I think it was April 2nd.
23 Q Okay. Could you please walk me through your
24 recruitment and onboarding process?
25 A Sure. I received a call from Aaron Zahn

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1 and -- wanting to know would I meet with him. We met
2 for breakfast, and he discussed his interest in being
3 more aggressive on water projects. He discussed the --
4 related to that, actually, in the government affairs
5 arena wanting to go after additional dollars from the
6 state and the Water Management District to fund those
7 water projects.
8 Q When was that call?
9 A It was first quarter of 2019. So I can't
10 tell you if it was January/February time period, but I
11 think maybe February is when we met.
12 Q And that was the call or that was the
13 breakfast?
14 A I think we met for breakfast in February.
15 Subsequent to that, I did have coffee with Melissa
16 separately from Ryan. I had several discussions with
17 Angie Hiers, who was the vice president for human
18 resources.
19 Q Okay. So you met with Mr. Zahn, you met with
20 Ms. Dykes, you met with Mr. Wannemacher and you had
21 calls with Ms. Hiers?
22 A That's correct.
23 Q Anybody else?
24 A That's it.
25 Q Did you ever have to go through a formal

1 interview process, or was it more informal coffee
2 meetings?
3 A It was -- I had to do a background check and
4 so I had to do some paperwork with the HR department.
5 But the interview with the three was -- was the primary
6 onboarding.
7 Q Did Mr. Zahn ever talk to you about a plan
8 that he might have to try to privatize JEA, as part of
9 your onboarding process?
10 A No.
11 Q Were you ever -- did any of them ever discuss
12 with you the possibility of privatizing JEA, as part of
13 your recruitment and onboarding?
14 A No.
15 Q Did anybody ever talk to you about the
16 possibility of a long-term incentive plan or PUP, as
17 part of your recruitment or onboarding?
18 A Certainly not the PUP, because that wasn't
19 identified at the time. Angie Hiers described for me
20 that the company was looking at developing a long-term
21 incentive plan, but there wasn't -- there was no meat
22 on the bones.
23 Q Just the concept?
24 A Yes.
25 Q As part of your recruitment, were you

1 recruited specifically to the position of CAO or just
2 recruited to join the senior leadership team?
3 Were you given a title that you were applying
4 for? Because they kind of created the position for
5 you; right?
6 A Well, after my last deposition -- or last
7 interview, there was not a CAO previously, but I was
8 recruited to be CAO.
9 Q Okay, got it. Was there any kind of a
10 discussion as part of the recruitment about what your
11 job duties and responsibilities as the CAO would be?
12 A Sure. So we talked an awful lot about the
13 water concerns that we face in Northeast Florida.
14 So Florida has -- Northeast Florida relies
15 solely on the Floridan aquifer. It's our sole source
16 of all of our potable water. The consumptive use
17 permit that currently JEA holds allows us to pump about
18 130 to 140 million gallons a day. As our population
19 increases, that will -- could present concerns.
20 And so one of the things that I emphasize is
21 water reuse. JEA does a nice job but can do a better
22 job with water reuse, and so we talked about expansion
23 of water reuse. We talked about what is known as water
24 purification, which is you take purple pipe water and
25 purify it to better-than-drinking-water standards as

1 another means to kind of reduce reliance on our
2 groundwater.
3 Q When you talk about purple pipe, you mean --
4 A Reused water, treated wastewater. And then
5 it can be further treated. And JEA actually has a
6 very, very successful pilot project that -- that they
7 completed in 2019.
8 We talked about septic to sewer, which is
9 a -- kind of an unkept promise that -- to many in our
10 community and needs to be able to serve those
11 communities. So in the environmental, that would be in
12 some of the water side.
13 We talked about the Northside plant for --
14 once-through cooling water brings in an extraordinary
15 amount of water, and -- and it has some negative
16 impacts from the biology of the critters in that area.
17 And JEA is currently undergoing a study on that, and
18 that could impact the life span of Northside generating
19 plant.
20 And then we talked about the -- there is a
21 combustion byproduct that is being kind of stockpiled
22 at Northside and the need to decide what we're going to
23 do with that.
24 So that was -- a lot of environmental for
25 sure. Government affairs included -- we had a newly

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1 elected mayor -- or reelected mayor. We had a number
2 of new City Council members. And of course as we
3 pursue legislative appropriations in Tallahassee, that
4 was another component.
5 And then the third component was corporate
6 compliance, and then my role in that ultimately grew.
7 Corporate compliance includes critical infrastructure
8 protection, which is -- and a lot of these are all
9 regulatory, which is my background. Not specifically
10 in some of these, but certainly I understand regulatory
11 authority and regulatory processes. So critical
12 infrastructure protection.
13 Electric compliance, which is kind of a load
14 regulatory scheme.
15 Physical security was in there as well.
16 Oh, and then they had the audit group within
17 the corporate compliance section.
18 Q How about legal?
19 A Thank you. Yes, legal. I was going to be
20 responsible for interacting with Office of General
21 Counsel.
22 Q Would you characterize that as within your
23 corporate compliance role or as a fourth category?
24 A That would be a separate category to work
25 with -- kind of be the management representative to the

1 Office of General Counsel.
2 Q And just thinking in terms of your org chart,
3 I understand that Lynne Rhode, when she was the chief
4 legal officer of JEA, had a dotted line to you. Is
5 that correct?
6 A I don't know. I know that was asked. I did
7 go back and check that. I know she did have a black
8 line to -- into OGC. But I recognize the constraints
9 of the charter.
10 Q Did she report directly to you as well as
11 OGC?
12 A We worked hand in glove, really, and I think
13 she worked very, very closely with OGC as well.
14 Q Did you have a prior relationship with Aaron
15 Zahn before he called you about this particular
16 opportunity?
17 A So the -- as I explained to Mr. Powell in my
18 previous interview, I was introduced by DEP to
19 Mr. Zahn. Mr. Zahn had a company that would turn waste
20 products into a beneficial reuse product and apparently
21 had some success in some of the area sewage treatment
22 plants. That's how I met Mr. Zahn.
23 The only conversation I had with him between
24 that time period and the time where he called me, that
25 I recall, is I was asked to chair the environmental

1 committee at the Jacksonville Chamber, and I asked
2 Aaron to serve on that committee. And at the time he
3 was too busy, and so he declined.
4 Q Why did you ask him to serve on the
5 committee?
6 A Well, he had a lot of interest in, obviously,
7 the waste business, and we were looking for new folks
8 to join.
9 Q Do you remember that you and he were both on
10 Rick Scott's economic development transition team
11 together?
12 A I don't.
13 Q So based on what you have said, I would
14 describe that as a very casual business
15 acquaintanceship. Is that a fair description of it, or
16 was it something more than that?
17 A As I told you, I met him through a
18 professional relationship, toured, I think, two sewage
19 treatment plants, and that was it.
20 Q When did you decide to take the role as JEA's
21 CAO?
22 A Well, it would have been sometime February or
23 March. And I don't know if I let Aaron know or Angie
24 Hiers.
25 Q There was some discussion about the timing of

1 your arrival in April being as a result of a bonus that
2 you were owed from Foley around March.
3 Does that sound about right?
4 A The -- Foley does give bonuses in the March,
5 April time period.
6 Q When did you give notice to Foley that you
7 would be leaving and moving over to JEA?
8 A I guess it would have been in March.
9 Q All right. And you just said that you
10 joined -- your first official day was April 2nd, 2019.
11 All right. When you got into the role, were
12 the responsibilities of the role the same as what were
13 discussed as part of your recruitment and onboarding,
14 or were they different?
15 A I would say the legal things that were kind
16 of thrown at us were -- was not quite what I expected,
17 and -- and -- because I was brand new, and then OGC
18 provided us Lynne Rhode. I think she started four,
19 five days after I did, and she was brand new as well.
20 Q As part of your -- the legal component of
21 your job, did you also have the responsibility to
22 manage JEA's outside counsel?
23 A No. Office of General Counsel manages
24 outside counsel with -- in consultation with us. And
25 so I had a number of opportunities to talk with -- it

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1 was primarily Jason and -- Jason Gabriel and Lawsikia
2 Hodges.
3 Q Did you ever provide legal services using
4 your bar license to JEA?
5 A No.
6 Q So you were never --
7 A I mean what do you mean by that, signing a
8 pleading?
9 Q I was thinking more broadly than that. I was
10 thinking did you ever provide legal advice and
11 consultation like you would have in your private
12 practice?
13 A Well, I certainly can't remove my legal
14 degree from -- so, you know, as we had discussions,
15 but -- you know, if we got into the legal weeds, for
16 sure OGC was involved, or outside counsel.
17 Q Who all reported to you directly as the CAO?
18 A So Paul Steinbrecher, Ted Hobson, and Sherry
19 Hall, and then the -- as you described, the dotted line
20 with Lynne Rhode.
21 Q Anybody else?
22 A That's it.
23 Q And you, in turn, reported directly to
24 Mr. Zahn?
25 A That's correct.

1 Q I am going to get into a whole bunch of
2 documents about the LTIP and the PUP.
3 Before I do that, I want to ask you a very
4 basic question, and that is this: Can you please
5 describe to me, using your own words, what exactly the
6 PUP is?
7 MR. COXE: To him?
8 MR. WEDEKIND: Yes.
9 A So the PUP was the, I say, plan that was
10 first described at the Orange Park meeting. It
11 included the three-year track, if you will, much like
12 what was being contemplated under the long-term
13 incentive plan previously. And then it -- what was
14 added was a separate track related to a
15 recapitalization.
16 Q So structurally the real difference between
17 the LTIP and the PUP was the component related to a
18 recapitalization?
19 A Yes. And that, at least to my recollection,
20 was the first time the employees were given the
21 opportunity to purchase, if you will, a synthetic unit.
22 So it was not obligatory.
23 Q Purely a voluntary plan?
24 A That's correct.
25 Q And I've seen different documents describing

1 it in different ways as the plan evolved. But
2 ultimately what happened was the concept, at least, was
3 that employees could be granted the option to purchase
4 a certain number of units, based on a percentage of
5 their salary, at $10 per unit, and the value of those
6 units would either rise or fall depending on the JEA
7 enterprise's overall performance as measured by its net
8 book value.
9 From a big-picture perspective, is that
10 roughly accurate?
11 A Yeah, the -- and I learned this when I joined
12 JEA. I think the LTI, it was described as a net
13 position, which is kind of the government -- as I
14 understand it, government equivalent of a -- the net --
15 kind of a balance sheet.
16 MR. WEDEKIND: Let's go off the record.
17 (Off-the-record discussion)
18 (Exhibit Number 1 was marked for
19 identification.)
20 BY MR. WEDEKIND:
21 Q Mr. Vinyard, I have handed you what's been
22 marked as Exhibit Number 1. And this, I believe, is a
23 calendar entry for April 2nd, which is your first day
24 on the job, at 9:00 a.m.
25 And its subject is: Discuss PSU valuation

1 approach with David Wathen of Willis Towers Watson.
2 Do you remember having a call at 9:00 a.m.,
3 on the first day of your job, with Willis Towers Watson
4 about the PSU valuation?
5 A I do not. I would be surprised if I had yet
6 made it to my office, because I had to get my badge and
7 fill out all of the HR paperwork on day one.
8 Q So you don't know if this call ever actually
9 happened or not?
10 A No, I don't.
11 Q Do you know what a PSU is?
12 A I do not.
13 Q Do you know what Willis Towers Watson's role
14 in the LTIP/PUP process was?
15 A They were hired, I think, in January of 2019,
16 before I arrived, and I think that they were the
17 compensation experts that did research for JEA.
18 Q Did you ever use the term "performance share"
19 or "performance stock unit"?
20 A I don't -- I don't think so.
21 Q Did anybody from Towers Watson ever express
22 any concerns or issues about the LTIP or the PUP to
23 you?
24 A I don't think I've ever had a conversation
25 with the Willis Towers Watson people.

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1 Q Did you ever email with them?
2 A I'm not aware of it. I mean I'm sure you
3 have my emails, so --
4 Q You just don't happen to remember right now
5 ever --
6 A I don't think -- I don't think I emailed
7 Willis Towers Watson.
8 (Exhibit Number 2 was marked for
9 identification.)
10 BY MR. WEDEKIND:
11 Q All right. Handing you Exhibit Number 2,
12 which is an email from Ryan Wannemacher, dated April
13 3rd, to Mr. Zahn, to you, and to Angie Hiers about the
14 Tennessee Valley Authority's having an LTIP. This is
15 the second day of your employment.
16 Do you remember looking at this information?
17 A As I sit here today, I don't remember on my
18 second day looking at this information.
19 I do know at some point that some research
20 had been done to see what other utilities were doing.
21 Q What did that research tell you?
22 A Oh, I -- it wasn't done by me.
23 Q Did you review it?
24 A No.
25 Q Who did that research?

1 A I don't know if it was Willis Towers Watson
2 or -- and if Angie was on here, she may have been doing
3 some work on it, as well as maybe Ryan.
4 Q So you don't know how the TVA's LTIP was
5 structured, then?
6 A I do not.
7 Q Was that within the anticipated purview of
8 your job responsibilities, given that you started
9 getting these things from your first day on the job?
10 A I guess it would have been if we were going
11 to hire law firms or work closely with OGC. But this
12 is an employee benefit thing which would not have been
13 within my normal scope.
14 If they needed legal advice, perhaps I would
15 have been -- or I would have been involved.
16 Q Do you remember ever actually looking at this
17 information?
18 A I don't.
19 (Exhibit Number 3 was marked for
20 identification.)
21 BY MR. WEDEKIND:
22 Q I hand you Exhibit Number 3. This is an
23 email from you to you dated April 9th, and it attaches
24 a link -- or it sends a link to an article about extra
25 compensation.

1 Why did you send this link to yourself?
2 A Well, it says sent from iPhone, so my
3 suspicion is I may have been working on my iPhone and
4 sent this to myself so I wouldn't forget it.
5 Q Why was it important enough not to forget?
6 A Well, if this was another Florida entity with
7 extra compensation features, it may be useful to both
8 Willis Towers or to the team.
9 Q Okay. So you were conducting here, it seems
10 like, a little bit of your own independent research
11 into these types of issues?
12 A Yes. I don't know where I was on April 9th
13 and why I would have been doing it on my iPhone.
14 Q Seems like it would be hard to read.
15 Okay. Given your background in public
16 service, did you already have an understanding about
17 the concept of extra compensation and what it means?
18 A So I do know that at DEP we did have bonuses
19 that were available.
20 Q For what? Or how were they measured?
21 A Well, for a performance where folks had kind
22 of gone above and beyond. I don't know if the state
23 rules were any different than what the city has.
24 Obviously there were HR people and such to handle that
25 at DEP.

1 Q Okay. When you say for people that had gone
2 above and beyond, that was in relation to their own
3 individual performance as employees?
4 A Yes.
5 Q Are you familiar with Florida Statute section
6 215.425?
7 A I am.
8 Q Okay. How are you familiar with that
9 statute?
10 A So that Chapter 215.425 came up as an issue
11 in researching probably first the LTI and then the
12 performance plan -- performance unit plan.
13 Q Okay. So that was an issue with respect to
14 both plans?
15 A It was something that I know was being
16 researched by the attorneys.
17 (Exhibit Number 4 was marked for
18 identification.)
19 BY MR. WEDEKIND:
20 Q I'm handing you Exhibit Number 4, which is an
21 email -- it's a string of emails. The top one is from
22 you to Steve Amdur at Pillsbury, copy Lynne Rhode,
23 subject LTIP. It's dated April 10th.
24 And it's a succession of emails, the first
25 one of which is an email from Ryan Wannemacher to Aaron

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1 Zahn that same day in which Ryan is transmitting a
2 spreadsheet that he has, in his words, been playing
3 around with. And it has to do with the valuation of
4 performance units.
5 So Mr. Wannemacher sends it to Mr. Zahn;
6 Mr. Zahn sends it to you; you send it to Steve Amdur
7 and Lynne Rhode. And Mr. Zahn's email to you says:
8 For your conversations with Pillsbury.
9 So as of April 10th you were having a
10 conversation with Pillsbury about the LTIP and the
11 performance units as they are described in this email.
12 MR. LOCKAMY: Is that a question or a
13 statement?
14 BY MR. WEDEKIND:
15 Q Is that correct?
16 A So given it is April 10th and I'm, I guess,
17 eight days into the job, this would have been not a PUP
18 but the long-term incentive plan, three-year long-term
19 incentive plan.
20 I am aware of this email. I went back and
21 looked at my calendar for the following day or that
22 day. I didn't find a calendar notice where I had any
23 discussions with Stephen Amdur.
24 Q Based on the title of the attachment, it
25 looks like they are already being called performance

1 units, because the title of the attachment is
2 Performance Unit Scratch Sheet.
3 A So Ryan may have called it that, but I can
4 tell you from my perspective the first time -- well,
5 the performance unit plan was unique from the LTI.
6 Q Looking at Mr. Wannemacher's email to
7 Mr. Zahn, which is at the very bottom, he says, "Based
8 on the latest due diligence, I think we are trending
9 toward a structure closer to the first tab than the
10 second."
11 Do you know what due diligence
12 Mr. Wannemacher was referring to?
13 A I don't. Again, it looks like Ryan was
14 working at 3:47 in the morning.
15 (Exhibit Number 5 was marked for
16 identification.)
17 BY MR. WEDEKIND:
18 Q I'm handing you Exhibit Number 5, which is a
19 Pillsbury invoice. It's dated May the 13th, but it's
20 for services provided in April. And it looks like that
21 the next day after this call Jessica Lutrin drafted
22 questions about LTIP proposal.
23 Do you see that entry? It looks like it's on
24 the 11th, "drafting questions regarding same."
25 Did you ever see those questions that Jessica

1 Lutrin drafted about the LTIP proposal?
2 A I'm not aware of any questions that she would
3 have drafted.
4 Q Did she ever -- did you ever have telephone
5 calls with Ms. Lutrin?
6 A I did. I don't recall them being this early,
7 but I may have. I know she was involved with the
8 performance unit plan in Orange Park.
9 Q Later?
10 A Much later, yes.
11 Q Okay. And you'll see, if you look at the
12 second page of that document, which is the one we're
13 talking about, the same day Pillsbury obtained
14 materials on incentive compensation or bonus
15 arrangements maintained by public authorities.
16 Did you ever see those materials?
17 MR. LOCKAMY: Where are you referring to?
18 MR. COXE: Where does it says that?
19 MR. WEDEKIND: It's -- K. Kasny is the
20 timekeeper. The date is 4-10-19. And the entry
21 is, "Research and obtain materials on incentive
22 compensation or bonus arrangements maintained by
23 'public authorities' for J. Lutrin."
24 BY MR. WEDEKIND:
25 Q Did Pillsbury ever provide you with the

1 materials that they were reviewing?
2 A Lee, this is eight days into my employment,
3 and I don't -- obviously it was a bit of a whirlwind
4 for the entire time. But certainly on my first week on
5 the job, I do not remember seeing any materials
6 provided by Jessica Lutrin.
7 Q Was there any discussion about getting a
8 legal opinion about the LTIP from anybody else within
9 your call at Pillsbury, if you remember?
10 MR. LOCKAMY: Let me back up one second.
11 Have you asked him if the call took place?
12 BY MR. WEDEKIND:
13 Q Well, did the call take place? Do you
14 remember having a call with Pillsbury? I thought that
15 you did.
16 A No. I said that I looked on my calendar and
17 I didn't find a calendar notice that would have -- and
18 they're pretty good about doing calendar notices.
19 And so I don't recall it. And I did look
20 back in that time period, and I don't think there was a
21 calendar notice from Pillsbury.
22 Q I think I can clear that up.
23 A Okay.
24 (Exhibit Number 6 was marked for
25 identification.)

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1 BY MR. WEDEKIND:
2 Q I'm handing you Exhibit Number 6, and I think
3 that this explains all that.
4 So on April 11th Steve Amdur sends Lynne
5 Rhode an email saying, "Lynne, I understand per a
6 conversation with Aaron that we should hold off on this
7 call for now. I will circle up as soon as I learn more
8 and would ask you to do the same. Thanks, Steve."
9 So it seems as if Aaron told Steve Amdur to
10 cancel that call on the 11th.
11 MR. COXE: Where on this string were you
12 reading from?
13 MR. WEDEKIND: The very top.
14 MR. COXE: So I don't read the whole thing.
15 MR. WEDEKIND: It's the very, very top.
16 MR. COXE: Okay.
17 BY MR. WEDEKIND:
18 Q So it seems that call may never have
19 happened.
20 Do you know why Mr. Zahn wanted Pillsbury to
21 hold off?
22 A I don't.
23 Q Do you remember whether or not at this point
24 Nixon Peabody has already started working on this
25 issue?

1 A I do. I think -- and, again, Nixon Peabody
2 was retained to do some work on this prior to my
3 joining JEA.
4 (Exhibit Number 7 was marked for
5 identification.)
6 BY MR. WEDEKIND:
7 Q Handing you Exhibit Number 7, which is an
8 email from you to Ryan Wannemacher dated the 13th.
9 It's kind of a back-and-forth between you and he.
10 And to orient you a little bit as to what was
11 going on, your bottom email says, "Good day yesterday.
12 Nice work."
13 And that was the day -- April 12th, 2019, was
14 the day that the St. Johns River Power Park was
15 imploded.
16 A Oh.
17 Q So that maybe orients you a little bit in
18 time.
19 A Not really, but ...
20 Q In any event, this is you following up with
21 Ryan Wannemacher requesting a connection to Nixon
22 Peabody.
23 A Who is -- I'm trying to look on the thing.
24 I'm referring to more than one person, but I don't see
25 an email --

1 Q Nor do I.
2 A -- to anybody else.
3 Q I agree. I don't know who you sent that
4 email to. I can only presume that among the recipients
5 was Ryan Wannemacher, because he replied, which is the
6 second email on the chain.
7 He said, "I spoke to Barry yesterday" -- and
8 I presume that that's Barry Rothchild at Nixon Peabody,
9 who was kind of the client contact, as I understand it,
10 for Nixon Peabody -- "and he was going to determine who
11 the best person on their end would be."
12 And you replied back and said, "Thank you."
13 So right after Pillsbury was told to hold
14 off, you are reaching out to get connected to Nixon
15 Peabody. Does that seem about right, based on these
16 emails?
17 A Or at least begin participating in the
18 conversation with Nixon Peabody.
19 Q Right. And we'll get into that, too, because
20 you're right about Nixon Peabody. Their invoice
21 indicated that they started work on the PUP in March
22 before your arrival, and we'll look at their invoice in
23 just a second.
24 So, then, Exhibit 7 is you asking Ryan to
25 connect you to Nixon Peabody. This is the result of

1 that, Exhibit 8. Ryan Wannemacher sends an email to
2 you and Lynne and Barry Rothchild connecting the three
3 of you about the LTIP on Tuesday, April 16th.
4 So he just sends an email to all three of you
5 connecting the dots; right?
6 A Yes.
7 (Exhibit Number 8 was marked for
8 identification.)
9 BY MR. WEDEKIND:
10 Q All right. This is the Nixon Peabody --
11 MR. LOCKAMY: Lee, before you get into that,
12 can we take a short break real quick?
13 MR. WEDEKIND: Sure.
14 (Recess from 2:05 p.m. to 2:08 p.m.)
15 (Exhibit Number 9 was marked for
16 identification.)
17 BY MR. WEDEKIND:
18 Q I put Exhibit 9 in front of you. Exhibit 9
19 is the Nixon Peabody invoice from around this same time
20 period. And it indicates that beginning on March 22nd,
21 the attorneys there, based on a conversation with Joe
22 Orfano, begin looking at Florida law issues around the
23 LTIP. And that obviously predated your arrival at JEA
24 by a week or so, give or take.
25 Does that make sense why we asked Pillsbury

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1 to hold off on looking at it, because we already had a
2 New York law firm kind of engaged on this?
3 A It would be reasonable that you don't need
4 two firms exploring.
5 Q And based on the entries, it looks like they
6 are looking at -- I'm looking at Liz Columbo's March
7 26th entry, "Research on payment of bonuses under
8 Florida law."
9 So it looks like they are really focused on
10 the compliance of an LTIP with -- under Florida law;
11 correct?
12 A Yes.
13 Q Okay. And if you --
14 A Well, that's what that entry says.
15 Q Well, right. I mean based on the invoice,
16 that's what they say they're working on.
17 All right. If you go to the top of the
18 second page of the exhibit, which actually I now notice
19 is Page 3 -- I don't know where Page 2 is, unless Page
20 1 is Page 2.
21 But the entry I'm focused on is April 22nd,
22 2019. Yeah, it looks like, if you look at Description
23 of Services, there's a carryover from what would have
24 been Page 2, so we're missing a page in this exhibit.
25 So there are time entries, apparently, from March 29th,

1 2019, to April 22nd, 2019, that aren't in this
2 particular exhibit.
3 Nevertheless, looking at April 22nd, there's
4 a conference call with you and Mr. Wannemacher about
5 potential retention incentive compensation
6 alternatives.
7 Do you remember that April 22nd call?
8 A I don't remember the call on April 22nd.
9 Q Do you remember having any calls with Nixon
10 Peabody?
11 A Yes.
12 Q Okay. What calls with Nixon Peabody do you
13 remember having?
14 A I remember them kind of giving us an update
15 on the memo that they were preparing, I guess probably
16 from their work in March, and I remember that occurring
17 in Ryan Wannemacher's office.
18 Q You and Mr. Wannemacher were in his office?
19 A There may have been -- right. There may have
20 been others in there, but I remember being in Ryan's
21 office when the call occurred.
22 Q Okay. And what was the -- what update did
23 they provide you?
24 A Just that they were working on it and
25 would -- would be providing that to us.

1 Q Okay. So it wasn't a substantive update,
2 not, This is what we're finding or this is what we're
3 seeing; it's more, Hey, we're working on it right now,
4 we'll get back to you?
5 A Yes. And there may have been some various
6 bond discussions while I was in there, but that was
7 something that I wasn't focused on.
8 Q And when you say bond -- because at one point
9 there was a conversation about structuring the LTIP
10 somewhat like a bond. That's not what you're talking
11 about; you're talking about different bonds?
12 A Yes, yes.
13 Q And so going back, you don't remember the
14 April 22nd call, so of course you wouldn't remember
15 what alternatives were being discussed?
16 A No. I don't remember getting an update -- I
17 don't remember getting the details of their memo until
18 it arrived in our inbox.
19 Q Okay. And that date was May 20th, 2019.
20 A Okay.
21 Q You can see it kind of at the bottom of that
22 Page 3, there are some final revisions that are being
23 made on that date. And then there's nothing -- no time
24 entries from May 20th, 2019, to June 30th, 2019.
25 And I'll show you the memo in a second, but

1 I'll tell you it's dated May the 20th, 2019. So that
2 was the day that it was delivered.
3 My question as it relates to the invoice is
4 why -- why was there a gap between May the 20th and
5 June the 30th of 2019?
6 MR. COXE: Lee, at their end?
7 MR. WEDEKIND: Yes. No, at Nixon Peabody's
8 end.
9 MR. COXE: Yeah.
10 BY MR. WEDEKIND:
11 Q So they send the memo and then nothing else
12 happens; they do no more work on this. Is that
13 correct?
14 A According to this.
15 Q Do you remember ever having a phone call or
16 any type of communication with Nixon Peabody after they
17 sent the memo on May the 20th?
18 A Yes. I sent OGC's memo on the same subject
19 to them on July the 1st.
20 Q Okay. But nothing -- no communications
21 between -- by you between May the 20th and July the
22 1st?
23 A Not that I recall.
24 Q Okay. So you sent -- I'm translating a
25 little bit here -- the June 17th memo that was signed

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1 by Kort Parde and Sean Granat at OGC to Nixon Peabody
2 on July 1st?
3 A Yes.
4 Q Why?
5 A Well, they had worked on the same issue.
6 Q And did you ask them to respond?
7 A I did not.
8 Q Why -- did they respond of their own right?
9 A I don't think they did.
10 (Exhibit Number 10 was marked for
11 identification.)
12 (Exhibit Number 11 was marked for
13 identification.)
14 BY MR. WEDEKIND:
15 Q All right. So I'm going to go back in time a
16 little bit. I'm going to hand you, to save a little
17 bit of time, two exhibits at the same time. These are
18 10 and 11. 10 is an email to you from Wannemacher
19 dated April 22nd. Please let me know when you have a
20 few minutes to discuss the Nixon call.
21 And then 11 is, looks like, a calendar entry
22 for April 22nd showing the LTIP call.
23 So it looks like you were reaching out to
24 Mr. Wannemacher in advance of the call, Hey, I want to
25 talk to you about this call, and then your calendar

1 shows that there was a call scheduled for later on that
2 day, on the 22nd?
3 A Okay.
4 Q Which is consistent with the Nixon Peabody
5 invoice that shows that they had a call with the two of
6 you on that same day.
7 So is there any reason to think that there
8 wasn't a call on that day?
9 A I'm not aware of any.
10 So it looks like, I guess, I just asked --
11 wanting to know what the call was about, perhaps, and
12 then we had a call.
13 Q Yeah. Pre-brief and then a call?
14 A Okay.
15 Q That's what I take from it. Is that what you
16 take from it?
17 A I -- I don't -- it looks like I was -- I was
18 going to ask, you know, about the Nixon call, and then
19 we had it. And I have no reason to know why we would
20 not have had it on April 22nd.
21 (Exhibit Number 12 was marked for
22 identification.)
23 BY MR. WEDEKIND:
24 Q Good. Number 12 is another string of emails.
25 The top one is Mr. Wannemacher to you, copy Mr. Zahn,

1 Ms. Dykes, about the comp committee meeting materials
2 for an upcoming comp committee meeting.
3 Do you know why Mr. Wannemacher forwarded
4 these comp committee meeting materials to you?
5 A Let me just quickly read through.
6 Q Sure.
7 A I do not know.
8 Q Do you remember reviewing the comp committee
9 materials?
10 A I don't think I did.
11 Q Okay. So you wouldn't have provided any
12 comments on them?
13 A Not that I'm aware of.
14 Q What was Pat Maillis's role in connection
15 with the LTIP?
16 A She was in HR.
17 Q Was part of her purview the development of
18 plans like this for employees, employee compensation
19 plans?
20 A I know Pat and visited with Pat. I'm not
21 aware of Pat's duties within HR.
22 Q And so did you ever have any conversations
23 with Pat regarding the LTIP?
24 A I don't think I did.
25 (Exhibit Number 13 was marked for

1 identification.)
2 BY MR. WEDEKIND:
3 Q I'm going to give you two more exhibits, 13
4 and 14. 13 is another conference call calendar entry.
5 It's with folks from Nixon Peabody and Holland &
6 Knight, May the 3rd, 2019, and it's at 3:30 p.m., the
7 call is.
8 And then 14 is an email that you and
9 Mr. Wannemacher exchanged -- well, scratch that. Let
10 me just hand you 13.
11 So 13 -- the first page of 13 is what I
12 described; it's the conference call with Holland &
13 Knight and Nixon Peabody; it's a calendar entry. The
14 second page is an email that you sent -- looks like you
15 sent to Mr. Wannemacher three minutes into that call,
16 says, "This must be a different call than I expected."
17 And then Ryan's response is, "Me too. I will
18 call Barry afterwards."
19 The subject, if you look at the subject of
20 Mr. Wannemacher's reply to you, says "No memo." So
21 what I take from this email exchange is that there was
22 a call set up on May the 3rd with Nixon Peabody to
23 discuss Plant Vogtle, which is why Holland & Knight was
24 involved. And you and Ryan thought that the call was
25 going to be about the Nixon Peabody memo, which is why

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1 you sent him an email three minutes into the call
2 saying "no memo," and Ryan says, I'll follow up with
3 Barry after this call.
4 A So show me where I said no memo.
5 Q So if you look --
6 A I'm just looking at the --
7 Q Again, correct. We're dealing with an email
8 from you at the bottom, it's 3:33 p.m. But then if you
9 go up and look at Mr. Wannemacher's reply, the subject
10 is Re: No memo.
11 My assumption from that is that your initial
12 email to him subject was No memo, and the reply was Re:
13 No memo.
14 A I can -- yeah, I can read that. I just --
15 it's not reflected here in the email.
16 Q It wasn't reflected in the documents that I
17 got either. These are the documents that I have. But
18 I'm trying to piece these things together, and that
19 makes sense to me.
20 Does that make sense to you?
21 A It makes sense, but I can't -- I can't --
22 when I only have a piece of my email, I don't want to
23 mistake --
24 Q The only point I'm trying to make by this
25 email is that on May the 3rd, 2019, you were expecting

1 a memo from Nixon Peabody?
2 A Yes.
3 Q On --
4 A Well, I don't say on May 3rd. I knew that
5 they were working on a memo for us.
6 Q Right.
7 A And I remember being a little frustrated at
8 the delay.
9 (Exhibit Number 14 was marked for
10 identification.)
11 BY MR. WEDEKIND:
12 Q Right. So we're interested in hearing what
13 Nixon Peabody has to say about our long-term incentive
14 plan. Exhibit 14. This -- I might be getting this
15 mixed up.
16 This, again, we're dealing with the same
17 issue with the emails. And so we've got a reply from
18 Mr. Wannemacher to you, and we are gleaning from the
19 reply that you had sent Mr. Wannemacher an email on May
20 the 9th at 9:24 in the morning that says, "We left a
21 voice mail with the Nixon attorney on Tuesday; giving
22 her numbers for you and me. Have you heard from her?"
23 And then Ryan's reply, the subject matter is
24 Re: Nixon, states, "I have not spoken to her but I know
25 she was at the LPPC meeting the last couple of days

1 with Joe Orfano. I will reach out again today.
2 Thanks, Ryan."
3 MR. COXE: Do you have what he is reading?
4 THE WITNESS: I do.
5 BY MR. WEDEKIND:
6 Q So, again, on May the 9th you are
7 anticipating receiving word from Nixon about the memo
8 that they're working on?
9 A Yes. And it -- it says "we." I don't know
10 if that's Lynne Rhode and me or who the other person
11 was.
12 Q Collectively, JEA and --
13 A We called and -- and leaving her our
14 telephone numbers.
15 Q It says giving her numbers for you and me.
16 So maybe it was you and Mr. Wannemacher?
17 A Right.
18 Q Right?
19 A They were very responsive to Mr. Wannemacher.
20 Q And less so to you?
21 A Yes.
22 Q And that was frustrating to you?
23 A Yeah. I mean, you know, to be a good lawyer,
24 you respond to your client.
25 Q Absolutely. Okay.

1 A Or you return their phone calls.
2 Q Understood. Particularly when the issue is
3 important to them and they are continuing to follow up
4 with you about expecting work product.
5 (Exhibit Number 15 was marked for
6 identification.)
7 BY MR. WEDEKIND:
8 Q Okay. Exhibit 15, you finally get a
9 response. This is Liz Columbo, May the 10th to you,
10 subject, Voicemail. "Good evening, I received your
11 voicemail and we are working on completing the memo and
12 will have it to you early next week. Liz."
13 So we finally hear back. Nixon Peabody is
14 continuing to work on this memo that we're all
15 anticipating; correct?
16 MR. LOCKAMY: Can you stop with the everyone
17 is anticipating and all that when you're -- you're
18 editorializing a little bit.
19 MR. WEDEKIND: That's what I get from the
20 series of emails.
21 BY MR. WEDEKIND:
22 Q You're anticipating an email from Nixon
23 Peabody; correct?
24 A Clearly they started working on it in March,
25 and it is now --

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1 Q Second week of May?
2 A -- May the 10th and there's no memo.
3 (Exhibit Number 16 was marked for
4 identification.)
5 BY MR. WEDEKIND:
6 Q Right. Okay, 16. This is an email from you
7 to Steve Amdur May the 13th, and my question for you
8 about this email is, what was the purpose of -- it was
9 you and he trying to set up a call.
10 What was the purpose of the call; do you
11 remember?
12 A On May 13th? I can't tell you.
13 Q Were you engaged with Pillsbury around the
14 May time period?
15 A So Pillsbury had been retained to do
16 corporate work prior to the time that I arrived. I
17 believe it was related to a delegation of authority,
18 and maybe there's some other kind of corporate
19 governance stuff.
20 Q And so it could have been a call relating to
21 that work, has nothing to do with the LTIP or PUP?
22 A I don't know.
23 Q Okay. That's the -- that's --
24 A Yeah.
25 (Exhibit Number 17 was marked for

1 identification.)
2 BY MR. WEDEKIND:
3 Q All right. Back to your correspondence
4 regarding Nixon Peabody, Exhibit 17, this is an email
5 from you to Mr. Wannemacher copying Ms. Rhode, subject
6 Beth, which I assume is Ms. Columbo at Nixon Peabody.
7 "Ryan, have you heard from Beth after we left her a
8 message on Monday? If not, I think we need to find a
9 law firm that values JEA."
10 First question, was this email related to
11 Ms. Columbo and Nixon Peabody?
12 A It looks like it was, given that it was to
13 Ryan, copying Lynne Rhode, and that's what we were --
14 we were obviously having trouble communicating with
15 Nixon Peabody.
16 Q And this --
17 A Or they were having trouble communicating
18 with us.
19 Q Right. And this is demonstration of your
20 frustration about that. The second sentence, If we
21 haven't heard back from her, we need to find a law firm
22 that values us.
23 A Well, as I mentioned earlier, if Mr. Orfano
24 and Mr. Wannemacher had them looking at issues in
25 March, and we're into May and we don't have any work

1 product, that would -- that obviously concerned me.
2 (Exhibit Number 18 was marked for
3 identification.)
4 BY MR. WEDEKIND:
5 Q I understand. All right, so we've finally
6 arrived. May the 20th, 2019. We have an email from
7 Elizabeth Columbo to Mr. Wannemacher and you, copying a
8 few Nixon Peabody attorneys, that says, "Ryan and
9 Herschel, Please see attached a draft of the memorandum
10 on the long-term employee incentive program. We are
11 still in the process of having it proofread and
12 citations checked, which is why it is marked as a
13 draft. Please let us know if you have any questions."
14 And attached to it is the Nixon Peabody memo;
15 correct?
16 A You are correct.
17 Q All right. And --
18 MR. COXE: Lee, the memo you're referring to
19 is the one that says draft?
20 MR. WEDEKIND: That is correct.
21 MR. COXE: Okay.
22 MR. WEDEKIND: The attachment says "Draft
23 5/20/19" in the upper right-hand corner.
24 BY MR. WEDEKIND:
25 Q Okay, first question: You received this

1 email; correct?
2 A I did.
3 Q Okay. Who did you give this memo to when you
4 received it?
5 A I gave it to Lynne Rhode.
6 Q Who else?
7 A I'm not aware that I gave it to anybody else.
8 Q Did you read the memo?
9 A I did.
10 Q Did you discuss it with anybody?
11 A I did with Ms. Rhode.
12 Q Anybody else?
13 A Probably discussed it with Ryan, and maybe
14 Aaron, but I don't have a -- the recollection that I
15 have is Lynne Rhode and I had a discussion.
16 Q Okay. Describe your discussion for me.
17 A So after I read the memo, I was frosted that
18 it was -- in the very beginning of the memo it says,
19 We're not Florida lawyers, and we advise you to seek
20 Florida counsel on the issues.
21 Q Why did that frost you?
22 A Well, we've been waiting for a memo, and
23 they've given me something that I can't rely on.
24 Q You found it unreliable?
25 A Well, when they say, We're not Florida

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1 lawyers, you should -- you should get another law firm
2 to look at this, it's kind of an admission on its face
3 that I can't rely on this.
4 Q So you were frustrated by that. What did you
5 and Ms. Rhode discuss?
6 A So -- well, first of all, I had her read it
7 and see what she thought of the analysis, and she
8 thought that it had some shortcomings. And so I asked
9 her to get OGC -- her colleagues at OGC to do the memo
10 that Nixon Peabody says we should have done with
11 Florida lawyers.
12 Q What shortcomings did Ms. Rhode identify with
13 respect to the Nixon Peabody memo?
14 A I think she -- she didn't identify specifics
15 other than it was a little bit superficial.
16 Q Any other shortcomings?
17 A Not that I recall.
18 Q All right. So you received the memo; you
19 provide it to -- well, you read it; you provide it to
20 Ms. Rhode; she reads it; the two of you talk about it.
21 She thinks it's superficial. You ask her to --
22 A And -- and she recognizes the unusual phrase
23 in there that you should seek Florida counsel.
24 Q Okay. So the same thing that frosted you
25 frosts her? Yes?

1 A I don't know if it frosted her. I know it
2 frosted me.
3 Q Either way, you both take Nixon Peabody up on
4 their suggestion, and you instruct Ms. Rhode to reach
5 out to OGC to do what Nixon Peabody's memo suggests you
6 do, which is to get an opinion of Florida counsel?
7 A That's correct.
8 Q You said that you may have had conversations
9 with Mr. Wannemacher and Mr. Zahn. What, if anything,
10 do you recall of those conversations?
11 A If I had conversations, it would have been
12 related to the fact that this memo that we've been
13 waiting on cannot be relied upon on its face.
14 Q All right. Other than your issue with the
15 fact that it suggests that you have a Florida law firm
16 look at these issues, did you go beyond that? Did you
17 read the substance of the memo itself?
18 A I did.
19 Q And did you understand it when you read it?
20 A I did.
21 Q Did you agree or disagree with it?
22 A I hadn't done the research independently.
23 But whether I agreed or disagreed with their analysis,
24 I cannot rely on it.
25 Q And you never contacted Nixon Peabody to

1 discuss the memo?
2 A I don't believe I did.
3 Q Did you ever ask Ms. Rhode or anybody else to
4 reach out to Nixon Peabody to discuss the memo?
5 A I don't think I did.
6 Q And you don't remember ever giving a copy of
7 this memo to anybody else, other than Ms. Rhode?
8 A Only Ms. Rhode.
9 Q Did you discuss the memo with anybody else
10 that you can recall, other than Ms. Rhode,
11 Mr. Wannemacher, Mr. Zahn?
12 A Well, again, I don't specifically remember
13 discussions with Wannemacher or Zahn. I do absolutely
14 remember discussing this with Ms. Rhode.
15 Q Okay. Other than those, anybody else?
16 A No.
17 MR. COXE: That he discussed it with?
18 MR. WEDEKIND: Yes.
19 MR. COXE: Okay.
20 BY MR. WEDEKIND:
21 Q Did you ever do your own independent research
22 on the issues that were raised by the Nixon Peabody
23 memo?
24 A I know I read Chapter 215.425 and parts of
25 Chapter 112 Florida Statutes, but that would have been

1 probably after the board meeting of July 23rd. So
2 later on in the summer.
3 Q Okay. So -- okay. The Nixon Peabody memo
4 compares the proposed LTIP that they were asked to
5 review with prior JEA bonus plans, at least that's what
6 it says it does.
7 Do you know what details Nixon Peabody was
8 given about the proposed incentive plan?
9 A I don't. As I mentioned, obviously this
10 research project started before I arrived at JEA.
11 Q All right. Nixon Peabody's memo uses the
12 phrase unresolvable dilemma. And the unresolvable
13 dilemma that Nixon Peabody identified was that
14 executives of JEA who could potentially participate in
15 the plan had the ability to exercise their power in
16 order to manipulate the end results of the plan.
17 That's the unresolvable dilemma that they identify.
18 Do you agree that that is an unsolvable
19 dilemma?
20 A I think I would probably turn to how OGC, the
21 Florida lawyers, evaluated that issue. And I haven't
22 gone back and read the memo in the last few days.
23 Q All right. So the fact that --
24 A I do know that in previous years -- not when
25 I was there -- they had short-term incentive plans, and

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1 part of those plans -- part of those bonus plans
2 contemplate coming in below budget as a component of
3 your bonus.
4 So the question you just asked, that's
5 something that would be within an individual's kind of
6 span of control in controlling their own budget. And
7 so at least in other scenarios with JEA where they've
8 had bonus plans, being able to control financial
9 expenditures was an acceptable factor in giving the
10 bonus.
11 Q Okay.
12 A But I haven't done -- I'm sure OGC --
13 somebody evaluated the short-term incentive plan back
14 when they had it at JEA. I haven't.
15 Q I want to go to the sentence that really I
16 think got your most focus. That's in the brief answer
17 on -- at the bottom of Page 1. It says, "While our
18 analysis involved a general review of JEA's charter,
19 the City's Charter, local and state laws and other
20 available sources, the attorneys involved in the
21 preparation of this memorandum are not licensed to
22 practice law in the State of Florida nor do we have or
23 maintain an office in the State and if JEA would like
24 to move forward in developing such a program, we
25 believe it would be prudent for JEA to retain Florida

1 counsel to provide additional analysis or further
2 determinations regarding the issues we have raised in
3 this memorandum."
4 And so you read that to say: We don't have
5 any ability to opine on Florida law, and so find
6 yourself a Florida law firm?
7 A I've got to be able to rely on -- or it seems
8 to me that as the management representative to the
9 Office of General Counsel, in order to move forward
10 with any program I've got to have Florida lawyers
11 opining on this. I think it would be imprudent not to.
12 Q Did you see how the plan, based on the
13 analysis that was provided by Nixon Peabody, could have
14 created a conflict of interest within JEA's executive
15 team?
16 A As I said before, I don't know what was
17 provided to Nixon Peabody.
18 Q No. What I'm saying is, based on the
19 analysis they provided in their memorandum, did it
20 alert you to a potential conflict of interest that JEA
21 executives might have if such a plan were ever
22 implemented?
23 A I was alerted to the fact that I wanted --
24 and I think you've seen in my emails, I wanted to make
25 sure that whatever plan that was in place met the

1 ethics requirements and the legal requirements. And
2 that's why Ms. Rhode was instructed to reach out to OGC
3 for a more in-depth evaluation.
4 Q So her marching orders were: We need to get
5 a more in-depth evaluation of these issues?
6 A We need to get an evaluation done by Florida
7 lawyers that, one way or the other, can be relied upon.
8 Q All right. Do you think that JEA's board of
9 directors should have ever been provided notice that
10 this legal opinion existed?
11 A Well, a couple things. It's a draft, and on
12 its face they say: You can't rely on it.
13 Q Where on its face does Nixon Peabody say:
14 You cannot rely on this memo?
15 A Well, the part that you read: We're not
16 Florida lawyers. These are Florida legal issues. I'm
17 not real sure why they were engaged to look at Florida
18 law to begin with, but they were.
19 Q The way that I read the sentence is it says,
20 If JEA would like to move forward in developing a
21 program, then JEA should possibly retain Florida
22 counsel. It doesn't say don't rely on this -- our
23 analysis of Florida law, is how I read it.
24 You read it differently?
25 A The way I read it, it gave me sufficient

1 pause that I thought that it would be necessary to
2 reach out to the Office of General Counsel for a more
3 definitive answer.
4 Q Okay. Ultimately the JEA board evaluated the
5 PUP at the July 23rd board meeting. Did you think --
6 and you attended that meeting.
7 A I did.
8 Q During that presentation when the board was
9 deliberating whether or not to adopt a PUP, nobody made
10 any reference to or mention of the existence of this
11 Nixon Peabody memo; correct?
12 A That is correct. From my recollection, that
13 is correct.
14 Q Do you believe that that would be a material
15 fact that the board should have been advised of as part
16 of its deliberations on the PUP?
17 A I don't know.
18 MR. COXE: Lee, can I ask a question? Are we
19 ignoring the follow-up to whether or not Lynne
20 Rhode did go to the General Counsel's Office?
21 MR. WEDEKIND: We're not. I'm just not there
22 yet.
23 MR. COXE: Okay.
24 BY MR. WEDEKIND:
25 Q Did you ever have any conversations with any

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1 board members about the Nixon Peabody memo?
2 A I did not.
3 Q And I understand from the letter that was
4 sent fairly recently from your attorneys that you had
5 fairly limited interaction with the board members.
6 A Aaron was the one that would brief the board
7 members.
8 Q Did you ever have one-on-one meetings with
9 the JEA board members?
10 A Probably not scheduled. But, you know, when
11 they were on the 16th floor, certainly we would speak.
12 And my kids played ball with some of the board members'
13 kids, and I have known Eric Green for a number of years
14 and his wife was on the board.
15 Q Okay. Did you ever save the Nixon Peabody
16 memo to JEA's document retention system?
17 A No. That would have been just in my emails.
18 Q Was it your practice not to save documents
19 that you received except in your emails?
20 Did you save documents to the document --
21 A Hard drive? Very rarely.
22 Q How did the document saving at JEA work?
23 A I think emails are saved perhaps forever.
24 Q Did you have some kind of a common drive that
25 you could upload and save documents to?

1 A It was available. I just left it in my
2 emails.
3 (Exhibit Number 19 was marked for
4 identification.)
5 BY MR. WEDEKIND:
6 Q This is -- Exhibit 19 is an email that was
7 sent recently by Stephen Datz. And we looked through
8 JEA's system to try to find this memo, and it was very
9 difficult to find. A scan doesn't show any instances
10 of this file on the network file share.
11 MR. COXE: Are you talking about 19 or are
12 you talking about the memo?
13 MR. WEDEKIND: 19. Yeah, the memo itself
14 wasn't found anywhere in JEA's files, and it
15 was -- except I think in one place.
16 BY MR. WEDEKIND:
17 Q Is that unusual that you would have a legal
18 memo that -- of this magnitude just not saved to JEA's
19 file system?
20 MR. LOCKAMY: Can you explain what by "this
21 magnitude" you mean?
22 MR. WEDEKIND: Been waiting on it for two
23 months, pinging the law firm every five days
24 looking for it, and when it comes it says what
25 you're proposing to do is illegal, don't do it.

1 And then it just doesn't get saved. It seems
2 unusual to me.
3 MR. LOCKAMY: Is that a question?
4 MR. WEDEKIND: No. That's a response to your
5 question.
6 BY MR. WEDEKIND:
7 Q That's where I'm coming from on this. It
8 seems very unusual that you would receive this document
9 and then not save it.
10 But I think what you said was it wasn't that
11 unusual in your practice just to keep things in your
12 email?
13 A It stays in my email.
14 Q And JEA's email system is designed so that
15 they don't delete, they last forever. So it wouldn't
16 have been lost?
17 A That's correct.
18 (Exhibit Number 20 was marked for
19 identification.)
20 BY MR. WEDEKIND:
21 Q All right. Exhibit Number 20, we get into
22 what Lynne Rhode does in response to your instructions.
23 This is a string of emails between Kort Parde at OGC
24 and Lynne Rhode. And I'll tell you that you're not
25 copied on any of these emails, so you wouldn't have

1 seen them before, probably. But I do think it goes to
2 what you were talking about earlier, which was the
3 response to the Nixon Peabody email -- excuse me, the
4 Nixon Peabody memo.
5 So if you start -- obviously you need to
6 start at the back, and you'll see Kort Parde tells
7 Lynne Rhode on June the 4th, "Lynne, As discussed here
8 is the rough draft for us to start with. I look
9 forward to speaking with you tomorrow morning."
10 So apparently OGC is in the process of
11 generating a memo, presumably, as you'll go on to see,
12 in response to a request from Lynne Rhode, as directed
13 by you. Because when you look at Lynne Rhode's reply,
14 same day, June 4th, she outlines a number of issues
15 that she has with this memo. And through Lynne's
16 email, you can understand generally what the draft memo
17 was about, because we don't have a copy of the draft
18 with us right now.
19 So Lynne Rhode identifies a number of issues
20 that need developing. She lists them 1 through 9 in
21 her email. And it says, overall -- this is about
22 three-quarters of the way down on Page 2. "Overall, I
23 think they are looking for a more direct answer (yes,
24 no, or maybe) related to the specific contemplated LTIP
25 program. I think the structure of that analysis would

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1 be useful," so on and so forth.
2 Do you see that?
3 A Right.
4 Q Is that consistent with what you have
5 instructed Lynne to do in response to the Nixon Peabody
6 memo?
7 A I doubt seriously if I would have been that
8 descriptive.
9 Q No, no. What I meant was earlier you
10 testified: I got the memo, I told Lynne to start
11 working with OGC. And this is Lynne working with OGC?
12 A Sure, sure.
13 Q That's all I meant by that.
14 A I'm sorry.
15 Q And this is Lynne developing, you know -- or
16 providing her own input into what she thinks the OGC's
17 memo should look like?
18 A Okay.
19 Q But then, if you look at the next email up in
20 the chain, Kort Parde replied back, "Lynne, I think
21 there is some confusion because I literally have no
22 information regarding how or what type of program JEA
23 intends to implement. I have only spoken with you and
24 just received the memo from the other firm."
25 So do we know what memo she's talking about

1 here?
2 A Yes. The Nixon Peabody memo.
3 Q Okay. So you know that Lynne Rhode sent it
4 to Kort Parde?
5 A Yes.
6 Q How do you know that?
7 A Because my attorneys reached out to Kort
8 Parde, and she confirmed that Lynne Rhode provided the
9 Nixon Peabody memo to her and colleagues at JE -- at
10 OGC.
11 Q How did Lynne Rhode provide Kort Parde with
12 the memo?
13 A I don't know.
14 Q Okay. And then Lynne Rhode's reply to Kort
15 Parde is, "I don't think there are many specifics yet."
16 As of June 4th, was that true?
17 A My recollection is the LTIP remained still
18 somewhat of a concept that Ryan and, I guess, HR were
19 working on, that there was not a lot of details yet.
20 Q Do you know whether or not OGC or Nixon
21 Peabody was provided the Wannemacher spreadsheet that
22 you had forwarded to Pillsbury in April?
23 A I don't know.
24 Q Did you have any role in working with OGC to
25 develop their memo?

1 A Looking at OGC's time sheets, it says that I
2 met with Kort and Lynne.
3 Q Do you remember when that was?
4 A In June of 2019.
5 Q Sometime in June. Do you remember that
6 meeting?
7 A I don't.
8 Q Had you ever met with Kort Parde before?
9 A I don't think so. Again, I was new, Lynne
10 was new, and I was not in the labor and employment part
11 of the legal practice.
12 Q And that was what her specialty was?
13 A That's my understanding, yes.
14 MR. COXE: You say "hers," are you talking
15 about Parde or --
16 MR. WEDEKIND: Parde.
17 BY MR. WEDEKIND:
18 Q The first issue that Lynne identifies in her
19 email, it says you state -- and this is Lynne talking
20 to Kort. "You" -- Kort -- "state on Page 4 that
21 statutory language would not permit a bonus based on
22 JEA's overall financial improvement. Why not? This is
23 THE KEY question and needs to be fleshed out. I don't
24 see that restriction anywhere."
25 Do you see that?

1 A I see it.
2 Q Yeah. How could -- if Lynne Rhode at this
3 point had had the Nixon Peabody memo, which lays out
4 over a series of pages this issue, how is it that she
5 could say she doesn't understand where the restriction
6 on that particular issue is? I don't understand that.
7 Can you explain it?
8 A I -- I can't testify for Lynne Rhode.
9 Q Does it make sense to you why she would be
10 saying this?
11 A I don't know.
12 Q Do you agree that that is the key question
13 that needs to be fleshed out?
14 A Well, as you pointed out earlier on in this
15 interview, that that was -- that the -- the improvement
16 of the balance sheet was one of the components being
17 discussed in the -- early on on long-term incentive
18 program.
19 So if that was something that was being
20 carried forward from the, I guess, two or three months
21 that Lynne and I had been there, then that would
22 certainly be something that would be important to know.
23 (Exhibit Number 21 was marked for
24 identification.)
25 BY MR. WEDEKIND:

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1 Q Exhibit 21 is a calendar entry -- I'll just
2 hand it to you. The subject is Compensation Meeting.
3 The date is June 5th. The organizer was Kort Parde,
4 and you were identified as a required attendee. It
5 looks like it was rescheduled from Thursday, May 30th.
6 It says Original Appointment below that.
7 Does that refresh your recollection about
8 what time this meeting with Kort Parde might have been?
9 A Well, I don't have the OGC time sheets in
10 front of me, but the time sheet said that I attended a
11 meeting. And, again, it may have been an initial
12 discussion and I stepped out and Lynne Rhode stayed.
13 But it looks like, according to Kort's time sheet, that
14 I attended a meeting with her. I don't know if it was
15 on June 5th or not.
16 Q Okay. Whatever the time sheets say, that was
17 the day you must have met with Kort Parde?
18 MR. COXE: It's what the time sheet says.
19 A It's what the time sheet says.
20 Q Right, that's what the time sheet says.
21 Okay. But you don't remember this meeting?
22 A No.
23 (Exhibit Number 22 was marked for
24 identification.)
25 BY MR. WEDEKIND:

1 Q Okay. 22 is an email from you to Lynne
2 Rhode, Subject comp: I have a meeting at 4:00
3 regarding comp. Please do what you can to get me
4 Court's (sic) memo in advance.
5 So this is -- you're waiting on the OGC memo
6 that Kort Parde is working on, with input from Lynne
7 Rhode, on June the 6th, is what this email says;
8 correct?
9 A It's what it says, yes.
10 Q Okay. Do you -- what comp meeting was this;
11 do you remember?
12 A I don't. I don't. It may have been -- well,
13 it wasn't a formal meeting. It would have been a
14 meeting with either Ryan or Aaron or Melissa or Jon
15 Kendrick.
16 Q But not a comp committee meeting, for
17 example?
18 A No, a -- that's correct. And I note I did
19 misspell Kort's name, and I apologize.
20 MR. COXE: Might have been autocorrect.
21 (Exhibit Number 23 was marked for
22 identification.)
23 BY MR. WEDEKIND:
24 Q Exhibit 23 is a continuation of the
25 development of this OGC memo. And I will tell you that

1 you're not on any of these emails, so you never saw
2 this. I'll just tell you that in advance, so I'm not
3 going to ask you to answer questions all about it.
4 But I will tell you this: The email chain
5 seems to repeatedly state that the OGC is not being
6 provided with specific information about the plan.
7 And my question is this, is: Did you know
8 what the back-and-forth communications were between
9 Lynne, who was working at your direction to facilitate
10 this OGC memo? Was she keeping you in the loop as to
11 what her communications were in the development of this
12 OGC memo?
13 A I am pretty confident that she was letting me
14 know where we were on the status of the delivery of the
15 memo.
16 MR. COXE: Lee, can I ask you, is 23 just
17 a -- it's just a string that goes back to -- all
18 the way on what we've already talked about?
19 MR. WEDEKIND: Yes. It's a very long email
20 string that --
21 MR. COXE: The back end is what we've already
22 talked about; right?
23 MR. WEDEKIND: That is correct. So it's a
24 continuation of the string through June the 10th
25 at 9:34 a.m., which is the very top email.

1 MR. COXE: Can I ask you one other question?
2 I should know, maybe I've forgotten. Who is
3 Kamaran Gay?
4 MR. WEDEKIND: I don't know.
5 MR. COXE: Do you know?
6 MR. LOCKAMY: No.
7 MR. COXE: It's right next to Sean Granat.
8 This string where it says Sean Granat. But I have
9 no idea who Kamaran Gay is.
10 MR. WEDEKIND: If you look at the next one
11 down, he has a COJ email address.
12 MR. COXE: I saw that.
13 MR. WEDEKIND: That's all I know.
14 MR. COXE: You don't know what position he --
15 MR. WEDEKIND: I do not know.
16 MR. COXE: Okay.
17 BY MR. WEDEKIND:
18 Q So Lynne was keeping you in the loop as to
19 how this project was coming. Was she providing you
20 substantive updates, This is what they're telling me,
21 or just more what I would call process updates, They
22 expect to have it to you by X date?
23 A When the memo would be delivered.
24 Q As part of this email chain, what you'll see
25 is that Sean Granat and Jon Phillips, who were brought

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1 into this -- into the process of developing it,
2 indicated that the memo would be more general than
3 specific.
4 Was that your understanding of the purpose of
5 this memo, what you wanted the memo for, was to be a
6 more general, rather than specific, memo?
7 A Well, I guess since we didn't have one that
8 at least I was comfortable relying on, I would take
9 anything from a Florida lawyer that would opine on the
10 things that were requested.
11 Q Do you ever remember having more than one
12 email -- excuse me, more than one meeting with Kort
13 Parde, or just the one?
14 A Well, just the one that I saw on the time
15 sheets.
16 Q Do you remember where it was physically?
17 A I don't have a recollection of where it was.
18 Q I'm going to show you -- I'm sorry. Go
19 ahead.
20 A I have some recollection of going to OGC, and
21 I think it was probably a stop-by meeting, and then
22 stop by Sean Granat, and that would have been a -- and
23 we did visit with him, but that would have been an
24 impromptu on both sides.
25 (Exhibit Number 24 was marked for

1 identification.)
2 BY MR. WEDEKIND:
3 Q I'm going to show you Exhibit 24; it's
4 another calendar entry. It's dated June the 10th. It
5 shows you and Kort Parde. It says OGC/JEA Conference
6 Room T16 West. Is that a JEA conference room?
7 A That would be, then, we met at JEA.
8 Q But again, we'll rely on the time records to
9 tell us which among these dates was the date of the
10 meeting?
11 A But T16 West is a JEA conference room.
12 Q Got it.
13 (Exhibit Number 25 was marked for
14 identification.)
15 BY MR. WEDEKIND:
16 Q All right. 25 is an email exchange between
17 you and Lynne Rhode. Thursday, June 13th, 2019. And
18 again we have the same issue, we don't know what the
19 subject matter or the recipient of your email was, but
20 if we look at the reply above it, we can glean that
21 this was an email originally sent by you to Lynne
22 Rhode.
23 It says, "Lynne, Aaron insists that he has to
24 have the memo by his meeting on Tuesday. I will call
25 with ideas. In the meeting now."

1 So given -- and the subject matter, if you
2 look above, says LTI.
3 Given the timing of this email, would you
4 expect that the memo that you're referring to is the
5 OGC memo that's being worked on?
6 A I would.
7 Q Do you remember calling Lynne Rhode with
8 ideas?
9 A I don't.
10 Q Do you remember -- the last sentence of your
11 email to her says, "In the meeting now."
12 Do you remember what meeting that was?
13 A I can go back to my -- well, I can't, but you
14 might be able to go to my calendar and see what the
15 meeting was.
16 Q But you don't happen to remember right now?
17 A No.
18 Q Okay. "Aaron insists that he has to have the
19 memo by his meeting on Tuesday."
20 I will tell you that there was a comp
21 committee meeting on Tuesday, June the 18th, 2019.
22 Does that seem like that was the meeting that Aaron was
23 referring to?
24 A It does.
25 Q Okay. So he's -- Aaron -- Mr. Zahn has a

1 comp committee meeting coming up. The Thursday before
2 that Tuesday meeting, he is telling you that he has to
3 have this OGC memo. Why?
4 Why does he have to have the memo?
5 A Because he wanted to be able to provide
6 something from a Florida lawyer to the comp committee,
7 would be my guess. It would seem reasonable.
8 Q Okay. And you don't remember the ideas that
9 you had to try to help push this over the goal line?
10 A No.
11 Q All right. And then her reply back to you
12 was, "Ok. Let me talk with Sean. I'll find him."
13 Do you happen to remember that they were at
14 a -- some type of a convention around this time, and
15 she was going to go actually physically look for him?
16 A I remember that almost all of the Office of
17 General Counsel went to a local government CLE thing,
18 and I think it was down in Orlando.
19 Q So she --
20 A So there was nobody -- well, very few people
21 at OGC.
22 Q Right. And you're getting -- you're
23 receiving pressure from your boss, Mr. Zahn, to get
24 this memo delivered, and you're pushing that to Lynne,
25 and Lynne is pushing that to Mr. Granat, to get this

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1 deliverable to the CEO of JEA?
2 A That sounds absolutely reasonable.
3 Q Okay. In advance of his comp committee
4 meeting.
5 MR. COXE: Lee, want to take a little short
6 break?
7 MR. WEDEKIND: Let's take a break. Thank
8 you.
9 (Recess from 3:13 p.m. to 3:20 p.m.)
10 BY MR. WEDEKIND:
11 Q Just to recap, and provide a few specifics on
12 testimony I think you've already given, you never spoke
13 with Sean Granat or Jon Phillips about the Nixon
14 Peabody memo; correct?
15 A I never spoke with them about that. I think
16 they were copied on -- ultimately on the email chain
17 where Kort acknowledges to Lynne Rhode that she's in
18 receipt of the memo. But I never -- I did speak to
19 Sean about his memo, but not Nixon Peabody's memo.
20 Q Did you speak with Mr. Granat about the OGC
21 June 17th memo after you got it or during its
22 development?
23 A As I mentioned to you earlier, my
24 recollection is that Lynne Rhode was going -- I went
25 over there with Lynne Rhode for something, and we

1 stopped by just to say hello, and I think we discussed
2 something.
3 I think there may have been an email saying,
4 Hey, we bumped into Sean while we were at OGC.
5 (Exhibit Number 26 was marked for
6 identification.)
7 BY MR. WEDEKIND:
8 Q Okay. I'm handing you 26. This is an email
9 from Pat Maillis to you June 27th, and then you reply,
10 and your reply copies Jon Kendrick as well. I can't
11 tell if he was actually on the initial email or not; he
12 might have been.
13 But her email to you is, "Jon and I are
14 preparing the follow-up deliverable for Aaron and the
15 Board on the design of the 2020 plans. Please forward
16 a copy of the opinion or interpretation rendered in May
17 regarding incentive plans."
18 Was she referring to the Nixon Peabody memo?
19 A I don't know.
20 Q Did you get any other legal opinions
21 regarding incentive plans in May of 2019?
22 A The only opinions in May and June would have
23 been OGC and Nixon Peabody.
24 Q And Nixon Peabody is May 20th and OGC is June
25 17th. So the May interpretation must have been the

1 Nixon Peabody memo?
2 A I don't know. I'm not aware of another memo.
3 Q And then you're -- I'm sorry. Go ahead.
4 A And then design of the 2020 plans, is that --
5 would that be -- what is that referring to? I'm
6 looking to see if there's a re line.
7 Q There is. It says: Legal opinion re
8 Incentive Plans.
9 A Okay.
10 Q Did Pat Maillis know about the Nixon Peabody
11 memo? It seems like she must have.
12 A I don't know what --
13 Q You never had any conversations with her
14 about that?
15 A Not that I remember.
16 Q Did you ever have any conversations with Jon
17 Kendrick about the Nixon Peabody memo?
18 A I don't remember having that discussion with
19 Jon.
20 Q Okay. And then what did you -- your reply
21 was: Let's discuss. Thanks.
22 What was your discussion with Pat Maillis
23 about her email?
24 A I do not know. I don't remember this email.
25 Q It comes from your email address.

1 A Oh, no, no, I'm not denying that I didn't
2 send it. I just don't remember this back-and-forth.
3 Q Okay.
4 MR. COXE: What number is this?
5 MR. WEDEKIND: 26.
6 BY MR. WEDEKIND:
7 Q You don't remember her sending you this
8 email, and you don't remember following up with her
9 about this?
10 A We may have.
11 Q But you don't remember it?
12 A I don't remember it.
13 (Exhibit Number 27 was marked for
14 identification.)
15 BY MR. WEDEKIND:
16 Q 27 is the OGC memo. And Lynne Rhode emails
17 it to you. Nancy McDonald emailed it to you on June
18 17th, the day that it was authored, and then this email
19 is later a follow-up, Lynne Rhode is sending it to you
20 again on July 1st. I don't know why she did that, but
21 that's what that says.
22 But if you look at --
23 MR. COXE: What number is that?
24 THE WITNESS: The attachment is --
25 MR. WEDEKIND: Yeah, we're on Number 27.

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1 THE WITNESS: -- Parde and Granat memo of
2 June 17.
3 MR. LOCKAMY: Lee, did you mark the June 13th
4 email?
5 MR. WEDEKIND: Skipped.
6 MR. COXE: Oh, you skipped it?
7 MR. WEDEKIND: Yeah.
8 BY MR. WEDEKIND:
9 Q Okay. So you got the memo on June 17th from
10 Nancy McDonald, "Please see the attached memo. Hard
11 copies are on your chair in your office."
12 And then attached to it is June 17th OGC memo
13 entitled Compensation Plans; correct?
14 A Yes.
15 Q Okay. And this memo is what your Florida law
16 firm response to the Nixon Peabody memo ultimately was;
17 correct?
18 A This was a -- this was a memo that Lynne --
19 that I -- I requested Lynne, look, we need some clarity
20 on what Florida law is, and then Lynne, working with
21 her colleagues, came up with this memo.
22 But I don't know if they were point for point
23 responding to the Nixon Peabody memo that they had or
24 what.
25 Q Okay. If you look at the issue as framed by

1 this memo, it says, "You have asked whether JEA may
2 create or establish a long-term employee incentive
3 program to pay a bonus or additional amounts,"
4 et cetera.
5 And it says yes, you can, provided that you
6 meet the requirements of 215.425, and then it goes
7 through an analysis of 215.425.
8 When you saw this memo, knowing that you had
9 the Nixon Peabody memo, did you ever compare them side
10 by side next to each other?
11 A I did not.
12 Q Okay. When you read this, what did you think
13 of it?
14 A Well, I was glad they were able to cite
15 several cases, and I thought that OGC did a good job
16 getting more in depth in their analysis. They used
17 Attorney General opinions, and I don't think that
18 existed in the Nixon Peabody memo.
19 Q Did you interpret the June 17th OGC memo as a
20 blessing or a sign-off on the legality of the long-term
21 incentive plan that was being contemplated by JEA at
22 the time?
23 A I think it was a blessing to move to the next
24 step. Because the -- the incentive plan of -- both the
25 long-term incentive plan and the performance unit plan

1 were both a work in progress.
2 Q Okay. So this wasn't full stoplight; this
3 was an, okay, continue on, there is a way for JEA to
4 create some form of long-term incentive bonus plan?
5 A Because there was no -- there was no plan
6 documents yet.
7 (Exhibit Number 28 was marked for
8 identification.)
9 BY MR. WEDEKIND:
10 Q 28 are the board minutes from the June 28th
11 comp committee meeting -- I should say committee
12 meeting minutes, not board minutes. And it indicates
13 that you attended this meeting.
14 Do you remember attending the June 18th Comp
15 Committee meeting?
16 A I do remember that.
17 Q Okay. What was your role with the meeting --
18 at the meeting?
19 A Well, I was not -- as I mentioned in my
20 previous deposition, I was not planning on attending,
21 but the group that was attending said you need to come
22 down and meet Camille Lee-Johnson, who was the chair.
23 It's somebody that I hadn't talked to and didn't know
24 prior to me joining JEA. So I attended.
25 Q Okay. These are a series of more general

1 questions, and then we'll get into a little bit of the
2 specifics of this particular committee meeting.
3 But you understand as the CAO of JEA that you
4 had fiduciary duties that you owed to the board members
5 of JEA; correct?
6 MR. LOCKAMY: To the board members?
7 MR. WEDEKIND: To the board.
8 THE WITNESS: Please explain.
9 BY MR. WEDEKIND:
10 Q Did you recognize that you owed the board of
11 JEA fiduciary duties as JEA's CAO?
12 A Within my realm of control.
13 Q Did you understand that part of your job as
14 the CAO, as an executive of the company, was to make
15 sure that the board was reasonably informed of all
16 material information related to the decisions that were
17 before it?
18 A Again, for the -- in my span of control. And
19 I think prior to this board meeting, the OGC memo on
20 long-term incentive plans were provided to the board
21 members.
22 Q Okay. And this -- at this particular comp
23 committee meeting, it says that, under agenda Item
24 II(C), Long Term Compensation Update, Mr. Zahn and you
25 presented the long-term compensation update.

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1 What was your role in that presentation?
2 A I didn't make a presentation at this meeting.
3 Q So it says that you did, but you didn't?
4 A Yeah. So after I think I was questioned
5 about this in the January deposition, I went to Jon
6 Kendrick and asked him, Jon, I don't remember
7 participating in this meeting, and he affirmed my
8 recollection, saying: You didn't.
9 And so I pointed this out to him in the
10 meetings, and his executive assistant was the one that
11 prepared the minutes. And so she had her personal
12 notes from the meeting, and I obtained a copy of those
13 notes, and it confirmed my recollection that I did not
14 make a presentation at this board meeting.
15 Q You attended but didn't present at it?
16 A That's correct.
17 Q Okay.
18 MR. LOCKAMY: And, Lee, we can provide you a
19 copy of those if you'd like.
20 MR. WEDEKIND: Yes, thank you.
21 BY MR. WEDEKIND:
22 Q It says, going up to Item B, this was where
23 Jon Kendrick presented the Towers Watson analysis.
24 Do you remember Mr. Kendrick's presentation
25 of the Towers Watson analysis?

1 A I don't.
2 Q Why wasn't Towers Watson there to present its
3 own analysis?
4 A I think you ought to ask either Aaron or Jon
5 Kendrick or Towers Watson.
6 Q You don't know?
7 A I do not know.
8 Q Going back to the fiduciary duty question
9 real quick. This is a general question; it's not
10 specific to anything.
11 MR. COXE: Why ask it if it's not specific to
12 anything?
13 BY MR. WEDEKIND:
14 Q Do you believe that if you're present at a
15 board meeting and you hear somebody make a material
16 misrepresentation to the board, do you owe the board an
17 obligation to correct the record?
18 A You know, Lee, you are asking me for a legal
19 opinion. I don't know where you're going with that,
20 but --
21 Q I just want to know if you felt like -- if
22 you were sitting in a board meeting and somebody says
23 something that you know is absolutely false, did you
24 feel an obligation to correct that statement?
25 A I may have a -- feel personally that I have

1 an obligation, but I'm not saying -- but I don't know
2 if that is a legal issue.
3 Q Fair enough.
4 MR. COXE: Let me ask a question, you said if
5 somebody says. Anybody?
6 MR. WEDEKIND: Anybody.
7 MR. COXE: Board member -- for example, a
8 board member says something that's false?
9 MR. WEDEKIND: Correct. If a material
10 misrepresentation is made to the board about an
11 issue that they are deliberating, that you know is
12 wrong, did you feel like you had an obligation to
13 correct it on the record?
14 MR. COXE: As opposed to go to the person who
15 made the misrepresentation?
16 MR. WEDEKIND: However.
17 MR. COXE: And tell them to correct it.
18 MR. WEDEKIND: Correct -- correct it one way
19 or another.
20 MR. COXE: Sort of like a lawyer in court if
21 they hear something they don't think is true. Is
22 that the question?
23 MR. LOCKAMY: That's the basic question.
24 MR. COXE: What are they supposed to do?
25 BY MR. WEDEKIND:

1 Q I'm wanting to know how you felt about it.
2 If somebody said something that you know is wrong in
3 front of you, did you feel like you had an obligation
4 to in some way fix it, in any way, whether or not you
5 raise your hand at the meeting and say I want to
6 clarify something, or go to people afterwards and try
7 to get it clarified?
8 Did you feel like you had a duty to do that?
9 A Again, I may feel it from a personal
10 standpoint. I don't know about on the -- whether there
11 is a legal, you know, statutory duty.
12 (Exhibit Number 29 was marked for
13 identification.)
14 BY MR. WEDEKIND:
15 Q Okay. Exhibit 29 is a presentation that was
16 presented to the comp committee meeting on June 18th.
17 This was the presentation you didn't make, that other
18 people made.
19 If you turn to Page 3, if you look down at
20 the very bottom of this slide, it says, Long term
21 incentive, and it says Financial Value and
22 Profitability.
23 Did you see profitability as a guiding
24 principle of JEA during your time there?
25 A Say that again.

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1 Q If you look at the very bottom -- we're
2 talking about the Total Market Compensation plan. If
3 you look under Long term incentive -- which I assume
4 this is the concept of the LTIP?
5 MR. COXE: What page?
6 MR. WEDEKIND: I'm on Page 3. Sorry, it's
7 the bottom slide on Page 3.
8 BY MR. WEDEKIND:
9 Q And Long term incentive is broken out to
10 align with the talent market and guiding principles.
11 And the question I had was, it looks to me
12 like this is a slide that's stating that the long-term
13 incentive was designed to align with the guiding
14 principle of profitability.
15 My question is -- this raised a question to
16 me: Did you feel that during your time with JEA,
17 during this time in June of 2019, that profitability
18 was a guiding principle of JEA?
19 A I don't know that it was described as a
20 guiding principle, but you will see the four items
21 under Short term incentive, Customer Value, Community
22 Impact, Environmental Financial, and Financial Value.
23 The acronym for those -- for those values, if you will,
24 was CCEF. When I arrived at JEA in April, CCEF was a
25 phrase that -- or an acronym that was used routinely to

1 describe the -- and I don't know if it was the guiding
2 principles, but it was certainly what the folks had
3 decided -- I think the board actually adopted the CCEF
4 as the measurement of -- of where JEA wanted to be.
5 Q Right. And so if you look at CCEF, financial
6 value is repeated -- financial value being the F in
7 CCEF; right?
8 A Yes.
9 Q And so if you look, financial value applies
10 under the Short term incentive and the Long term
11 incentive plan; it's repeated there. But then also
12 under Long term incentive, somebody has added a guiding
13 principle of profitability.
14 That was not part of the board-approved CCEF
15 guiding principles?
16 A Not to my knowledge. I know what -- the
17 CCEF, or the four there. I don't know about the
18 profitability component.
19 Q I'm not suggesting that you created these
20 slides. I'm just asking -- it raised a question to me
21 more generally about whether or not that was a
22 principle that was being pushed by people in the
23 C-Suite during your time there, profitability.
24 A CCEF was being pushed.
25 Q Okay. On Page 5 of the presentation, it

1 talks about the LTIP design, and it's got a proposed
2 design here. And you see performance units and time-
3 based units. Apparently these are two different
4 methods by which you can design a plan.
5 And if you look under the performance unit,
6 LTI Eligibility, all employees, okay, that is
7 consistent with the PUP.
8 Award Frequency, Annual.
9 Performance Measure, Customer Rates. Do you
10 know what that means? Where does the reference to
11 customer rates come from?
12 A I don't know.
13 Q Okay. If you look on Page 6, on the top
14 slide it identifies a plan design element. The fifth
15 one down is called Circuit Breaker.
16 I noticed that, and it intrigued me, because
17 that was the same language that was used in your recent
18 letter, and I'm wondering if this is where you got that
19 language from.
20 A The answer is no.
21 Q Okay. At the bottom of the slide on -- at
22 the bottom of the top slide on Page 6, the very last
23 row says Estimated Cost, estimated cost of annual
24 Performance Unit awards to all employees based on
25 current incumbent base salaries is $3.4 million.

1 Was that part of the presentation that was
2 made to the comp committee in June of 2019?
3 A I don't know what -- what estimates were
4 provided the comp committee.
5 Q You don't remember ever hearing that number?
6 A No.
7 Q Okay. If you look on -- this says Page 3.
8 Must be a pagination issue. The second Page 3 of
9 this --
10 MR. COXE: It's just a second set of slides,
11 isn't it?
12 MR. WEDEKIND: Must be, yeah.
13 BY MR. WEDEKIND:
14 Q If you look at the top slide on the second
15 page, it's got the purple --
16 A Uh-huh.
17 Q Under 2019 -- it says Year of Willis Towers
18 Watson's review, 2019, and then it goes over. The last
19 bullet there says, "JEA Board's objective is to create
20 and implement a short-term and long-term incentive plan
21 where all employees are eligible to receive an award
22 based on individual and organization performance."
23 Was that your understanding of what the
24 purpose of the plan was, was designed to reward
25 employees for -- in part for organization performance?

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1 A Well, I know that it was certainly part of
2 the short-term incentive plan. And then I guess if you
3 want to -- you described it and I described it today,
4 that part of it was the financial standing of the
5 company, and I would think -- I would guess that would
6 be the organizational performance.
7 Q All right. No mention was made of the Nixon
8 Peabody memo at the comp committee meeting; correct?
9 A I'm not aware that it was.
10 (Exhibit Number 30 was marked for
11 identification.)
12 BY MR. WEDEKIND:
13 Q Okay. Exhibit 30 is an email from you to
14 Lynne Rhode, Update - comp memo, dated June 8th. And
15 in the memo it says, "As soon as I review her work" --
16 meaning Kort's work, because she was referring to Kort
17 Parde -- "I plan to visit with the City Ethics Officer
18 to confirm."
19 The question is, did you ever do that?
20 A I did not. I -- of course, the plan wasn't
21 fully developed. I did, however, call Jason Gabriel at
22 some point in the June-July time period -- well,
23 actually, I think I did call the city ethics officer
24 just to introduce myself.
25 I subsequently called Jason Gabriel and

1 mentioned that I might want to take the incentive plan
2 to the ethics officer.
3 Jason was very, very gracious and -- but he
4 said that it would -- likely the plan would wind up in
5 Tallahassee at the Florida Ethics Commission, that he
6 routinely worked with Florida Ethics Commission staff
7 on working out ethics issues with City Council members,
8 that he had a good working relationship with them, and
9 that whenever the plan was developed, he would be more
10 than happy to help guide this through the Florida
11 Ethics Commission.
12 So he was -- again, I was still very new, but
13 he was very, very helpful.
14 Q The city ethics officer, is it Carla Miller
15 that you're referring to?
16 A Yes. And I have a recollection that it was
17 just a brief call where I introduced myself.
18 Q Does JEA have any in-house ethics people?
19 A We do.
20 Q Who is that?
21 A Walette Stanford.
22 Q Did you ever talk with her about the long-
23 term incentive plan issues?
24 A I did not. My focus was with OGC.
25 Q All right. So I'm going to jump ahead a

1 little bit. July 23rd board meeting -- July 23rd board
2 meeting, the PUP plan gets approved. It had been -- it
3 had transformed from the LTIP into the PUP, according
4 to what I understand you're saying, at the Club
5 Continental July 10-through-12 meeting with Pillsbury
6 and others; correct?
7 A PUP was the first -- at that meeting was the
8 first time I had heard about PUP.
9 Q So now I'm just -- I want to tag a date. So
10 after July 10, it's the PUP. Before July 10, it's the
11 LTIP?
12 A At least in my mind, yes.
13 Q Right, okay. So now we can talk about the
14 PUP. The PUP was developed July 10 through 12; it was
15 refined a little bit; it was presented, at least in
16 concept, to the board at the July 23rd meeting, along
17 with a substantial amount of other very important
18 issues. The July 23rd meeting was critical, right, a
19 lot of things were happening.
20 The PUP plan is approved July 23rd, and then
21 going forward JEA, with Pillsbury and Foley, worked to
22 further refine it.
23 A And OGC.
24 (Exhibit Number 31 was marked for
25 identification.)

1 BY MR. WEDEKIND:
2 Q And OGC, okay. In August, August 9th, a few
3 weeks after the PUP is approved by the JEA board, an
4 email comes in from the city auditors. This is
5 Exhibit 31.
6 Jeff Rodda sends a number of people,
7 including Joe Orfano, Ryan Wannemacher, a list of
8 questions about the PUP that's just been approved.
9 And according to the top email, Ryan flips it
10 to you, and on August 9th says, "Let's chat when you
11 get a chance."
12 Why was Ryan Wannemacher coming to talk to
13 you about these specific questions?
14 A Well, not having reviewed these questions --
15 he may have had some legal questions about the PUP.
16 That would be my guess. Because he -- he is asking
17 some tax issues, nitrogen credits. I'm just going
18 through the stuff that -- a couple things that may be
19 within -- the nitrogen credits would have been Paul
20 Steinbrecher, who was our environmental vice president.
21 Obviously making connection with the appropriate legal
22 team.
23 So perhaps it was just requesting assistance
24 to who he needs to talk to.
25 Q The last question that the Council Auditor

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1 asks is, "What is the reason for including COJ OGC
2 Attorneys assigned to JEA as eligible participants in
3 the PUP?"
4 Do you know the answer to that question?
5 A Yes. Obviously the charter is specific that
6 all attorneys have to be employees of the Office of
7 General Counsel. That is the only reason why the two
8 full-time employees -- OGC employees that are assigned
9 to JEA would not have otherwise been included in the
10 PUP.
11 And they were -- so Aaron was very adamant
12 that they, if we can, include them. They were also
13 originally included in the retention agreement, and so
14 I took both of the documents -- or issues to Jason
15 Gabriel, and Jason said because if there was a
16 recapitalization, the two OGC attorneys would not
17 necessarily be impacted from an employment standpoint,
18 they could be assigned to JAA or JTA, he asked that we
19 take the two OGC attorneys out of the retention
20 agreement.
21 But it was acceptable, at least at that time,
22 for them to be -- remain in the performance unit plan.
23 Q And that was -- so originally it was Aaron
24 Zahn's idea to include them in the PUP and the
25 retention agreement, and then Jason Gabriel put the

1 kibosh on them in the retention agreement, but
2 permitted them to stay as eligible participants in the
3 PUP?
4 A At that time, yes.
5 Q Later that changed?
6 A No. But it was -- it was -- I think it
7 became an issue within OGC.
8 MR. COXE: What number was that?
9 MR. WEDEKIND: 31.
10 (Exhibit Number 32 was marked for
11 identification.)
12 BY MR. WEDEKIND:
13 Q I'm handing you 32. This is an email from
14 Ryan Wannemacher to you and Mr. Zahn and Ms. Dykes and
15 Lynne Rhode. This is the follow-up -- or his forward
16 of the follow-up. It says: Jeff, Attached are the
17 latest drafts of the plan documents approved by the
18 board. As we're still working on a number of other
19 pressing items, can we circle up in a few weeks on any
20 additional questions you may have after reviewing the
21 documents. I appreciate it.
22 So he -- Wannemacher wants to talk with you
23 about how to respond to these questions on August 9th,
24 and then on August 14th the response is: Here are the
25 plan documents that were approved by the board. Figure

1 it out yourselves and ask us questions later.
2 So my question to you is: Did you direct
3 Mr. Wannemacher to push off the Council Auditor in
4 responding to these questions?
5 A No.
6 Q Did Mr. Zahn instruct Mr. Wannemacher to push
7 off answering these questions from the Council Auditor,
8 to your knowledge?
9 A I think we need to focus on our language
10 here. You use the word "push off," and what I'll say
11 is: I did not direct Ryan or suggest that Ryan delay
12 his response to the Council Auditor, and I have no
13 knowledge that Aaron did either.
14 Q Okay. At what point did JEA engage Foley to
15 start assisting it on the Florida law matters?
16 A So something you may not know, JEA does not
17 engage attorneys. The Office of General Counsel
18 engages attorneys, as you know.
19 Q On behalf of JEA, right.
20 A Yes. So that would have been in July.
21 Q Okay. Beginning of July?
22 A Well, it was early enough to where several of
23 the Foley & Lardner people attended the Orange Park
24 meeting.
25 Q Okay. As I understand it, Foley was brought;

1 in to attend -- to focus on Florida law issues working
2 hand in glove with Pillsbury on all of these different
3 components of the long-term strategic plan and the PUP
4 and all of that. Is that accurate?
5 A If you'll look at the engagement letter, it
6 itemizes all of the items that they were engaged to
7 perform.
8 Q My point is only that they were really more
9 focused on Florida-specific issues.
10 A Well, that was one of the reasons why I
11 reached out to Jason Gabriel about retaining Florida
12 counsel, is because we don't need to be, as you've read
13 in my deposition, paying New York rates for Florida
14 real estate law or Florida corporate law or Florida
15 employment law.
16 And I knew that Foley had substantial
17 capabilities two blocks from OGC and JEA's offices.
18 Q During this process, the time period of July,
19 August, September, how frequently were you
20 communicating with Jessica Lutrin at Pillsbury?
21 A Not very frequently. She was more focused on
22 tax and federal issues, and so it was infrequent.
23 Q The emails that we have reviewed indicate
24 that there were no emails between you and Jessica
25 Lutrin between the dates of July 17th and August --

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1 excuse me, October 31st, 2019.
2 Does that sound right to you?
3 A Well, I don't -- I can't sit here and say
4 that there were no emails between me and Jessica in
5 that time period. But if -- but I did not -- I did not
6 engage Jessica much at all.
7 Q Who would have on JEA's side?
8 A As I mentioned, she -- I believe she is a tax
9 expert and has expertise in employee benefits. So my
10 suspicion -- I mean maybe the finance team. Certainly
11 Lynne Rhode would have talked to her or engaged with
12 her. I don't know if Jon Kendrick would have or not,
13 on the employee benefits, because at the time there
14 were a number of items being discussed that might have
15 to be transferred to a new entity.
16 (Exhibit Number 33 was marked for
17 identification.)
18 BY MR. WEDEKIND:
19 Q Got it. I'm handing you 33, which is an
20 email from you to Kevin Hyde about a meeting, it looks
21 like -- it references a meeting that you and Ryan
22 Wannemacher and Sherry Hall, it looks like, attended
23 with the Council Auditor in October of 2019.
24 Do you remember that meeting?
25 A I do.

1 Q Okay. What was discussed?
2 A So most of the items being discussed were
3 with Ryan. Sherry helped out. And Aaron asked me to
4 attend in case there were questions, since I'm the one
5 that had the discussion with Jason Gabriel about
6 including OGC employees in the performance plan.
7 Q I probably should have mentioned this
8 earlier. I don't know if we talked about it or not.
9 Among the purview that you had as the CAO was
10 responding to public records requests; correct?
11 A That would -- at the very end, yes. But they
12 were originally appointed first to -- they reported to
13 Brandon Edwards, who reported to Ted Hobson, who then
14 reported to me.
15 Q Okay. As part of the meeting with the
16 Council Auditor as referenced in Exhibit 33, they
17 attach a document that's additional questions and
18 initial concerns on the PUP. Specifically I would
19 invite your attention to Number 8. Number 8 says,
20 "Please provide documentation regarding Florida Statute
21 section 215.425(3), on whether or not it applies to the
22 plan. If it does, have the requirements been met?"
23 It seems to me as if the Nixon Peabody memo
24 is exactly responsive to Number 8. And my question is
25 whether or not JEA ever provided the Nixon Peabody memo

1 to the Council Auditor in response to its request to
2 Number 8?
3 A I don't know if JEA provided the Nixon
4 Peabody to the Council Auditor.
5 Q Do you know who was responsible for
6 responding to questions and concerns raised by the
7 Council Auditor in Exhibit 33?
8 A I do know that Ryan responded, or was trying
9 to respond, and I do know that Sherry Hall was trying
10 to assist him in collecting the appropriate
11 information.
12 Q Did you ever mention to anybody that the
13 Nixon Peabody memo might be responsive to the Council
14 Auditor's requests?
15 A Say that again.
16 Q Did you ever mention to anybody that you
17 thought that the Nixon Peabody memo would be responsive
18 to the Council Auditor's request?
19 A No.
20 Q Why not?
21 A Well, because we had a more robust memo by
22 the Office of General Counsel, and honestly, the Nixon
23 Peabody memo had gone by the wayside. But I'm not sure
24 I even looked at these documents -- or at these
25 questions.

1 Q Why did you send them to Kevin Hyde?
2 A Because as you took a quick glance, some of
3 them had to do with the performance units, and Kevin
4 might have information that could help.
5 Q Okay. So you played some role in trying to
6 develop information that would be responsive to this
7 request?
8 A I wanted to make sure that the appropriate
9 parties had the requests and -- well, internally that
10 was handled obviously by Ryan, but I thought that
11 Foley & Lardner may have some information.
12 Q Did you ever send the Nixon Peabody memo to
13 anybody at Foley?
14 A I don't think I did.
15 Q Did you ever talk to them about it?
16 A I don't -- I don't recall talking to them
17 about it. Like I said, the OGC memo I think was far
18 more robust in their analysis, and my suspicion is that
19 that would have been supplied to all the interested
20 parties.
21 Q Okay. So you -- do you remember providing
22 the OGC memo to Foley, or you think that you did, or
23 you think that you would have?
24 A I think I did. If I didn't do it, then Lynne
25 Rhode probably would have done so.

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1 (Exhibit Number 34 was marked for
2 identification.)
3 BY MR. WEDEKIND:
4 Q All right. Exhibit 34 is the second of two
5 memos prepared by Foley about the PUP. I didn't
6 provide you the first one -- I'll just tell you this --
7 because I feel like the second one was a
8 supplementation of the first. So really the second one
9 covered all the ground of the first and then added to
10 it, so I really want to just talk about the whole
11 thing, so that's why you get one.
12 So this is a robust -- it's a 16-page -- I'll
13 just define it. It's a 16-page memorandum of law by
14 Foley to JEA opining on the legality of the PUP;
15 correct?
16 A Yeah. It describes it, and it does a legal
17 analysis relating to the performance units.
18 Q Okay. So, big picture, OGC, on behalf of
19 JEA, engages Foley to opine on Florida-law-related
20 issues about all of this stuff, including the PUP.
21 Foley drafts this particular memo analyzing the PUP
22 under Florida law.
23 The PUP resolution requires it to comply with
24 215.425(3); right?
25 A I think that was pointed out in my deposition

1 in January.
2 Q Right. And of course, obviously, it's a
3 Florida statute. That's a Florida legal issue, so
4 Foley is looking at it. They produce this memorandum.
5 And it goes into a great amount of detail on a wide
6 variety of aspects about the PUP. It's very detailed
7 and very thorough, as you would expect.
8 It references -- excuse me. It refers to the
9 PUP as a deferred compensation plan.
10 MR. COXE: What page are you on?
11 MR. WEDEKIND: I'm on Page 4.
12 BY MR. WEDEKIND:
13 Q It says, "The PUP is a form of deferred and
14 long-term incentive compensation."
15 My question is: When did the PUP change from
16 a bonus to a deferred compensation plan?
17 A Well, I don't know if that was a result from
18 the whatever came out of the Orange Park meeting.
19 That's what I would assume.
20 Q 215.425(3), which the PUP is required to
21 comply with, only relates to bonuses. It has nothing
22 to do with deferred compensation; correct?
23 A I -- I've read 215.425.
24 Q Do you agree that that's -- it addresses the
25 elements of a bonus, not deferred comp?

1 A 425, yes, was -- I think it's extra
2 compensation to public employees.
3 Q Right. Sub 1 is that extra compensation
4 component, and then Sub 3 goes into what elements you
5 can have in order to be a bonus.
6 The point really only is just that a
7 different chapter of the Florida statutes relates to
8 deferred compensation plans; right? Isn't that your
9 understanding?
10 A I know that Chapter 112.215 does relate to
11 deferred compensation plans.
12 Q Right, right, right. Okay. So the memo --
13 A And I think if -- the minutes from the July
14 23rd board meeting, Mr. Kendrick explains that there
15 was lack of clarity under Florida law regarding the
16 215, and that they have moved it more into a voluntary
17 benefit program.
18 Q All right. So --
19 A So it would have changed by July the 23rd
20 when the board was briefed on it. I think that was
21 when Mr. Kendrick outlined that.
22 Q Here is -- here is the point of the question.
23 Foley goes into great length to explain what the PUP
24 isn't: It isn't this, it isn't that, it isn't the
25 other thing.

1 And it goes into a great amount of detail
2 about whether or not it meets all of these other
3 different requirements, under, for example, deferred
4 comp. It evens goes so far as to ask the question --
5 this is on -- this is Number 9 on Page 15, at the very
6 end of the memo: -- "Is the PUP permissible under
7 Florida Laws related to 'Extra Compensation'?"
8 And it analyzes the PUP under 215.425(1). It
9 does not analyze the PUP under 215.425(3). Why not?
10 A I think that's a question that -- well, let
11 me back up here. This memo was done at the request of
12 Jason Gabriel, and so while I don't have the specific
13 requests that he made, I do know that Kevin was
14 responding to the -- to Jason Gabriel and Lawsikia at
15 Office of General Counsel and the questions that they
16 had.
17 So I don't know if they asked the question a
18 different way and -- by the way, this is not a
19 criticism of Jason at all. Jason worked hand in glove
20 with Foley and JEA on the issue throughout the whole
21 process.
22 Q So -- and I see, I guess to your point, that
23 the memo is actually addressed to Lawsikia and Jason.
24 Did you play any part in the preparation of
25 this memo?

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1 A Not that I recall. I did not do any legal
2 research associated with that. Obviously that -- Kevin
3 Hyde is one of the best labor and employment lawyers in
4 the country, and -- and so I'm not going to second-
5 guess him. Or Jason Gabriel, for that matter.
6 Q When this -- this memo wasn't addressed to
7 you. Did you read it when it came out? Did you get a
8 copy of it?
9 A I'm sure I did. And I -- I remember meeting
10 with Jason and Lawsikia and Kevin -- I don't know if --
11 I can't remember if Lynne was there -- on several
12 occasions. And they asked good -- Jason Gabriel posed
13 good questions. He was doing his due diligence, and
14 Kevin was responding.
15 Q I have a note that there was -- one of those
16 meetings happened on November the 5th at Foley. Does
17 that --
18 A I -- Lawsikia described that in my deposition
19 at length.
20 Q Was that the meeting that you said you just
21 didn't remember?
22 A No, I do -- I do remember attending the
23 meeting at the Foley offices with Jason, and I think
24 Lynne was there, and Lawsikia and Kevin.
25 And it would have been about that time frame,

1 because I do remember The Landing was coming down, so
2 we were looking out the window looking at the Landing.
3 Q What do you recall about that meeting?
4 A Just more back and forth, as we had done --
5 or as Jason and Lawsikia and Kevin did, and I was there
6 for I guess -- and probably Lynne Rhode also, with OGC
7 and JEA, more Q and As, what about this, what about
8 that. It was the due diligence that everybody wanted
9 to have done.
10 Q The Nixon Peabody memo wasn't addressed at
11 that meeting, was it? Do you remember talking about
12 it?
13 A I -- I don't.
14 Q Wasn't the PUP's compliance with 215.425(3)
15 the key issue that Lynne Rhode identified?
16 MR. LOCKAMY: When are you -- what time frame
17 are you talking about?
18 MR. WEDEKIND: She had identified it in her
19 emails with the OGC as they were beginning to
20 develop the June 17th memo. She said this is the
21 key issue. We looked at the email a while back.
22 THE WITNESS: So that would have been
23 during -- when it was the long-term incentive plan
24 and not the performance unit plan. And as you
25 pointed out, it kind of shifted to be a deferred

1 contribution, so that may have impacted the legal
2 analysis.
3 BY MR. WEDEKIND:
4 Q Do you know if that's true, or are you
5 speculating?
6 A I'm speculating.
7 Q Yeah.
8 A I mean you pointed it out that it was -- the
9 deferred compensation is also addressed in another part
10 of Florida Statutes.
11 Q Right. 112 --
12 A 215.
13 Q Yeah. Do you know if the PUP was ever
14 described as a deferred compensation plan to the board
15 before the July 23rd or during the July 23rd meeting?
16 A As I mentioned, I think Jon Kendrick
17 described it as a benefit, as opposed to a bonus.
18 Q I can show you the documents, but I don't
19 think I'm going to need to. I'm just going to ask you
20 a couple general questions about the November 12th
21 email from Mr. Zahn that postponed the PUP.
22 A Okay.
23 Q What conversations did you have with Mr. Zahn
24 about postponing the PUP, if any?
25 A I don't remember having conversations with

1 Aaron about that. I think Aaron and Jason -- Mr. Zahn
2 and Mr. Gabriel were discussing the issue at length.
3 Q So he never -- so Mr. Zahn never suggested
4 that he might attempt to reimplement the PUP at a later
5 date after its postponement?
6 A Heck, no.
7 Q On November 19th, Kyle Billy, the Council
8 Auditor, issued his report on the PUP.
9 Did you ever have any conversations with
10 Mr. Zahn about Mr. Billy's memo?
11 A No.
12 Q Why not?
13 A Because I didn't read Mr. Billy's memo.
14 Q Why not?
15 A We had so much going on, the PUPs were dead,
16 and that was one less thing to worry about.
17 (Exhibit Number 35 was marked for
18 identification.)
19 BY MR. WEDEKIND:
20 Q Exhibit 35 is some email back and forth
21 between you and Kerri Stewart, late November, November
22 29th, about the "Myth versus Fact" document. I don't
23 know what else to call it.
24 And you were provided a draft of this "Myth
25 versus Fact" document and provided some input on it;

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1 correct?
2 MR. COXE: What's the date of that?
3 MR. WEDEKIND: November 29.
4 BY MR. WEDEKIND:
5 Q It looks like the middle email is your
6 feedback to her.
7 A Okay.
8 Q My only question is just that you had the
9 opportunity to review her work product and offer your
10 feedback on it, and you provided your thoughts and she
11 edited accordingly, or didn't?
12 A I provided some wordsmithing comments. I
13 don't know if she made those changes or not.
14 Q Okay.
15 A That was not normally in my day-to-day
16 duties, but she obviously reached out for some help.
17 Q Why? If it wasn't normally within your
18 day-to-day responsibilities, why did she reach out?
19 A Kerri is a wonderful human being, and she
20 asked for help on some of the wordsmithing, and that's
21 what I did.
22 (Exhibit Number 37 was marked for
23 identification.)
24 BY MR. WEDEKIND:
25 Q At this point in the timeline, there has

1 become a great deal of public interest in what JEA is
2 doing. We're in the late November/early December time
3 period. You probably recall that there was a special
4 committee formed by Mr. Diamond and Mr. Salem, and they
5 asked a bunch of questions of a bunch of different
6 execs.
7 37 is an email from Sherry Hall to you dated
8 Tuesday, December 10th, that is forwarding an email
9 from Matt Brockelman of The Southern Group, which is
10 forwarding an email from Carlo Fassi, that provides a
11 number of notes regarding the upcoming City Council
12 meeting -- committee meeting.
13 My only question here is --
14 MR. COXE: Talking about the Salem-Diamond
15 meeting?
16 MR. WEDEKIND: Yes.
17 MR. COXE: It was not an upcoming council
18 meeting.
19 MR. WEDEKIND: It was at this time.
20 BY MR. WEDEKIND:
21 Q So that meeting did not happen until after
22 December 10th, and so somehow -- the point is that you
23 and others at JEA knew a basic structure and format of
24 the City Council committee meeting in advance; correct?
25 A I don't -- well, I attended the meeting. It

1 was not unlike a lot of other -- it was very similar to
2 every other council meeting that they have, except it
3 was in a different room.
4 Q Correct. But all -- this email provides
5 information regarding a tentative agenda, and who is
6 going to be there, and kind of a general structure
7 about the questions that are going to be asked. And
8 this was given to -- this information was somehow
9 obtained by JEA in advance.
10 Why did you send this to Sherry Hall?
11 A Sherry Hall --
12 Q Excuse me. Why did she send it to you; do
13 you know?
14 A Well, because it was sent to her.
15 Q Did you pass this information along to
16 anybody else at JEA?
17 A I don't recall sending it to anyone else. I
18 really don't even recall this memo -- like I say, it's
19 not -- I'm just reading through it here. The questions
20 are not -- would not be out of the ordinary given what
21 was going on at the time.
22 (Exhibit Number 38 was marked for
23 identification.)
24 BY MR. WEDEKIND:
25 Q Exhibit 38 is an email from Kevin Hyde to you

1 and Lynne Rhode that attaches a document called
2 Executive Summary of PUP document.
3 Why did Mr. Hyde prepare and send this to
4 you?
5 A So at the time the entire senior leadership
6 team was in Atlanta meeting with the proposed bidders,
7 and so no one was there to be responsive to the
8 council's request. And so what I did was I asked Kevin
9 to shepherd getting the documents that the public
10 records people were able to produce in that short
11 period of time, get the binding done. I think they
12 wanted 20 or so copies of the information that was
13 provided to the committee.
14 And so that's why Kevin was engaged in
15 providing all that information, as well as just kind of
16 a one-pager or so on the PUPs, which were the focus of
17 the hearing.
18 (Exhibit Number 39 was marked for
19 identification.)
20 BY MR. WEDEKIND:
21 Q Exhibit 39 is a series of emails between you
22 and Mr. Hyde and others at Foley & Lardner dated
23 December 23, 2019. This was after the PUP had already
24 been terminated by JEA.
25 So why is Foley now, after the PUP has been

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1 terminated, looking into issues regarding whether or
2 not the PUP would require an IRS approval?
3 A Well, that wasn't the question that I asked.
4 Kevin and I knew that the -- as you cited, Chapter
5 112.215 would require federal approval of any PUP. And
6 we had both assumed that it would take six months or
7 so, once submitted, to get that approval.
8 And so I called him -- because there was a
9 lot of interest in the issue, I called him and said,
10 Can you find out how long these approvals take place.
11 And so one of the tax partners at Foley & Lardner
12 opined that it would take at least four months.
13 So our -- our assumptions that Kevin and I
14 had regarding the time that it would take -- that it
15 would take to get federal approval of any of the PUP
16 plans was, I would say, very accurate. But this just
17 confirms it.
18 Q So one issue that I see in Mr. Bernstein's
19 email is that under 409A, it's -- the kicker is kind of
20 at the very end of that email, where he says, "I think
21 that the best that JEA could do is get an opinion of
22 counsel on the issue if they wanted all of the issues
23 analyzed and addressed."
24 And so it seems like what he is saying is the
25 IRS is not going to give you a letter ruling on this.

1 Is that -- was that your takeaway as well?
2 A No. My takeaway was solely with the timing
3 of it, and that was my only focus, was whether or not
4 Kevin and I were correct, that the performance unit
5 plan, once it was approved by -- once it was evaluated
6 by the Attorney General and Ethics Commission and on
7 and on, the timeline. And, like I say, we were
8 correct.
9 Q Why are you confirming your correctness after
10 the plan has already been terminated? Isn't, at that
11 point, it moot?
12 A As I said, there was a lot of interest in it,
13 and I -- I wanted to be accurate.
14 MR. WEDEKIND: For the record, I noted that
15 there is not an Exhibit 36. I skipped Exhibit 36.
16 And to avoid any confusion by all of us later
17 on --
18 MR. COXE: You coming back to it?
19 MR. WEDEKIND: I just note it. So in this
20 transcript there will not be an Exhibit Number 36,
21 and I apologize for that.
22 BY MR. WEDEKIND:
23 Q I think that you've already answered this
24 question before, but I'm going to ask it in a different
25 way now.

1 You had many different opportunities to
2 disclose the existence or substance of the Nixon
3 Peabody memo. There was a June 2019 comp committee
4 meeting, June 2019 board meeting, July 29 (sic) board
5 meeting, the December City Council special committee
6 meeting, the December 2019 board meeting, your January
7 2020 interview, and many other opportunities, but you
8 never disclosed it.
9 Why not?
10 MR. LOCKAMY: Lee, for purposes of your
11 question, though, you concede that he disclosed it
12 to Lynne Rhode and to Kort Parde at OGC?
13 MR. WEDEKIND: That's not my question.
14 MR. LOCKAMY: You just said that you failed
15 to disclose it. What was the tag line at the end?
16 That's incorrect, based on the prior testimony.
17 BY MR. WEDEKIND:
18 Q All right. You had those opportunities to
19 publicly disclose the existence and substance of the
20 Nixon Peabody memo and you didn't. I want to know why.
21 MR. COXE: What do you mean "publicly"?
22 MR. WEDEKIND: In public.
23 MR. COXE: What does that mean?
24 MR. WEDEKIND: Not one on one with one
25 person, to disclose it to the board who was

1 evaluating these issues or to the committee who
2 was investigating these issues.
3 MR. LOCKAMY: Do you concede he --
4 MR. NUNN: Hank, are you acting as a lawyer
5 or a witness?
6 (Brief interruption)
7 MR. COXE: We don't know who's talking, so I
8 don't know how to answer that question.
9 MR. NUNN: This is Dan Nunn.
10 MR. COXE: Thank you for your input, Dan.
11 What's the story, Lee?
12 MR. WEDEKIND: I want my question answered
13 the exact way that I phrased it.
14 MR. COXE: Publicly?
15 MR. LOCKAMY: No, it was wrong. The way you
16 phrased it was wrong.
17 MR. WEDEKIND: That's fine. You can object
18 to it all you want to. You're really not entitled
19 to. But the question stands.
20 MR. LOCKAMY: Ask it accurately.
21 MR. WEDEKIND: I can ask my questions any way
22 that I want to ask him.
23 MR. LOCKAMY: Ask it again.
24 BY MR. WEDEKIND:
25 Q You had many different opportunities to

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1 disclose or discuss the existence and the substance of
2 the Nixon Peabody memo, including the following, the
3 June 2019 comp committee meeting, the June 2019 board
4 meeting, the July 2019 board meeting, the December City
5 Council special committee meeting, the December 2019
6 board meeting, your January 2020 interview, and you
7 didn't, at any of those meetings or events, disclose
8 it.
9 MR. LOCKAMY: But do you concede that he
10 disclosed it --
11 MR. WEDEKIND: The facts are what they are.
12 Please quit arguing and let him answer the
13 question.
14 MR. LOCKAMY: I'm asking you a question. Do
15 you concede --
16 MR. WEDEKIND: I'm not --
17 MR. LOCKAMY: -- that it was provided to OGC?
18 MR. WEDEKIND: I'm not testifying right now.
19 I'm asking questions.
20 MR. COXE: Lee, come on, now. The emails
21 show Sean Granat got copied --
22 MR. WEDEKIND: The emails show -- they show
23 what they show. I'm not asking about emails.
24 MR. COXE: They show what they show.
25 MR. WEDEKIND: I'm not asking about emails.

1 I'm asking a specific question about specific
2 events.
3 MR. LOCKAMY: But you're saying failure to
4 disclose when you know he disclosed it to OGC.
5 BY MR. WEDEKIND:
6 Q Can you answer my question?
7 A So as I mentioned to you earlier, I didn't
8 think that the Nixon Peabody memo had any value
9 because, at least as I read the memo, they say on its
10 face that they're not Florida lawyers and that we
11 should pursue Florida counsel.
12 We did that. We went to the Office of
13 General Counsel and got a memo that was far more robust
14 by Florida lawyers that were licensed to give a Florida
15 opinion on the matter. Oh, by the way, the Nixon
16 Peabody memo was -- remained in draft.
17 So I think having a memo that, in my view,
18 was not worth anything versus one that was far more
19 robust by the Office of General Counsel and who -- and
20 the General Counsel addressed, I think, every single
21 one of the issues that the Nixon Peabody memo
22 addressed.
23 I haven't -- I didn't compare the two, but
24 it's not like that Nixon Peabody discovered something
25 that Sean Granat and Kort Parde didn't discover.

1 Q Did you ever attempt to calculate what the
2 value of the PUPs that you might be entitled to would
3 be in the event of a recapitalization of JEA?
4 A I haven't attempted to calculate anything.
5 Of course you said to me personally there's been no
6 allocations, so that couldn't be done anyway.
7 Q Did you know that the plan assumed that units
8 would be allocated based on a percentage of each
9 employee's salary?
10 A If it's in the documents, then I -- I read
11 the documents.
12 Q Did anybody ever talk to you about what your
13 units might ultimately be worth in the event of a
14 recapitalization?
15 A No. There was -- there were -- there was not
16 a -- well, let me back up. In my previous deposition
17 there were -- there was a lot of allegations or
18 discussions -- public discussions about the value of
19 the PUPs.
20 And as a result, I went to Aaron Zahn at the
21 time and asked Aaron, Aaron, Have you had a discussion
22 with Camille Lee-Johnson, who was the comp committee
23 chair at the time. For good corporate governance, I
24 believe it was Pillsbury that placed that safeguard in
25 the plan documents.

1 Q What safeguard?
2 A That the comp committee chair would make the
3 decisions.
4 Now, she had the ability if she wanted to
5 shift some of that to the senior leadership team, or
6 Aaron, or something like that. But one of the things
7 that's key is she controlled these things.
8 And that has been kind of one of my
9 frustrations as the discussion has taken place, is if
10 the comp committee chair was Tom Petway or Ed Burr or
11 Bob Shircliff, people that are icons in our community,
12 they would know that they would exercise sound judgment
13 in deciding what is the appropriate number of units and
14 the value of those units. And there's been zero
15 discussion about that safeguard that was placed in
16 there.
17 And I have to assume that if some
18 extraordinary sum was due to Aaron Zahn -- Camille
19 Lee-Johnson, the comp committee chair, has I think
20 terrific judgment and good sense, and when -- exercised
21 the duties that the board member was supposed to
22 exercise.
23 Q But wouldn't the units have already been
24 allocated?
25 A No. She's the one that allocates.

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1 Q Right. But if the units are allocated and
2 purchased before the recap event and then the recap
3 event happens, she no longer has the ability to control
4 anything by a reallocation of units.
5 A So she does -- she has extraordinary control.
6 The bids were -- came in on the Tuesday before
7 Thanksgiving, so before any -- if there was going to be
8 an allocation in December, as had originally been
9 discussed, the numbers would have been available to
10 her. I think that's one of the defects in the whole
11 timeline.
12 As I'm sure you've seen my discussion in my
13 previous deposition that I didn't think the timeline
14 was achievable anyway, because of the two things that I
15 did, which is put in the circuit breakers, as you have
16 mentioned, and that being whether OGC said yes on
17 moving forward with the PUPs, or Foley & Lardner; I
18 insisted that we go to the Attorney General for the
19 State of Florida and have her look at these documents
20 and render it.
21 And then, as you know, we had planned on
22 submitting the same -- you know, after getting feedback
23 and if it was to move forward, it would be provided to
24 the Florida Commission on Ethics, and Jason had already
25 committed to helping us with that.

1 And so -- you are forgetting some very key
2 and critical components in the process.
3 Q I think all I'm wondering about right this
4 very -- I understand that. And we're going to get into
5 all of that.
6 But I -- my question really is directed to
7 there was a whole lot of discussion about these PUP
8 units. I just wanted to know: Was it ever a source of
9 conversation about what these things might ultimately
10 be worth in the event of a recapitalization?
11 A As I have mentioned, the number that I first
12 recall hearing was from the Council Auditor on October
13 31st.
14 Q Was there any internal discussion within the
15 senior leadership team after the Council Auditor
16 produced its report?
17 A Not with me.
18 Q We took the PUP and made a few assumptions.
19 And our calculation, based on a mid range of publicly
20 available bids from the ITN, resulted in a PUP payout
21 to you of $17.6 million.
22 A To me?
23 Q To you.
24 MR. LOCKAMY: Do you have something to show
25 him for that?

1 MR. WEDEKIND: No. I'm asking the question.
2 BY MR. WEDEKIND:
3 Q Does that surprise you?
4 A Yes.
5 Q Would it surprise you that our calculations
6 show that the whole senior leadership team would
7 have -- if they had purchased all of the maximum amount
8 of units allocated to each of them would have received
9 more than $200 million?
10 A That was never discussed with us.
11 MR. LOCKAMY: Lee, where are you getting the
12 allocation from?
13 MR. WEDEKIND: The plan documents.
14 MR. LOCKAMY: You are saying the plan
15 documents have the allocations to individuals?
16 MR. WEDEKIND: They have assumptions made in
17 them, yeah. Ryan Wannemacher was using them in
18 April.
19 MR. LOCKAMY: You're saying that the April is
20 what ended up in the plan documents?
21 MR. WEDEKIND: No. I'm saying that the plan
22 documents have allocations that are based on a
23 percentage of salary.
24 BY MR. WEDEKIND:
25 Q Have you ever heard of public officials

1 receiving bonuses in the tens of millions of dollars?
2 A No.
3 MR. WEDEKIND: Now would be a good time to
4 take a quick break.
5 (Recess from 4:44 p.m. to 4:57 p.m.)
6 BY MR. WEDEKIND:
7 Q Okay. I want to go back and just make sure
8 that I understand just a handful of points from the
9 first four hours of our conversation.
10 You had talked about conversations that you
11 and Jason Gabriel had about obtaining opinions from the
12 Florida Ethics Commission.
13 Do you recall the timeline or the time frame
14 of when those conversations took place?
15 A In the summer. And it may have been as
16 early -- I know I talked to Jason Gabriel at length
17 during the Orange Park days, and sometimes kind of late
18 at night, and so it may have been that early. But,
19 like I said, I know I had that discussion, and he was
20 extraordinarily accommodating.
21 Q You also talked about a conversation that you
22 and he had about removing the OGC attorneys from the
23 retention agreement.
24 A Uh-huh.
25 Q Same question about -- can you give me any

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1 details about those conversations?
2 A Well, he had the documents, and I don't know
3 if that was the purpose of the meeting or it was a
4 secondary item that he wanted to discuss or what.
5 But it was at City Hall, so it was not at
6 JEA, and his rationale made sense, that OGC attorneys
7 could find other places to work within the consolidated
8 City of Jacksonville.
9 Q When did that conversation take place?
10 A I don't know. If the retention agreement had
11 the OGC employees in there on July 23rd, then it would
12 have been after July 23rd. If they were already
13 excluded, it would have been before. Because we -- you
14 know, we obviously did what Jason requested.
15 Q Okay. So on either side of the July 23rd
16 meeting --
17 A That would be a marker of where -- like I
18 said, if the documents voted on by the board of
19 directors on July 23rd did not include the two OGC
20 attorneys in the retention agreement, then that means
21 that Mr. Gabriel and I had that discussion prior to.
22 Q Got it. How long did Nixon Peabody work for
23 JEA before your arrival; do you know?
24 A I don't know.
25 Q Did you ever hear any complaints about Nixon

1 Peabody's performance from anybody at JEA?
2 A I know that Ryan enjoyed a good working
3 relationship with them. I have heard that Mr. Zahn was
4 not pleased with their performance, but I don't
5 remember him telling me that directly.
6 Q What specifically do you recall about
7 Mr. Zahn's opinions of Nixon Peabody?
8 A None.
9 Q Just that he didn't care for them?
10 A Yes.
11 Q Some foundational questions.
12 Who drafted the PUP?
13 A So the first time I remember seeing the PUP
14 was on Jessica Lutrin's laptop.
15 Q Where?
16 A In Orange Park.
17 Q So July 10th through the 12th?
18 A (Nods head). Correct.
19 Q I forgot to mention that earlier on. You
20 have been doing a great job of answering out loud --
21 A Well, Mari trained me on the last one in
22 January.
23 Q So Jessica Lutrin was -- at Pillsbury was the
24 primary drafter of the PUP, and you first saw them on
25 her laptop at the Club Continental meetings on or

1 around July 10th through 12th, 2019?
2 A As far as I know, Jessica Lutrin drafted it.
3 (Exhibit Number 40 was marked for
4 identification.)
5 BY MR. WEDEKIND:
6 Q I'm next going to talk with you about your
7 analysis of the legal constraints related to the
8 Scenario 2. The first reference that I have found to
9 what ultimately became that particular analysis was a
10 reference on April 19th to an x/check memo.
11 What was the x/check memo?
12 A So when -- and I think the document actually
13 existed prior to the time that Lynne Rhode and I
14 started at JEA, and it was a series of potential new
15 revenue streams for JEA and whether or not it could be
16 done under the various legal constraints, whether it be
17 charter or state statute or whatever. And that would
18 be -- like I say, I think that had been utilized
19 previously.
20 Q Who started it?
21 A I don't know.
22 Q So you inherited this work product and then
23 continued to, with Ms. Rhode, build it out?
24 A Yeah. I never liked the x/check memo,
25 because there were so many nuances to kind of what was

1 trying to be summarized. So I think probably it was
2 made better, but I never liked it.
3 (Exhibit Number 41 was marked for
4 identification.)
5 BY MR. WEDEKIND:
6 Q Okay. So 41 is an email from Lynne to you
7 dated April 28th. It attaches a document --
8 A I'm sorry. You said the x/check memo. There
9 was an x/check document, a slide, that I was referring
10 to, and so I apologize.
11 Q Okay. So my understanding was that initially
12 in April this process began as a legal memo, an x/check
13 memo, and that's what I'm going to hand you right now.
14 So this is 41. This is the first draft of what I think
15 is the x/check memo, or at least an early draft.
16 Is that the x/check memo?
17 A It would have been, yes. It probably
18 received the constraints -- well, it says Constraints
19 on JEA Initiatives on the subject line.
20 Q Right, right. And so this is a more detailed
21 and robust legal work product as opposed to a
22 PowerPoint slide?
23 A That's correct.
24 Q And that was one of the -- when you were
25 talking about the complaints that you had, what I

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1 understand you were saying -- and correct me if I'm
2 wrong -- is that the slide contained too much
3 information that did not provide -- the format of the
4 slide didn't provide for the level of nuance that the
5 subject matter required, in your opinion.
6 A That's correct.
7 Q Okay. But this memo is different than that,
8 and this goes into a more detailed narrative analysis
9 of the issues?
10 A It is more detailed, but still leaves -- and
11 I think this was a direction from Lawsikia to Lynne,
12 and then to me in my presentation, that to the extent
13 that business opportunities were more fully developed
14 than what Lynne and I had to work with that OGC would
15 come back and do a far more detailed analysis of all of
16 the various issues.
17 But this memo is trying to address almost
18 conceptual things that Aaron was -- had mentioned to
19 us.
20 Q And, really, ultimately this is a 25-page
21 memo that was condensed to essentially one PowerPoint
22 slide; correct?
23 A I think it was the other way around. I think
24 JEA had used the PowerPoint slide in advance of Lynne
25 Rhode and I joining JEA.

1 Q I see, okay. So the slide came before the
2 memo, not the other way around?
3 A I think so, because they -- that -- my
4 recollection is that slide was around really from the
5 very beginning -- from the very beginning of when I
6 started there.
7 (Exhibit Number 42 was marked for
8 identification.)
9 BY MR. WEDEKIND:
10 Q Okay. 42 is an email from Julio Romero to
11 you, subject: Feasibility review for Status Quo 2
12 initiatives.
13 It says, "Herschel, attached is the list of
14 potential revenue generating initiatives that we are
15 planning to include in the final presentation of the
16 status quo 2 plan."
17 And then it attaches, it looks like, an Excel
18 spreadsheet with a substantial number of initiatives.
19 Is that what this is?
20 A Yeah. It looks like they were -- it looks
21 like to cut costs.
22 Q What do you mean, "to cut costs"?
23 A Well, Status Quo 2 was all about cost
24 reduction. And so as I just look here at the first
25 line, outsource HR functions; consolidate HR staff; you

1 go -- reduce security patrol; reduce downtown security;
2 consolidate legal fees; reduce paper bills.
3 So this looks like a -- at least on that
4 first page is an attempt by Julio's people to cut
5 costs. And we were all working on -- ultimately
6 working on how to reduce costs.
7 Q As part of SQ 2?
8 A That was our -- our assignment was to go and
9 find out how to reduce costs as part of SQ 2.
10 (Exhibit Number 43 was marked for
11 identification.)
12 BY MR. WEDEKIND:
13 Q All right. June 27th -- this is Exhibit 43.
14 On June 27th Lynne Rhode emails you and says please
15 send me -- well, you say, first, "Please send me what
16 you can on x/check before you head north."
17 "I plan to finish the revised memo and send
18 you that along with the chart today."
19 So were the memo and the chart being drafted
20 simultaneously?
21 A So I'm assuming the chart is the chart with
22 the lots of red and green, and I'm just assuming that
23 Lynne may have been going on vacation and wanted to get
24 a draft in place.
25 And I know she was working with Lawsikia and

1 Steve Durden to get their input on the memo.
2 (Exhibit Number 44 was marked for
3 identification.)
4 BY MR. WEDEKIND:
5 Q The next exhibit, 44, are a draft of what I
6 believe are comments -- your comments at the July board
7 meeting. So this is your portion of the presentation
8 to the board on the legal constraints issues.
9 Is that what this is?
10 A This is not what I used, because I just kind
11 of did an almost back of the envelope, but it does look
12 like a draft of my thoughts. But I did not use a typed
13 document.
14 Q You didn't take a speech up there with you,
15 in other words?
16 A I didn't.
17 Q Spoke extemporaneously?
18 A Well, not extemporaneously, but I had -- I
19 just had a piece of paper.
20 Q Okay. On -- two things I want to ask you
21 about. On Page 3 you reference a Florida Supreme Court
22 case that jumped out at you involving the City of
23 Daytona Beach. That was a 1938 case, wasn't it?
24 Do you remember that?
25 A I remember it was an old case.

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1 Q Yeah. Do you remember ever thinking maybe
2 you ought to use a little more modern case?
3 A It was used because they were discussing --
4 my recollection -- I haven't read the case in six
5 months.
6 They were using -- utilizing municipal
7 purpose and -- in their evaluation, and they were
8 evaluating the other constitutional provision about
9 either joint ownership or lending of credit. It jumped
10 out at me -- well, one, as I explained in my deposition
11 in January, they used an old-fashioned term, juke
12 joint.
13 But Aaron was -- Aaron Zahn at the time was
14 looking at some pretty extreme ways to bend the curve
15 to enhance revenue into JEA, and one of them that he
16 had mentioned was, well, can we -- again, these were
17 ideas that we were trying to have to apply the law to,
18 but they weren't fully evaluated by the business side.
19 But one of the things he said, well, should
20 we open an electronic -- electric vehicle dealership,
21 and it happened to be mentioned in this thing -- in
22 this case.
23 And there's another document that Ms. Rhode
24 used to -- that had a number of cases, and that's what
25 caught my eye. It was the uniqueness of saying, Of

1 course you can't have an automobile dealership if
2 you're a city government, and yet that's kind of what
3 Aaron was musing about.
4 Q Recognizing that this is not a verbatim
5 speech that you gave to the board, on Page 4, the very
6 last paragraph, these notes state, "If JEA starts
7 competing in any line of business, our private sector
8 competitors could make a public records request and
9 obtain a business plan, cost structure, and even some
10 of our bid prep work could be obtained by our
11 competitors" And then there's a bracketed question,
12 Kerri.
13 So my question -- couple questions about
14 this. Number one, did you send this to Kerri Stewart
15 to be evaluated?
16 A I did not. I talked to Kerri Stewart about
17 it.
18 Q What did she say about that?
19 A So the reason why that bracket is in there is
20 that very occurrence happened to Melissa Dykes.
21 Melissa Dykes had a business plan, and was hoping to
22 get into a new line of business at JEA, and thought
23 that it would be profitable.
24 And Kerri, at the time, was working as a
25 government affairs consultant on the private sector.

1 And I think Kerri did a public records request or found
2 out about it and got the plan and ultimately was -- her
3 client was able to succeed and JEA was not.
4 So there was a real-world example of where
5 public records and our requirement to disclose all of
6 our information didn't turn out well from a
7 profitability standpoint or revenue-generating
8 standpoint at JEA.
9 Q Did that portion of your comments make it
10 into the board presentation?
11 A It did not.
12 Q Why not?
13 A It would require having Kerri come up and
14 make a separate presentation. It was -- it was an
15 anecdote.
16 Q I should have been more specific with my
17 question.
18 Did the portion more generally about public
19 records requests make it into part of your presentation
20 to the board?
21 A I believe it did.
22 Q Did you review the Public Records Act as part
23 of your preparation for the July board meeting?
24 A The only real -- the legal research that was
25 done was done by the work with the OGC, and so I didn't

1 do the legal research.
2 Q Okay. Would it surprise you to know that
3 there's a specific exemption that applies to electric
4 utilities about proprietary confidential business
5 information and trade secrets?
6 A I am aware generally of that. But, again,
7 we -- at the time, Aaron was looking at going outside
8 of what typical electric utilities are doing. So it --
9 if there was a business plan for electric vehicles, I
10 don't know that that exemption that you cite would
11 apply.
12 Q But, regardless, the possibility of an
13 exemption wasn't disclosed to the board as part of your
14 presentation?
15 A Well, not one that's not relevant.
16 (Exhibit Number 45 was marked for
17 identification.)
18 BY MR. WEDEKIND:
19 Q Okay. I am going to hand you Exhibit 45, and
20 I think this is your presentation on legal constraints.
21 And I would ask first that you confirm that it is.
22 A Yes.
23 Q Did you pick out the picture of the tree
24 standing in the road?
25 A I did not.

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1 Q Okay. Whoever prepared JEA's materials at
2 this time did a pretty good job of attempting to convey
3 messages with the selection of their photographs.
4 Okay. On Page -- I want to skip to the chart
5 that we're -- that we've been kind of talking around,
6 which I think is --
7 A Okay. Page 4, it looks like.
8 Q -- the fourth page; right?
9 A Yeah.
10 Q Is this the chart that you were talking about
11 earlier?
12 A Yes.
13 Q Okay. And it's -- it's very well color
14 coded. You've got your key in the upper right. Red
15 means it's prohibited or not viable; yellow,
16 significant constraints; and then green means you're
17 good to go.
18 Okay. Under -- on the left-hand column --
19 excuse me, on the left-hand chart, under Sell or lease
20 new electric, water, or sewer, there's four different
21 kind of subsections. It's very hard to read.
22 A Yeah. You're going to have to read it.
23 Q Yeah. So the question that I have, each of
24 those four different subsections, which are warranty
25 and protection services, electrification, energy

1 services company, and distributed generation, all have
2 a red indicator under the IP column.
3 Do you know why IP would have prevented JEA
4 from pursuing any of those initiatives?
5 A This is just based on my recollection, is
6 that if JEA -- and JEA was exploring some pretty unique
7 items, but there was a concern in the analysis that --
8 of whether if they identified or prepared something
9 that seemed to be pretty proprietary that they couldn't
10 protect it from public records laws prior to the time
11 that you could maybe get a patent. That's my general
12 recollection of that discussion.
13 Q I should have done this before, but I'm going
14 to do it now. Let's step back and just ask some more
15 general questions about this chart.
16 Who prepared it?
17 A So Lynne Rhode. I don't know -- I do know
18 that Lawsikia Hodges helped her with the constraints,
19 the legal work, and I know that Lawsikia reviewed this
20 package prior to the board meeting. I don't know what
21 input, if any, Lawsikia provided to Lynne on the
22 charts.
23 Again, it was very difficult to try to put
24 together this chart with -- without a true business
25 plan on each one of those items. Again, that's why

1 Lawsikia asked that I mention at the end of my
2 presentation that any detailed analysis that needed to
3 be done would be done by OGC as we gathered more facts.
4 And I think her memo says the same thing.
5 Q Did anybody other than Ms. Rhode, Ms. Hodges,
6 or you have input into this chart?
7 A Shawn Eads, perhaps, and he is our -- kind of
8 our -- one of our technology people. Assuming -- I
9 know that the board package review -- it was reviewed
10 by Aaron before it was sent out, or at least that was
11 customary.
12 Q Did anybody tell you to make any changes to
13 the colors on your chart, change this green to red?
14 A Not that I recall. But I do know that Lynne
15 Rhode and I would discuss that in length. Like I said,
16 recognizing the difficulty it was of putting something
17 like this together with -- with the information we had
18 available to us.
19 Q All right. Under -- on the right-hand
20 section of the chart, the second of the contemplated
21 initiatives is Reduce City Contribution.
22 That is the contribution by JEA to the City
23 every year; correct?
24 A That's correct.
25 Q Okay. But underneath Example, it says

1 Eliminate annual assessment. And there are red squares
2 under City Charter, Policy Considerations, and Impact
3 of Constraints.
4 My question is, when you looked at reducing
5 the City contribution, you only evaluated its
6 elimination and not just its reduction, or did you?
7 A I don't know. It says -- I mean the primary
8 column is Reduce City Contribution.
9 Q Right. And then you go to the example and it
10 says eliminate. To me those are -- they seem
11 inconsistent.
12 A It could be -- they could be different. But
13 I don't -- I don't know that we focused on that at the
14 time.
15 Q Yeah. My only question really is which one
16 was -- were the squares an evaluation of, a reduction
17 or an elimination, or do you remember?
18 A I don't remember.
19 Q There was discussion about joint
20 ownership/ventures with other entities, whether they
21 were other utility entities or nonutility entities, and
22 those are in the right-hand chart. It's about halfway
23 down.
24 And it's -- looks like it's possible to have
25 joint ownership with an electric -- or electrical

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1 energy generating or transmission facility, which makes
2 sense, because wasn't that what SJRPP was?
3 A That's correct. There's a -- and, again, I
4 haven't -- I didn't do the research, but my
5 recollection is that Florida Constitution actually has
6 a carve-out for joint ownership for electric utilities.
7 Q So they can jointly own an electrical -- like
8 a power plant?
9 A Generation plant, yes.
10 Q Okay. But then under Joint Ownership/Venture
11 with Non-utility, there are many red squares, so that
12 would be very difficult, if not impossible, to
13 accomplish.
14 The question is, what type of joint ownership
15 or venture did you evaluate in connection with that
16 row?
17 A So, again, you have to put it in context of
18 where the CEO was thinking. And he was talking about
19 could he buy 60 percent or some major ownership of
20 shares in technology companies. And so it was not --
21 you know, a lot of times the joint ownership, my
22 recollection is, the analysis that's -- that was done
23 by Lynne, the cases that allowed joint ownership is
24 very limited.
25 And Aaron wanted to take an active role in

1 companies that JEA would invest in. And that there --
2 at least to my knowledge, there are no cases that --
3 where you could do that.
4 Q As part of the analysis of the joint
5 ownership, was there any consideration about different
6 types of structural arrangements, instead of just a
7 joint ownership? Like did you consider other types of
8 ways to work around the constraints?
9 A So Aaron wasn't interested in workarounds. I
10 mean he wanted -- he was interested in really taking
11 over other companies or -- and so the -- both of the
12 joint ownership and lending credit, all those cases are
13 what I would call timid involvement in the private
14 sector entity, where you have -- the public entity owns
15 the dirt and they lease it to the private entity, but
16 there was no real risk to the public entity.
17 And that -- and Aaron was looking at a more
18 aggressive approach to bring revenue in for the long
19 term at JEA.
20 Q A more general question. On the far left
21 column of each of these two charts, you have an
22 initiative, and then on the column next to it you have
23 an example. It's kind of an expansion of the previous
24 question that I had asked.
25 Are the green, yellow, and red squares an

1 analysis of the general initiative, or are they an
2 analysis of the specific examples?
3 A Lee, I can't tell you specifically. I
4 remember, you know, the general initiative sometimes
5 doesn't have -- doesn't tell the reader at all what
6 Aaron was interested in, and so maybe just to help them
7 a little bit.
8 Q So, for example, under the joint ownership of
9 a non-utility company, the example is buy less than 100
10 percent of a landscaping company.
11 So you would say, okay, well, I don't think
12 JEA can do that under these different categories, and
13 so you would mark them red and then move on.
14 Is that kind of -- is that how it worked?
15 A Yeah. And it wasn't necessarily specific to
16 the landscaping company, but it does give the idea. I
17 mean JEA does, as I've come to learn, a substantial
18 amount of vegetation management, keep the limbs away
19 from the power lines. And again, owning a landscaping
20 company or the majority of a landscaping company wasn't
21 going to move the needle, and that's not really what
22 Aaron had in mind.
23 But that's -- you know, it's -- it's
24 something that was placed in there to say, well, we're
25 in that business, should we be investing in businesses

1 that do similar things.
2 (Exhibit Number 46 was marked for
3 identification.)
4 BY MR. WEDEKIND:
5 Q All right. Exhibit 46 is an email from Lynne
6 to you dated November 27th, 2019. This is attaching
7 Memo IV NOTES and Municipal Purpose NOTES.
8 I'm wondering why you're asking about this in
9 November of 2019.
10 A My recollection is is that Lawsikia wanted
11 another copy. I know she was provided copies of these
12 notes earlier in the year, but maybe her filing is like
13 mine. And so I think she called me to see if we could
14 provide her a copy of these notes, and so I just got it
15 from her.
16 (Exhibit Number 47 was marked for
17 identification.)
18 BY MR. WEDEKIND:
19 Q Exhibit 47 is an email from you to Lynne. It
20 looks like a reply to that email. It says, "Aaron has
21 assigned me legal research to perform on constraints."
22 What did Mr. Zahn assign you to do legal
23 research on constraints about in November of 2019?
24 A Boy, I do not know what he had in mind at the
25 time, unless there was a -- take that back. I do know

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1 what it is.
2 When the bids came in -- I'm glad to have
3 this. When the bids came in, and so that was the
4 Tuesday before Thanksgiving, Aaron called me on
5 Wednesday before Thanksgiving and said, I need you to
6 evaluate whether or not all of the responses from the
7 various bidders removed all the constraints.
8 So Lynne was out of town, I was out of town,
9 and that's the research project, which was then -- I
10 provided some feedback to one of the banks, but they
11 had already done most of the work.
12 Q Meaning Morgan Stanley or J.P. Morgan?
13 A Yeah.
14 (Exhibit Number 48 was marked for
15 identification.)
16 BY MR. WEDEKIND:
17 Q 48 is an email from Ted Powers at Pillsbury
18 to you and a number of other people in August. And
19 really it looks like predominantly it's addressed to
20 the Foley team, is what Mr. Powers says.
21 But this looks like a series of questions
22 that Pillsbury has about the IPO and the co-op
23 alternatives.
24 And so the first question is: Why is
25 Pillsbury in August of 2019 evaluating the IPO and the

1 co-op alternatives?
2 A Because those were still being considered in
3 the event that the board did not want to pursue the
4 ITN, was my understanding. I was not very involved in
5 the IPO or co-op component, but those were items that
6 were being evaluated.
7 Q What was your take on those two alternatives?
8 A Let's see. I sat through -- and I think
9 you've probably read this in my interview -- a very
10 lengthy explanation, multiple hours, of J.P. Morgan to
11 Councilman Becton. He was very interested in the co-op
12 alternative.
13 But this would have been after August, I'm
14 assuming. And it was very informative. I was not
15 enamored with the idea, because it would take
16 another -- because of Jacksonville's size, at least
17 according to this explanation, it would take another
18 co-op that was existing to want to merge with JEA.
19 Now, there are other apparently large co-ops
20 in the country that might be able to do that, or at
21 least based on my recollection of the presentation,
22 because there are other large co-ops that were small
23 towns when they got co-op status, and then they've
24 grown into very large, you know, metropolitan areas.
25 Q Any as big as Jacksonville?

1 A Oh, I have no idea about the -- the co-ops
2 around the country.
3 Q It seems like their initial question is a
4 pretty obvious one, that the Florida Statutes don't
5 allow for anything other than agricultural-based or
6 rural co-ops, and you'd have to get a change in the
7 statutes in order to make that alternative happen.
8 Did you see that as a significant roadblock
9 to that particular alternative?
10 A Well, I don't remember this question, but we
11 have Clay County co-op just next door, and that's not
12 an agriculture co-op, that is an electric co-op. So I
13 would suggest that they weren't fully informed at the
14 time.
15 Q Okay. But I think what you said was that
16 really you didn't have purview over the process of
17 their analysis of these two alternatives.
18 A I think that the banks did more of the
19 analysis than Pillsbury did.
20 Q Why is that?
21 A Oddly enough, from what I found out is the
22 banks actually, I think, have a co-op division or
23 department, that that's what they wake up and do every
24 day.
25 (Exhibit Number 49 was marked for

1 identification.)
2 BY MR. WEDEKIND:
3 Q 49 -- I don't want to mess up. 49, okay, I'm
4 handing you 49. This is an email from you to Mr. Hosay
5 at Foley, September 6, 2019, and it is enclosing a
6 draft outline, indicative slides and so on, about the
7 Scenario 3 alternatives or options; right?
8 Is that what this is?
9 A To be made a presentation, I guess, at the
10 September board meeting.
11 Q Yeah. Two-thirds of the way down the first
12 page is an email from Mr. Zahn to Steve Amdur, copying
13 a bunch of other people, including you. But
14 specifically his thinking is identified in four bullet
15 points, number four which is, "More detailed overview
16 of the different options being explored 3a through 3f.
17 This is probably where we need to spend time on
18 creating new material."
19 Do you know why JEA needed to spend time
20 creating new material on those particular options?
21 A No. But I haven't looked at whatever they
22 have for 3a through 3f.
23 Q Did any co-ops respond to the ITN?
24 A I don't believe so.
25 Q So --

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1 A And you'll have to talk to the -- the
2 procurement folks or whatever is -- you know, as I
3 mentioned, there's a possibility that the board could
4 have rejected the ITN and gone to one of the other
5 alternatives, whether it be IPO or a co-op.
6 Q Right. But there were really -- with respect
7 to the co-op alternative, as I understood your
8 testimony earlier, you could either convert JEA into a
9 co-op or have it be acquired by a co-op?
10 A So what I learned at the -- at the
11 presentation -- and I sat in just because I know
12 Councilman Becton and he was our JEA liaison -- was
13 that JEA was now too large of a city to on its own get
14 co-op status. It would have to get co-op status via a
15 merger with an existing co-op.
16 Q Okay. So that transaction could have
17 happened outside of the ITN --
18 A I think --
19 Q -- or it would have been part of the ITN?
20 A I think it could have been. I mean there --
21 like I say, the board could do whatever they want, and
22 if another co-op wanted to merge with JEA, then they
23 could have, or an IPO.
24 (Exhibit Number 50 was marked for
25 identification.)

1 BY MR. WEDEKIND:
2 Q Okay. So let's talk about the IPO. I'm
3 handing you Exhibit 50. Exhibit 50 is a calendar
4 invite, looks like a Zoom meeting call before its time,
5 in November of 2019 -- talking about the IPO
6 consideration. And then attached to that is discussion
7 materials prepared by one of the banks.
8 Is that what this is?
9 A It appears to be.
10 Q And the reference is Project Scampi. That
11 was a code name given to what exactly? Was it the
12 whole strategic discussion or the privatization or --
13 A To my knowledge, Project Scampi was related
14 to the recapitalization.
15 Q So any of the different alternatives in
16 Scenario 3?
17 A I think so, but I will say that I'm not -- I
18 know it applied to the ITN, and I don't know why they
19 would exclude it from the other alternatives that the
20 board was presented with.
21 Q Got it. If you go through the PowerPoint
22 that's attached, if you go all the way to Page 22 of
23 the PowerPoint, there are five bullet points on this
24 particular slide. The third bullet point on this slide
25 states, "Although no controlling legal precedent has

1 been found, the JEA likely can create a corporation for
2 the purpose of sale of JEA through an IPO offering to
3 investors."
4 From a legal perspective, does it concern you
5 that there is no controlling legal precedent for this
6 particular alternative?
7 A Well, I would say this is why you have people
8 to kind of investigate these issues.
9 Q Right.
10 A So --
11 Q Right. But this seems like the IPO was
12 pretty obviously a not-well-thought-through
13 alternative?
14 A Well, I don't know. They were planning on
15 making a presentation on either co-op or IPO in January
16 to the board. Of course all of that ended.
17 And so -- and that may be something that you
18 have in your email file, which presentation it was.
19 But at least one of them had enough momentum that they
20 were going to make a board presentation on.
21 Q As part of an IPO, a company doesn't sell all
22 of its -- assuming this particular company actually had
23 equity -- of course JEA doesn't have equity. But
24 assuming a company did have equity and it went to sell
25 it through an IPO, it doesn't sell all of its equity at

1 one time, correct; it sells it over time?
2 A I am not a corporate transactional lawyer, so
3 I can't opine on that.
4 Q Okay. Did you -- the problem with the IPO is
5 that it would -- if JEA didn't sell all of its equity
6 at the same time immediately, then it would be a joint
7 owner with other people, which would be a huge problem
8 under your legal constraints analysis; right?
9 A That -- that's something I'm sure that the
10 lawyers were looking at.
11 Q Okay. So my question was, as part of the
12 JEA's analysis of these different alternatives, were
13 you ever asked to apply the same analysis that you did
14 with the x/check memo to the alternatives that were
15 being considered under Scenario 3?
16 A No. The only time I was asked was in
17 response to the bids. And, like I said, somebody
18 assigned Morgan Stanley, Pillsbury, and Foley to look
19 at the legal constraints on an IPO.
20 Q Okay. So Foley was looking into the legal
21 constraints on the IPO?
22 A Well, I see their name on the letterhead -- I
23 mean on the top of the slide, so this obviously was a
24 joint project between the three of them.
25 Q Do you remember having any conversations

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1 about the legal constraints with respect to either the
2 co-op or the IPO alternatives?
3 A Only -- with the co-op one, the meeting that
4 I sat in, there was a discussion there that was back
5 and forth, and the councilman asked some good
6 questions.
7 But I wasn't involved in -- the champion for
8 co-op, I think, was Ted Hobson, and the champion for
9 IPO was Joe Orfano, internal JEA champions.
10 Q Were you a champion for any of the
11 alternatives?
12 A No.
13 (Exhibit Number 51 was marked for
14 identification.)
15 BY MR. WEDEKIND:
16 Q These are much larger exhibits, so we're
17 moving through them more quickly.
18 I'm handing you Exhibit 51. And this is an
19 email from an attorney at Pillsbury to you dated August
20 29th, 2019, and it includes an attachment from
21 McKinsey.
22 So my question is, why was McKinsey reengaged
23 in the strategic analysis after the board in July had
24 voted to move forward with Scenario 3?
25 A Having not gone through this document, I

1 think that Aaron thought that they would be useful in
2 helping the law firms and banks to have McKinsey
3 outline for potential bidders the opportunities that
4 may exist for JEA. But that's -- you know, this is not
5 my area.
6 Q Okay. Did you do anything with this material
7 when you got it?
8 A I can -- did I respond that I received it?
9 Q I don't know if you did or not.
10 A I don't think I -- well, I don't remember
11 seeing this document. I'm not sure why they would have
12 sent it to me.
13 Q I don't know either. But what's interesting
14 about it, at least it was to me, was that it's two
15 different emails. The bottom one is an email from
16 McKinsey, says, Please pass this along to Herschel and
17 confirm whenever it's been delivered, and then they do
18 that.
19 So I'm wondering why McKinsey singled you out
20 for receipt.
21 A In some of this, these duties, I would try to
22 get the document to the right individual within JEA.
23 Obviously these are all people from out of town, and so
24 if it got to me, typically I would try to get it into
25 the right hands of the people that know what they're

1 looking at.
2 Q Okay. And so if you look at the subject of
3 both of them, it says: Discussion document - for the
4 purpose of informing legal services provided for
5 Project Scampi.
6 So would you have then delivered that to
7 somebody?
8 A The answer is I don't know, because I'm
9 looking this, and I'm not sure -- again, very quickly,
10 this looks more like the McKinsey kind of stuff, which
11 is in the weeds on the business of JEA or potential
12 business of JEA. And that's -- there are a lot of
13 other people that would have appreciated what was in
14 this document.
15 (Exhibit Number 52 was marked for
16 identification.)
17 BY MR. WEDEKIND:
18 Q All right. 52 is a letter from you to Miriam
19 Hill dated December 13th, and this is following and in
20 response to the letter that Mayor Curry sent on
21 December 12, which is actually attached.
22 And your email to Miriam says, "Miriam, We
23 will probably need some regulations (sic) quickly
24 drafted for the Board. I talked" --
25 MR. LOCKAMY: Resolutions.

1 BY MR. WEDEKIND:
2 Q "We will probably needs some resolutions
3 quickly drafted for the Board. I talked to Alan
4 Howard, Kevin Hyde, and Robert Hosay about the Mayor's
5 letter. Last night about assisting. Please use them
6 as a resource."
7 So what resolutions for the board were you
8 referring to?
9 MR. LOCKAMY: I corrected you on it because I
10 thought you said regulation.
11 MR. WEDEKIND: Oh, I might have.
12 MR. LOCKAMY: Not the plural.
13 MR. WEDEKIND: I want to be precise.
14 MR. COXE: It's too late.
15 THE WITNESS: So obviously the Mayor tasked
16 JEA with doing certain things, and I'm just
17 looking -- for example, coordinate and schedule
18 community meetings in 14 city council districts,
19 the option of collapsing JEA and moving into it as
20 a municipal department, and then obviously
21 conferring with Jason Gabriel, General Counsel, to
22 do all those things.
23 So if these were items that the Mayor asked
24 us to do, then that's something that would be --
25 that the board would need to be directing us to

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1 do.
2 BY MR. WEDEKIND:
3 Q Okay. And so the resolutions would be --
4 A Whatever was proposed at the next board
5 meeting. I'm assuming that that -- that you can access
6 those and that Miriam and others probably drafted them.
7 Q What were your conversations with Alan
8 Howard, Kevin Hyde, and Robert Hosay about the Mayor's
9 letter?
10 A Just letting them know that we received it.
11 Q Did you talk about what JEA's response was
12 going to be or should be?
13 A Well, we were -- I wanted to put all the
14 options that the Mayor presented to the board, and I
15 think they adopted some of the resolutions and not
16 others, or elected to pursue certain paths and not
17 others of the Mayor's suggestions. That's just my
18 recollection.
19 (Exhibit Number 53 was marked for
20 identification.)
21 BY MR. WEDEKIND:
22 Q Last exhibit on this topic. Number 53 is an
23 email from Alan Howard to you Christmas Eve, December
24 24th, 2019. I think this is Alan -- Alan's email to
25 you. "Please confirm this assignment is still a 'go.'

1 And Merry Christmas."
2 What assignment is Alan Howard referring to?
3 A So Alan was doing several things for JEA at
4 the time. And I don't remember which one. I mean it
5 was related to franchise agreements or territorial
6 agreements, different things.
7 And then with the uncertainty that was
8 occurring in December and January, I'm sure he's
9 saying, Do I continue on with this assignment, whatever
10 that was.
11 Q Do you remember what assignment it was?
12 A No.
13 Q Was JEA contemplating pursuing any charter
14 changes in December 2019?
15 A I don't think that we would be proposing
16 charter changes in December.
17 (Exhibit Number 54 was marked for
18 identification.)
19 BY MR. WEDEKIND:
20 Q I'm handing you Exhibit 54. I'm moving on to
21 public records now. We're going to talk about public
22 records.
23 The first question that I have, and the
24 reason why I asked you about your email addresses
25 earlier, was that we noticed when we went through at

1 least some of your emails that they appear differently,
2 and I wanted to know if you knew why that was.
3 There are two examples of how your emails
4 appear in the system and they don't look the same.
5 Do you have any idea about why that would be?
6 MR. LOCKAMY: Are you giving him an example?
7 MR. WEDEKIND: I gave him two, one of each.
8 MR. COXE: One that doesn't look like the
9 other?
10 MR. WEDEKIND: Correct.
11 MR. LOCKAMY: What do you mean they don't
12 look alike?
13 BY MR. WEDEKIND:
14 Q Well, if you look at them, the signature
15 block is different. One of them actually shows the
16 specific email address; one of them doesn't. They just
17 appear different to me, and I didn't know why that was,
18 and I was just curious if you did.
19 A So as I'm looking here one of them says
20 Vinyard, Herschel T., Chief Administrative Officer, and
21 then it lists my JEA email address, vinyht@jea.com.
22 And the other one, it just says Vinyard, Herschel T.,
23 Chief Administrative Officer.
24 My bet is is I may have sent one from my
25 iPad, and I don't know if my iPad attaches a signature

1 block.
2 MR. LOCKAMY: Did you mark that?
3 MR. WEDEKIND: Yes. 54.
4 BY MR. WEDEKIND:
5 Q No other thoughts about why that --
6 A No.
7 Q No?
8 A No.
9 Q The senior leadership team at JEA during this
10 time used white boards as part of the strategic
11 planning process; correct?
12 A Well, I had a white board. I don't -- I had
13 my water project stuff on there, but not the ITN stuff.
14 Q But other people had information about the
15 strategic planning process on white boards in meetings?
16 A Correct.
17 Q Why?
18 A Well, for discussion purposes.
19 Q Did anybody ever take photographs of the
20 white boards that were being discussed by the senior
21 leadership team?
22 A Yes.
23 Q Were those photographs saved on JEA's
24 document system?
25 A I don't know. I know they were produced as

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1 part of a public records request.
2 Q Were they photographed as a matter of course,
3 or occasionally by people when they wanted to record
4 something?
5 A It was infrequent, in my view. And based
6 on -- I saw the public record request go out, and there
7 weren't that many responses. But there wasn't a lot of
8 photographs taken.
9 Q Were you aware of an incident in which Jody
10 Brooks, when she was serving as the chief legal officer
11 at JEA, identified to Mr. Zahn that photographs of the
12 white boards would be public records, which led to
13 Mr. Zahn berating her?
14 Have you heard that story before?
15 A I heard there was an incident at White Oak
16 Plantation. I did not know it related to -- it was
17 related to white boards.
18 Q Okay. Did you ever have any experiences with
19 Mr. Zahn that demonstrated that he had a hostility
20 towards public records?
21 A No.
22 Q Did you ever see a white board with
23 allocations of PUP units?
24 A No.
25 Q Were you aware of a special conference bridge

1 being established for Nancy McDonald?
2 A What is a special conference bridge?
3 Q The use of unique conference call-in numbers.
4 A No. You mean separate from the what we
5 always used?
6 Q Yes.
7 A No.
8 Q She is your assistant?
9 A Yeah.
10 Q Anybody else?
11 A Jennell Milton.
12 Q Are you familiar with the contemplated
13 transition to ADP for payroll processing of appointed
14 employees at JEA?
15 A As part of my public records duties, I saw a
16 bunch of ADP materials go out from the HR department.
17 Q Were you in any way involved in the
18 transition from in-house payroll to outsourcing payroll
19 to ADP?
20 A No.
21 Q Did you know anything about it?
22 A Well, I know that obviously it was being
23 looked at. And I saw an email or text that was
24 produced by Melissa Dykes from Angie Hiers that said
25 that they were evaluating that, using outside payroll

1 services, and had been doing some, I don't know,
2 financial calculations or whatever.
3 And she just said if -- Melissa, if you are
4 interested, please let me know, in discussing.
5 Q So was that a project that Ms. Dykes was
6 spearheading?
7 A Oh, I don't know.
8 Q Do you know who was running that project?
9 A No. I'm assuming HR. If Angie Hiers started
10 it, then I guess it would be HR.
11 Q So that would fall under Jon Kendrick's --
12 A Subsequently, yeah.
13 Q -- purview?
14 (Exhibit Number 55 was marked for
15 identification.)
16 BY MR. WEDEKIND:
17 Q I'm handing you Exhibit 55. And I wanted to
18 ask you, within the context of public records, about
19 the use of two things.
20 Number one, code names for the projects, we
21 already talked about Scampi previously. I think that
22 the special code name was Freebird for the strategic
23 planning and the privatization concepts.
24 Are you aware of any other code names that
25 were used for strategic planning or privatization,

1 other than Freebird and Scampi?
2 A So as you know, there are -- you know, with a
3 lot of projects they are given names. And my
4 recollection -- I have since seen that Freebird was
5 used by some early on. I didn't remember that. The
6 one that I remember is Scampi.
7 Q And I think Mr. Zahn came up with Scampi
8 after the baseball team; is that right?
9 A As I understand it, that -- the little shrimp
10 that runs around at the ball games has the name Scampi.
11 Q Were those code names designed to avoid
12 public records laws?
13 A No.
14 Q So I handed you Exhibit 55, and this is the
15 other part of the questions that I wanted to ask. This
16 is an email -- you are not copied on this email. This
17 is an email from Jessica Lutrin to Lynne Rhode, and
18 it's for Lynne's review. It has to do with the PUP,
19 and it's providing some questions about the PUP.
20 The thing I found most concerning about this
21 particular document that I wanted to ask you about was
22 its use of asterisks in the place of the word PUP.
23 Are you aware of a practice at JEA amongst
24 the legal teams looking at these issues to delete words
25 and replace them with asterisks or other symbols for

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1 the purpose of avoiding public records laws?
2 A No.
3 Q Can you explain, then, why they would delete
4 the word PUP and insert an asterisk?
5 A I have no idea. Because she does performance
6 unit, PU. Hank has got my document right this minute.
7 Q Yeah, I see PU. You don't see the word PUP.
8 A No, I'm not aware of that being utilized. I
9 guess I would say that the -- as you know, there are
10 probably a thousand emails regarding PUPs elsewhere.
11 No, I'm not aware of this.
12 Q Why else would Jessica Lutrin use an asterisk
13 in the place of the word PUP here?
14 A I do not know.
15 Q All right. Are you -- do you remember a
16 conversation between JEA and the Civic Council
17 regarding the production of public records in response
18 to requests that they had made?
19 A Yes.
20 Q Okay. Do you recall participating in a
21 meeting that I think was helmed by Jeanne Miller about
22 that issue in October of 2019?
23 A I remember a phone call that -- could it have
24 been a phone call?
25 Q Could have been a phone call. Do you

1 remember a phone call?
2 A I do.
3 Q Okay.
4 A And do they have their expert on the call?
5 Q I believe so. Tom Cloud? Does that sound
6 right? Brown?
7 MR. COXE: Hartman?
8 THE WITNESS: Hartman.
9 Q Hartman?
10 A Hartman.
11 (Exhibit Number 56 was marked for
12 identification.)
13 BY MR. WEDEKIND:
14 Q I'm going to hand this to you so you can look
15 at it. This is Exhibit 56. These are actually fairly
16 detailed notes about that call. It was not recorded,
17 but it's pretty well documented, the conversation that
18 was had.
19 A So I do remember a phone call. It was
20 primarily for Hartman to --
21 MR. COXE: Was that the Civic Council?
22 MR. WEDEKIND: Yes.
23 THE WITNESS: To ask questions of Aaron. And
24 he was in his car going somewhere. I was in my
25 car going in a different direction, so we were not

1 together.
2 And I guess I think my purpose was to make
3 sure -- because October 2nd, this was after the
4 bids had gone out, and so I was there to make --
5 hopefully to make sure that he didn't violate
6 the -- the ITN.
7 BY MR. WEDEKIND:
8 Q Well, so I wanted to talk about just a very
9 brief interaction, and I think it starts at the very
10 bottom of Page 3. And this is Mr. Hartman asking a
11 question about prep work regarding fair market value.
12 And it looks like your response, which is on
13 the following page, is, "We should stay away from that
14 one."
15 And then Hartman follows up, "No appraisal
16 either then?"
17 And your response appears to be, at least
18 according to this, "That one too."
19 Can you walk me through what was going on
20 there?
21 A Well, we had an outstanding RFP where we
22 hoped people were going to, you know, bid the highest
23 amount that they could for the board to evaluate,
24 ultimately, and I didn't want to be -- have Aaron
25 talking about the -- any of the values. That would be

1 foolish.
2 Q What is the reference to an appraisal,
3 though?
4 A Oh, I don't know. I think there were
5 appraisals done in years past, not -- you know, not
6 since I joined JEA. But I didn't want to have the CEO
7 during an open RFP opining about any of the previous
8 appraisals that might have been done.
9 MR. COXE: Lee, can I ask you a question?
10 I'm assuming Cloud is the GrayRobinson guy
11 out of Orlando who is, quote, the expert. Who is
12 Brown?
13 MR. WEDEKIND: I don't know.
14 MR. COXE: I just see his name on the
15 attendance list.
16 MR. WEDEKIND: Or her name?
17 MR. COXE: Huh?
18 MR. WEDEKIND: Or her name.
19 MR. COXE: Or her name.
20 Do you know who that is?
21 THE WITNESS: So -- well, the only -- I mean
22 it may have been Henry Brown, who is a Civic
23 Council member. I don't know.
24 MR. COXE: The one who was later on the
25 board?

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1 THE WITNESS: Yes.
2 MR. WEDEKIND: Yes.
3 THE WITNESS: Okay. But, again, I don't know
4 if that's him or not.
5 MR. WEDEKIND: You don't remember a Brown
6 being on --
7 THE WITNESS: No.
8 MR. COXE: I just seem to remember Jeanne
9 Miller wanting JEA to hire Cloud.
10 BY MR. WEDEKIND:
11 Q Do you remember the Civic Council expressing
12 some frustration about JEA's response to their public
13 records request?
14 A I do.
15 Q Can you walk me through that conversation
16 that you, on behalf of JEA, and the Civic Council were
17 having about that issue?
18 A Well, let me back up. Jeanne Miller and I
19 are friends. She's executive director of the Civic
20 Council. We've gone to church together. We were both
21 at Smith Hulsey together. And so she made a comment --
22 no.
23 I proactively after this discussion called
24 her and said, Jeanne, if -- or maybe I emailed her --
25 if there are any documents that you aren't getting that

1 Aaron promised you on the phone -- again, we were both
2 driving, so he may not have had a list -- I said,
3 Please let me know.
4 And so I'm sure you have my letter to Tim
5 Cost, because the public records officials of JEA were
6 being accused of not being responsive. Ultimately
7 those people were -- reported to me. And I know they
8 are extraordinarily dedicated to their job, and I
9 wanted to make sure that the public knew that they
10 are -- they are jam up and jelly tight. They do a
11 very, very good job under extreme circumstances.
12 But I was proactive in reaching out to Jeanne
13 about that.
14 (Exhibit Number 57 was marked for
15 identification.)
16 BY MR. WEDEKIND:
17 Q I'm going to hand you a series of emails.
18 They are all related to the same issue, so I'm going to
19 hand them to you all at once and we can walk through
20 them. These will be 57, 58, and 59. They all have to
21 do with shredding documents that may have been
22 responsive to public records requests.
23 So here are three emails, 57, 58, 59. The
24 first, 57, is an email from Serena Kaippilil to Jasen
25 Hutchinson. And it says, "Hi Jasen, We have

1 confidential material from the ITN that need to be
2 thrown out in its own shredding bin. Can you let me
3 know if you can bring a shredding bin up to T17." And
4 it attaches a public records request to that email.
5 So my first question is why, in response to a
6 public records request, would you have somebody at JEA
7 identifying that there's public -- there's confidential
8 material that needs to be shredded?
9 And then you'll see at the top, Jasen then
10 forwards this to your attention. It says, "Please
11 advise."
12 A Yes. My recollection is -- there was a group
13 working on 17 -- and, again, it was to make certain
14 that paper copies of electronic documents did not get
15 out to the bidders. This was during the bid period.
16 And my recollection is I had a discussion
17 with Lynne Rhode, and she confirmed via email that any
18 documents, any paper copies, were duplicates of
19 electronic records.
20 Q How did she know that?
21 A Well, knowing Lynne, she probably went up
22 there on 17 to confirm, or she may have been there. It
23 was -- it was folks that were either the lawyers or the
24 banks that were working on 17.
25 Q Okay. So could you -- that was one of my

1 questions: Can you identify who this group working on
2 17 was?
3 A No. I never went up there.
4 But I think they were evaluating -- or
5 preparing to get involved. But, you know, if you look
6 at the people that were involved, John McCarthy and
7 Jenny McCollum, they are very, very familiar with
8 public records, so they would not be discarding records
9 unless they were duplicates.
10 But there was some sensitivity to make sure
11 that none of the bidders inappropriately received
12 documents.
13 Q Did you get angry at Jasen Hutchinson for
14 sending you this email?
15 A I don't remember him sending me the email.
16 But I do remember somebody showing me the email from
17 Serena.
18 (Exhibit Number 58 was marked for
19 identification.)
20 BY MR. WEDEKIND:
21 Q And then the next one is, looks like, a reply
22 from Lynne. It says she's confirmed that it's related
23 solely to duplicate hard copies.
24 Did you instruct Lynne to send this email?
25 A I did not.

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1 Q And then we've got -- the next one is a
2 follow-up.
3 MR. LOCKAMY: So the Lynne Rhode, that's
4 Exhibit 58?
5 MR. WEDEKIND: Yes.
6 (Exhibit Number 59 was marked for
7 identification.)
8 BY MR. WEDEKIND:
9 Q And then 59 is the last one, which looks like
10 a follow-up from a few weeks after that. It's to you,
11 and it says, I've reached out to provide an estimate to
12 pull records and still haven't heard back yet.
13 So I'm wondering what's taking so long to get
14 a response to this particular public records request;
15 do you remember?
16 A I don't remember.
17 One thing I do remember is that both Jenny
18 and John McCarthy were extraordinarily busy with the
19 ITN. That's not an excuse, but they were running the
20 ITN, and -- but I'm just looking at the timeline.
21 (Exhibit Number 60 was marked for
22 identification.)
23 BY MR. WEDEKIND:
24 Q Okay. 60 is an email from you dated November
25 7th to Ms. McDonald. It says, "Please print."

1 But it looks like it's printing a document
2 that includes feedback from you. And in the preceding
3 email from David Goldberg, it says, "Herschel also
4 provided feedback, some of which is incorporated and
5 other comments best left for discussion."
6 So my question initially is, what comments
7 did you have on this stump speech presentation that
8 were better left for discussion?
9 A Well, the answer is I don't -- I don't -- let
10 me see what the time and date is.
11 Can you show me where -- I'm sorry. I see
12 the Melissa Dykes piece.
13 Q It's the third sentence of that email.
14 A Oh, okay. Got you, got you.
15 Q This is a -- it looks like a propaganda piece
16 to support the recapitalization efforts in November.
17 Stump speech, it's referred to as.
18 A Do you know if it was ever given?
19 Q I do not know.
20 A I don't know what I may have mentioned to
21 David Goldberg. Again, I'm looking at the date. We
22 are in the middle of the RFP. I'm very sensitive about
23 that information, or any information that might not
24 have been appropriate. But I don't -- I don't
25 remember.

1 Q On Page 4 of the deck is a note. It says,
2 "Herschel is not comfortable with this slide and says
3 we should show debt to opportunity cost snapshot."
4 MR. COXE: Lee, what page?
5 MR. WEDEKIND: 4.
6 BY MR. WEDEKIND:
7 Q Do you remember making that comment?
8 A I don't. I will -- I'm just reading here.
9 In my view, it serves no purpose to throw rocks at
10 previous administrations on what they may or may not
11 have done. I'm just -- I'm looking at that, and --
12 because we were where we were. But --
13 Q What did you mean by a "debt to opportunity
14 cost snapshot"?
15 A There must have been a slide that they had
16 used before that I had seen. But I don't -- I don't --
17 and maybe if you see the next version of this there was
18 a -- and, who knows, maybe they -- they -- they decided
19 that I was being Pollyanna-ish about it.
20 (Exhibit Number 61 was marked for
21 identification.)
22 BY MR. WEDEKIND:
23 Q 61 is a letter that I think you referenced
24 earlier from you to Tim Cost at the Civic Council about
25 the public records request. I'll hand you a copy of it

1 right now to take a look at.
2 In this letter you talk a lot about what --
3 well, not talk a lot about, but you mention what JEA
4 did produce in response to the Civic Council's public
5 records request.
6 Did JEA produce a copy of the Nixon Peabody
7 memo in response to this request?
8 A I do not know.
9 Q You mention a couple of things. Number one,
10 "As Chief Administrative Officer, JEA's public records
11 division is within my responsibility."
12 Do you agree with that?
13 A Yes. As I mentioned, they reported to
14 Brandon Edwards, who reported to Ted Hobson, who
15 reported to me.
16 Q And it says, "The public records group is
17 compromised of dedicated professionals and attorneys
18 who take seriously their responsibilities related to
19 Florida public records law."
20 So the question is: Who's on that team?
21 A So the team has grown substantially. We have
22 Jeanie Gillespie and Jasen Hutchinson; we have Jeff
23 Moore. And now that -- as the demands -- of course at
24 one time we had an in-house OGC lawyer that was -- and
25 Jasen by the way, is an attorney, Jasen Hutchinson.

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1 We had an in-house attorney, but that ended
2 later on. That group now has, I think, 14 people in
3 it.
4 Q That are solely dedicated to responding to
5 public records requests?
6 A Right now. What I noticed was a -- I mean we
7 kept getting more and more requests, and so I augmented
8 the staff that would include, I think, six people that
9 got trained from our internal audit group. When
10 available our JEA ethics officer was involved to
11 assist.
12 We -- I suggested that Melissa Dykes call her
13 counterparts at other independent authorities, and she
14 was able to get two on-loan public records
15 professionals from JTA. And so I think -- or at least
16 when I left, we grew them to about 14 to try to reduce
17 the backlog.
18 And then they did an RFP that I approved that
19 allowed some technology to help do a better job at
20 producing the records on an expedited basis. I think
21 all those efforts are paying dividends.
22 Q Did you have any responsibility for preparing
23 or disseminating the packages for the board meetings?
24 A Well, certainly I would have had some input
25 on my piece, like, you know, my slides that I did.

1 Of course there weren't that many board
2 meetings in the short time that I was there. So, no,
3 other than the obvious, which was obviously my section
4 of the July 23rd, and I may have done some wordsmithing
5 along the way. We did a section where we got a grant
6 check from the Water Management District. So very
7 limited.
8 (Exhibit Number 62 was marked for
9 identification.)
10 BY MR. WEDEKIND:
11 Q Are you aware -- speaking of the July 23rd
12 board meeting, are you aware of any irregularities
13 relating to the dissemination of the July 23rd board
14 meeting package? I handed you Exhibit 62.
15 MR. COXE: What do you mean by
16 irregularities?
17 MR. LOCKAMY: That's what I'm about to ask.
18 MR. COXE: You already did.
19 BY MR. WEDEKIND:
20 Q Well, the question really is this: The email
21 states this month -- this is a July 17th, 2019, email,
22 from La'Trece Bartley, who is Ms. Dykes' assistant.
23 It says, "This month's JEA board package will
24 be in hard-copy format versus an electronic format and
25 will not be in Diligent."

1 MR. COXE: I'm sorry, what was the --
2 MR. WEDEKIND: Will not be in Diligent.
3 BY MR. WEDEKIND:
4 Q So the first question is: What is Diligent?
5 A I don't have the foggiest idea what Diligent
6 is.
7 Q Okay. I think that Diligent is -- based on
8 some limited research I've done -- a program that is
9 able to electronically disseminate board package
10 information.
11 But you're not familiar with that particular
12 program or software?
13 A No.
14 Q Okay. Do you know whether or not it was
15 unusual for board packages to be disseminated in hard
16 copy only?
17 A No. I mean I only have my -- I served on the
18 Jax Port board, and we received all of our information
19 in hard copy.
20 Q You did?
21 A Uh-huh.
22 Q Based on this email, it seems like this was
23 an unusual format for the dissemination of board
24 materials. The question really relates to public
25 records, in that -- would this have been done in an

1 effort to avoid public records laws?
2 A Not by me. And I'm not aware of any efforts
3 by others.
4 Q So Mr. Zahn never came to you and said: The
5 July 23rd board meeting is important, and I don't
6 really want anybody to know what I'm disseminating, so
7 I'm going to send everybody hard copies, instead of
8 electronic copies like I always do?
9 A No. And I think that as soon as they're
10 ready, they post them on the web. But, again, I don't
11 know when that's normally posted or what the
12 requirements are.
13 MR. WEDEKIND: Let's go off the record.
14 (Recess from 6:40 p.m. to 6:48 p.m.)
15 BY MR. WEDEKIND:
16 Q I want to ask a couple of general questions,
17 and then I'll ask a specific one.
18 How did the members of the senior leadership
19 team communicate with one another?
20 A Well, we met some.
21 Q In person?
22 A Yeah. Probably had phone calls. There was
23 some other 845 thing that -- it was a number that would
24 show up on your phone. They used it for sharing
25 articles, for hurricane response stuff that was

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1 immediate.
2 All of that information has been -- and that
3 was before I got there, but that information was
4 captured by --
5 Q What is 845?
6 A It was a number that showed up like a --
7 Q Like a text?
8 A Like a text. But it wasn't -- it was kind of
9 a --
10 Q A broadcast text?
11 A Yeah. Like I say, we would get things. But,
12 like I say, the IT people captured all those for public
13 records purposes.
14 Q Did SLT ever use messaging apps to
15 communicate with one another?
16 A No. Not to my knowledge.
17 Q Did you ever use -- I'll ask specifically,
18 did you ever use GroupMe to communicate with other
19 members of the senior leadership team?
20 A I don't know what GroupMe is, so probably
21 it's very unlikely.
22 Q Okay. Did you ever hear anybody talk about
23 GroupMe?
24 A (Shakes head)
25 Q Okay. Did you ever --

1 A Is that the thing where the texts disappear?
2 Q That's, I think, what I was going to ask you
3 about next, which is Signal.
4 A Okay. No. I --
5 Q So did you ever text --
6 A I never used the disappearing things, and I
7 never heard that any of the SLT used the disappearing
8 text thing.
9 Q Did you ever text, regular text?
10 A Very -- I was not a -- and still am not a big
11 texter.
12 Q And of course email?
13 A Yeah. Well, I do email.
14 Q Right, okay. Any other methods of
15 communication that the SLT used to communicate with one
16 another?
17 A Not that I'm aware. But you may know some
18 technology that I don't know.
19 Q I'm just asking what you know.
20 A No, sir.
21 Q All right. We talked a little bit about the
22 Civic Council request and response and letter. Did you
23 turn over the Civic Council's request to the public
24 records response team?
25 A My recollection is that I sent it directly --

1 whatever Jeanne Miller was looking for, I sent it
2 directly to her.
3 Q "Her" meaning?
4 A Jeanne Miller.
5 Q So I'm asking about the JEA's response to the
6 request. So when the request came in, did you -- was
7 it handled by JEA's public records response team?
8 A As far as I know. I mean if it was a public
9 records request, it was separate from what Jeanne asked
10 for on the phone call. Whatever they asked for, to my
11 knowledge, went through normal protocol. I don't
12 remember it being handled separately.
13 Q Okay. And so what she asked for on the phone
14 call, how was that handled?
15 A Well, remember, there's some -- there's some
16 emails back and forth. It may even be referenced in
17 this letter. I think it's referenced in the letter.
18 Whatever she was asking for, I want -- like I
19 say, I wanted to accommodate Jeanne, and I reached out
20 to her proactively to make sure. She asked for, I
21 believe, a document, and I sent it to her directly.
22 So at least as to that one I handled
23 separately, because I don't think it was a formal
24 public records request to the public records request
25 mailbox.

1 (Exhibit Number 63 was marked for
2 identification.)
3 BY MR. WEDEKIND:
4 Q Okay, moving on. Exhibit 63 is an email from
5 Mr. Zahn to you early on in your employment at JEA,
6 April 12th, and it attaches a January 15, 2019,
7 employee agreement for him, for Mr. Zahn.
8 Why did he send this to you?
9 A Well, I'm assuming he didn't have a -- I know
10 there's been discussion about do non-CEOs have
11 employment agreements, but I'm assuming this was one
12 that he did or he chopped up from Mr. McElroy's
13 employment agreement. I don't know.
14 Q You are aware that as part of the July 23rd
15 board meeting, the board approved forms of employment
16 agreements for not only Mr. Zahn but for the entire
17 SLT; correct?
18 A Yes.
19 Q Okay. And my understanding is that four
20 members of the SLT, Mr. Zahn, Ms. Dykes,
21 Mr. Wannemacher, and you, had engaged outside counsel
22 at Ford Harrison in Tampa to assist in the negotiation
23 and drafting of the employment agreements.
24 Is that right?
25 A No.

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1 Q Okay.
2 A It was only to do a first draft.
3 Q Okay.
4 A There was no negotiation between the Tampa
5 lawyer and anybody at JEA or any lawyer representing
6 JEA.
7 Q Okay. So what was your role in drafting the
8 employment agreements for the SLT?
9 A Well, originally, and as you've seen from my
10 previous deposition, Aaron wanted to reach out to one
11 of the JEA lawyers, outside counsel, to draft it.
12 I suggested that that may create a conflict
13 and that if we want to submit an employment agreement
14 to JEA that we ought to use our own money to have it
15 drafted.
16 And so he said: All right, then go find a
17 lawyer that can do it. I did. And we got a draft
18 employment agreement that was ultimately provided to
19 the company.
20 Q And just to underscore one point that you
21 just made, you informed Mr. Zahn that using JEA's
22 outside counsel to draft the employment agreements
23 would be a conflict of interest?
24 A I was concerned about that, and I don't know
25 that it was a -- it's an actual conflict, but I said:

1 Let's use our own money.
2 So I don't know if it's a -- like I say, a
3 legal conflict, but I felt more comfortable not having
4 the ratepayers pay for that draft.
5 Q And that was Shane Muñoz of Ford Harrison?
6 A That's correct.
7 Q How did you find Mr. Muñoz?
8 A I think I reached out to -- reached out to
9 Kevin Hyde at Foley for a list of people. And I may
10 have reached out to somebody else for a list. And so I
11 got -- I collected a few names from people here that
12 might -- "here" being in Jacksonville -- that might be
13 able to do it, and we wound up with Mr. Muñoz, that I
14 didn't know before at all.
15 Q And his role was limited to an initial draft
16 of an employment agreement?
17 A He drafted the employment agreement. And
18 then there were comments from the team. I don't want
19 to -- I don't know if it's privileged, but -- like I
20 said, that was provided to the company here.
21 Q Are you aware that at some point in the
22 process Mr. Zahn began conferring with attorneys at
23 Pillsbury to include different terms in the employment
24 agreements?
25 A I'm aware that at some point Pillsbury

1 started doing some work. I don't think I was aware at
2 the time.
3 Q At some point later you learned that he
4 had --
5 A Yeah.
6 Q -- he had begun to use Pillsbury to draft the
7 employment agreements?
8 A When -- yes.
9 Q And that was in direct contravention of the
10 advice that you had previously given him?
11 A Well, as I said, I'm not sure it's a legal
12 conflict, but it was -- I was more comfortable going to
13 outside -- to an outside law firm.
14 (Exhibit Number 64 was marked for
15 identification.)
16 BY MR. WEDEKIND:
17 Q Okay. Moving on, Exhibit 64 is an email.
18 The top one is from you to you. The bottom one is from
19 Mr. Zahn to you. I think this is just a way of
20 memorializing an agreement. Wait. Hang on.
21 A You need to get that off.
22 Q I made a mistake. One second. I gave you
23 the wrong one.
24 I only have one question on this one, and you
25 probably could have just read it, but thank you for

1 not.
2 Page 2 of 7, there's one comment here, and
3 the comment is: Does this need to be updated?
4 Do you know whose comment that is?
5 A I don't. Let me just read the sentence here.
6 Q Yep.
7 A No, I don't know who commented on this
8 document.
9 Q Okay. The comment on Page 2 of 7 is as to
10 the effective date. Does that have -- hold any meaning
11 to you, why the effective date would need to be
12 updated?
13 A I -- I don't know the significance of that
14 date.
15 Q Are you aware that the extra compensation
16 statute that we've been talking about, Subsection 1,
17 prohibits a Florida public employee from receiving
18 retroactive pay?
19 A Not specifically.
20 Q Okay. Did you ever suggest to Mr. Zahn that
21 it was illegal for him to receive retroactive pay?
22 A I didn't. I didn't review his agreement.
23 Q Okay. So when the -- when Mr. Muñoz drafted
24 the employment agreement, who at JEA did he send it to?
25 A Well, he sent it to me, and I provided it to

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1 the other people that were helping pay for it.
2 Q Then, ultimately, who at JEA reviewed it?
3 Who was your counterparty, for lack of a better word?
4 Because you are on one side and JEA as an organization
5 is on the other in connection with this contract
6 negotiation.
7 A I don't know, other than in -- Lawsikia
8 Hodges said that she reviewed it and had some comments
9 on it.
10 Q Okay. And then what were the results of the
11 conversation -- or the comments received from
12 Ms. Hodges?
13 A I don't know what was changed in the document
14 as a result of her comments.
15 Q Okay. Do you remember participating in a
16 meeting at which your employment agreements were being
17 discussed?
18 A You mean at the board meeting?
19 Q No, I'm sorry. More informal, like a call
20 with Mr. Hyde and maybe attorneys from Pillsbury.
21 A Yes. So I was asked about that in January,
22 and I don't recall being on that call. But I did go
23 back and confirm that there was a calendar appointment
24 for that call in my -- in Outlook. So I think I was on
25 that call.

1 Well, I know I was on that call. It was in
2 my appointment thing, and Lawsikia said that I was on
3 the call.
4 (Exhibit Number 65 was marked for
5 identification.)
6 BY MR. WEDEKIND:
7 Q Okay. So I'm going to, just to confirm, hand
8 you what I think the calendar appointment is that we're
9 talking about. This is Exhibit 65. It's dated July
10 17th, and it shows Jessica Lutrin, Lawsikia Hodges,
11 Kevin Hyde, Lynne Rhode. I don't see your name on
12 here.
13 Is this the calendar invite that you're
14 talking about?
15 A I could swear that I was --
16 MR. LOCKAMY: Look on the second page.
17 MR. WEDEKIND: Oh. Yeah, there are two
18 calls. Thank you.
19 BY MR. WEDEKIND:
20 Q I think it was updated to include you. So if
21 you look on the second page, you were added. Do you
22 see that?
23 A Uh-huh.
24 Q Okay. Do you think this was probably the
25 call that we're talking about?

1 A I think so. I remember July 17th, and
2 Lawsikia was traveling.
3 Q Right. And so what was the purpose of this
4 call?
5 A Obviously the employment agreements.
6 Q What with respect to the employment
7 agreements, though?
8 A Lawsikia had some comments, according to her
9 statements made in my January deposition, and so
10 that -- she wanted to relay those comments.
11 Q With you as the contract counterparty in this
12 particular instance, do you think it was appropriate
13 for you to attend that meeting between JEA and its
14 lawyers discussing your own employment agreement?
15 A I haven't given that much thought to the
16 issue. I'm just looking at the attendees. Certainly
17 everyone on the call was being funded by JEA.
18 Typically you wouldn't exclude a management person from
19 the call.
20 But, Lee, I haven't done any sort of
21 evaluation on that.
22 Q This is kind of a unique situation, because
23 you are not only, in this case, an employee and an
24 executive, but when you are negotiating an executive
25 contract, then you are also put in the role of a

1 contract counterparty.
2 A So I don't know what companies typically do.
3 Q Okay. But at least you recognized and
4 understood, of course, that Pillsbury and Foley were
5 representing JEA through OGC?
6 A That's correct. And, you know, again, I
7 don't remember the substance, but nobody told me to get
8 off the call, including Lawsikia.
9 (Exhibit Number 66 was marked for
10 identification.)
11 BY MR. WEDEKIND:
12 Q Okay. 66, July 22nd, so the day before the
13 big board meeting; this is an email from Jessica Lutrin
14 to Madricka Jones. You're not copied on it. But it
15 attaches the JEA Separation and Transition Agreement
16 Form, paren, Non-CEO.
17 My question is, did Pillsbury draft the
18 separation and transition agreement that was attached
19 to all of the employment agreements for the members of
20 the SLT?
21 A I don't know who drafted the agreement.
22 Q All right. You are aware that ultimately the
23 employment agreement that you did sign contains a
24 separation and transition agreement; correct?
25 A Yes.

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1 Q Okay. That was not part of the employment
2 agreement that was drafted by Shane Muñoz on your
3 behalf, was it?
4 A I don't think so.
5 Q And when I say that, I mean not only the
6 specific agreement, but the concept of a separation and
7 transition agreement was not from Mr. Muñoz?
8 A I don't -- I don't know. I don't think so.
9 Q Okay. Do you know whose idea it was to
10 include this transition agreement within the SLT
11 employment agreements?
12 A What it -- when you say separation and
13 transition agreement, tell me what the document does.
14 Q So I have heard it referred to colloquially
15 as a consulting agreement.
16 A Okay.
17 Q Does that help?
18 A It does.
19 Q Okay. My understanding of the agreement is
20 that in the event of a termination that JEA and the
21 employee would then enter into this so-called
22 consulting agreement for a period of time, the period
23 being different for each employee, during which the now
24 former employee would serve as a consultant to JEA for
25 a period of time, for a certain amount of money; right?

1 A Yes.
2 Q Just conceptually, that's what that is?
3 A Yes.
4 Q Whose idea was that agreement?
5 A I don't know. I know it was discussed among
6 what I would call the legacy senior leadership team,
7 the people that were there. Because Mr. McElroy had a
8 similar agreement, a consulting agreement, that lasted
9 six or nine months and would have been approved by, I
10 guess, the board and the Office of General Counsel at
11 the time.
12 Q Did you ever look at Mr. McElroy's transition
13 agreement?
14 A I did not.
15 Q Did you ever speak directly with anybody at
16 Pillsbury or Foley about issues relating to the
17 employment agreements of the SLT?
18 A It is highly unlikely that I would have
19 spoken with anybody at Pillsbury. I may have talked
20 with Kevin Hyde. But I don't remember any specific
21 conversations with Kevin on that.
22 Q At some point after May 20th but before July
23 23rd, 2019, Nixon Peabody was replaced as bond counsel
24 to JEA?
25 MR. LOCKAMY: You said before July 23rd?

1 MR. WEDEKIND: Correct. As part of the July
2 23rd meeting, a resolution was passed approving
3 Greenberg Traurig to serve as bond counsel.
4 MR. LOCKAMY: Additional bond counsel.
5 MR. WEDEKIND: Okay, that's what I'm getting
6 to.
7 MR. LOCKAMY: Nixon Peabody was still --
8 MR. WEDEKIND: And that's what I'm going to
9 work to. Thank you.
10 BY MR. WEDEKIND:
11 Q So my question is: When did the decision to
12 engage further bond counsel happen?
13 A Well, I can't tell you the precise date. I
14 can tell you that -- and, again, I've been told by the
15 finance folks was that they typically had two bond
16 counsels employed -- or approved by the board. And for
17 whatever reason, the board has to approve bond counsel.
18 One of the previous bond counsels, the law
19 firm, their engagement expired. I don't think they
20 were very happy with their performance. And they were
21 pretty involved with the Vogtle opinion on the bonds,
22 and therefore they believed that it would not be
23 prudent to continue to use them.
24 And so I know because of that Jason
25 Gabriel -- Lynne Rhode reached out to Jason for

1 recommendations of the second bond counsel, and
2 apparently the city uses Greenberg Traurig as their
3 bond counsel, and so he -- Jason put Lynne and the
4 individual at Greenberg together.
5 Q When did Ms. Rhode reach out to Mr. Gabriel?
6 A I don't know.
7 Q After May the 20th?
8 A I don't -- probably so.
9 Q Was the decision to retain additional bond
10 counsel ever communicated to Nixon Peabody?
11 A I don't -- I don't know.
12 Q Not by you?
13 A Not by me. And Nixon Peabody remained --
14 remains, as far as I know, active or -- you know, a law
15 firm that can represent JEA.
16 There was an email exchange between Ryan
17 Wannemacher -- Mr. Wannemacher and Nixon Peabody in
18 August or September where Ryan was trying to get them
19 to do some additional work. They had, though, an issue
20 also with MEAG that required waivers, and so that
21 presented a problem that they couldn't do work for
22 us -- for JEA because of that conflict.
23 (Exhibit Number 67 was marked for
24 identification.)
25 (Exhibit Number 68 was marked for

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1 identification.)
2 BY MR. WEDEKIND:
3 Q Let's look at -- I think I've got those
4 emails in front of me, so I'm going to hand them to
5 you. These are 67 and 68.
6 These are emails that are -- email chains
7 that you were ultimately copied on, so you've seen
8 them. But they address the MEAG conflict issue. And
9 Mr. Wannemacher and Joe Orfano are communicating with
10 Nixon Peabody, as you discussed. The subject is
11 conflict issue.
12 And if you look at it, it says, if you go to
13 the very first email in the chain -- so this is from
14 Mitch Rapaport to Mr. Wannemacher, Mr. Orfano, copying
15 Liz Columbo.
16 A So I've got 67 and 68.
17 Q Yes.
18 A Okay.
19 Q I'm looking at the second page of 67. So if
20 you go to the first email on that chain, the middle
21 paragraph says, "Going forward, to address the conflict
22 issue that has arisen, Nixon Peabody would continue to
23 represent JEA as bond, tax and disclosure counsel on
24 all finance and related matters provided that, Mitch
25 Rapaport would not be involved in providing tax

1 advice."
2 The point is that it looks like there was a
3 fix to this conflict issue that had been proposed to
4 JEA and that you had gotten this email at least as of
5 September 5th, which is the very top email.
6 And then the next --
7 A I will say -- and I don't know if it's Mitch
8 Rapaport, but there was somebody in the Nixon Peabody
9 law firm that they thought was excellent at their
10 duties, and they insisted that that individual be
11 allowed to work for JEA.
12 Q "They" being the firm?
13 A No. I think Ryan Wannemacher really, really
14 wanted -- and I think it's Mitch Rapaport to be able to
15 continue working with the rest of the team -- the Nixon
16 Peabody team for JEA.
17 And I don't think they could overcome that
18 hurdle. I wasn't part of the conflict discussion, but
19 I do remember hearing that one of the individuals at
20 the Nixon Peabody firm was excellent.
21 Q If you look at the second of the two
22 exhibits, 68, the very top is an email from you to
23 Mr. Wannemacher that says, "I recommend that we not
24 respond yet."
25 Why did you recommend that?

1 A I don't remember specifically why I said
2 that. It may have been that they were still trying to
3 negotiate some resolution with MEAG.
4 I know Ryan continued to talk to MEAG, so
5 that's just -- that's -- that's a guess.
6 Q Could it have had anything to do with the
7 opinion that they issued in May about the PUP?
8 A No. Look, as I said, I was frosted with
9 Nixon Peabody for spending the time to issue an opinion
10 that we could not rely on -- or I was not comfortable
11 relying on.
12 So to the extent it was about that opinion,
13 it had to do with the fact that, What am I going to do
14 with an opinion issued in draft saying that you really
15 need to hire a Florida law firm.
16 Q Did you know whether or not at the time that
17 Nixon Peabody had opined on Florida law issues for JEA?
18 A No. Like I said, I wasn't -- I didn't ask
19 our bond -- outside bonds counsel for that memo. That
20 project was started before I was there. And so I don't
21 know what they have done for us on Florida law.
22 But, as I said, I thought that that -- that
23 was a giant caveat.
24 (Exhibit Number 69 was marked for
25 identification.)

1 BY MR. WEDEKIND:
2 Q Okay, 69 is a letter from you to St. Johns
3 County dated September 27, 2019. This letter put
4 St. Johns County on formal notice of a 90-day period
5 upon which JEA requests -- I'm reading Page 2 -- SJC
6 submit its decision on whether to exercise a purchase
7 option or waive it.
8 Why was this letter sent?
9 A Well, we -- one, it was sent because Mr. Zahn
10 asked me to send it, and we needed to begin discussions
11 with did St. Johns County want to purchase these assets
12 or not.
13 Q Why did Mr. Zahn instruct you to trigger
14 these contract rights before a sale was assured?
15 A Well, because any bidder would want to know
16 are the out-of-county assets included or not.
17 So if their -- if their response was
18 simple -- which it wasn't -- which is we don't have the
19 interest or resources to purchase it, then we could
20 respond to the bidders that it would be included in a
21 potential transaction.
22 Q And you are aware that this letter has
23 triggered a dispute between JEA and St. Johns County
24 that remains unresolved?
25 A I thought it was on its way to being

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1 resolved.
2 Q As of yet, I don't think it's been resolved,
3 so we -- we're in June.
4 A Well, I think that, at least from what I
5 understand, it was very close to being resolved before
6 I left.
7 Now, obviously COVID took 60 or 90 days out
8 of the negotiation and discussions.
9 Q Just --
10 A This was at the direction of Mr. Zahn to
11 start these conversations, both here and in Nassau.
12 Q So the same thing -- the same issue occurred
13 in Nassau County?
14 A Yes. Although Office of General Counsel sent
15 that letter to Nassau County.
16 (Exhibit Number 70 was marked for
17 identification.)
18 BY MR. WEDEKIND:
19 Q All right. Exhibit Number 70 is a letter
20 that was sent by your lawyers on your behalf to
21 Mr. Granat, and I want to walk through the letter and
22 ask you to lay out the various assertions that are made
23 in it, and so I've got a copy of it. This is Exhibit
24 Number 70, and I'm going to hand it to you.
25 All right. You alluded to this earlier in

1 your testimony, but your letter states that on more
2 than one occasion you, in the presence of others,
3 counseled Mr. Zahn that the PUP should not be pursued
4 and that it could fatally injure any restructuring
5 JEA's board might pursue.
6 Can you please describe with particularity
7 every time that you advised Mr. Zahn that the PUP was
8 imprudent and should not be pursued?
9 A So I may not be able to do it for every time.
10 But I have been told that the very first time was at
11 Orange Park when the PUPs were first kind of revealed
12 or disclosed, and so that would be the first time that
13 I said something. And I was also informed that my
14 response was pretty firm, or animated, to Mr. Zahn.
15 Q So let me stop just real quick, if I may.
16 And I'll let you continue, but I just want to
17 understand what exactly you're saying about this
18 instance.
19 You said a couple times that you were
20 informed that your response was this. Do you have any
21 independent recollection of telling Mr. Zahn this at
22 Club Continental?
23 A I don't.
24 Q Who told you that you had this response?
25 A Mr. Munz, Michael Munz.

1 Q What was his role in all of this?
2 A Michael, or the Dalton agency, I think, has
3 had a contract with JEA for a number of years.
4 Q And what did Mr. Munz tell you about your
5 response to Mr. Zahn with respect to the PUPs at Club
6 Continental?
7 A He told me that -- that I fairly vigorously
8 told Mr. Zahn that I thought it was a bad idea.
9 And then Mr. Munz added that he was far more
10 descriptive or graphic in his description to Mr. Zahn
11 where he held the same opinion.
12 Q That Mr. Munz also believed that the PUPs
13 were a bad idea?
14 A That's correct.
15 Q And he told Mr. Zahn at Club Continental?
16 A That's correct.
17 Q In more colorful language?
18 A That's correct.
19 Q So that was the first time. Do you have
20 anything -- any other details to provide in connection
21 with that?
22 A No. I think -- all I recall specifically is
23 what Mr. Munz told me.
24 Q Okay. What is the next such occasion?
25 A So it was -- I remember on more than --

1 several occasions, and in the -- the location was the
2 JEA headquarters on the 16th floor, where I said
3 something to the effect of: Aaron, the public will
4 light themselves on fire if you make one dollar off any
5 of these transactions.
6 I think I probably said: Aaron, people will
7 light themselves on fire if you make one dollar off any
8 of these transactions.
9 But that is the phrase that I routinely told
10 him, and that was heard by others.
11 Q You say several. How many times did you tell
12 Mr. Zahn this?
13 A I -- I can't remember how many times, but I
14 let him know my feelings and my thoughts. Obviously he
15 got a 7-0 board vote, so -- and -- but I didn't stop
16 sharing my opinions on that for sure.
17 Q Who witnessed you telling Mr. Zahn this?
18 A Well, I am certain that Ms. Dykes and
19 Mr. Wannemacher heard me telling Mr. Zahn that.
20 Q Anybody else?
21 A There may have been others around.
22 Q That you remember.
23 A I mean the executive assistants may have been
24 around there to hear, or others. But I'm confident
25 that Ms. Dykes and Mr. Wannemacher heard me on more

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1 than one occasion.
2 Q What did Mr. Zahn say in response to your
3 comments?
4 A I don't recall him saying anything in
5 response.
6 Q It seems odd.
7 A I think he heard me.
8 Q Did he have any kind of reaction?
9 A No. I mean it's not like he yelled at me or
10 was rude. But I told him I thought that it was not a
11 good idea to pursue this.
12 And as I -- as Mr. Coxe and Mr. Lockamy say
13 in the letter, I remember telling him that this plan
14 could significantly jeopardize anything that the board
15 is considering with the array of different strategic
16 alternatives.
17 Q Okay. So we've got the Club Continental. We
18 have the several occasions on the 16th floor.
19 Are there any other occasions that you can
20 remember expressing concerns or reservations about the
21 PUP?
22 A I think we had a meeting at Dalton Agency
23 where I did a similar comment to him.
24 Q To Mr. Zahn?
25 A To Mr. Zahn.

1 Q Was anybody else a witness to that comment?
2 A Probably Mr. Munz, and I think Ms. Dykes was
3 also there as well.
4 Q Okay. So other than those three occasions,
5 were there any other occasions?
6 MR. LOCKAMY: There's more than three
7 occasions.
8 THE WITNESS: Yeah, there's more than three
9 occasions.
10 BY MR. WEDEKIND:
11 Q Three different categories?
12 A Three different category -- three different
13 locations. But I may have been a bit of a broken
14 record about it.
15 Q Any other times that you can remember?
16 A No.
17 Q Okay. The letter also says that other SLT
18 members also told Mr. Zahn that the PUP was imprudent.
19 Can you describe those times?
20 A Well, I know Ms. Dykes informed me that she
21 privately talked to Mr. Zahn. She didn't do it
22 publicly like I did.
23 But, then again, she was the one that had
24 been passed over by the board in favor of Mr. Zahn, and
25 so I think she thought it would be prudent to let her

1 know -- him know her thoughts without an audience.
2 Q What were your primary concerns about the
3 PUP?
4 A So at the time there were no financial
5 details, but this was going to be a document that had
6 the features of the former long-term incentive plan,
7 which, as you have seen from Ms. Rhode's emails to OGC,
8 that I had concerns about the legality and ethics
9 there.
10 And then, as we discussed at the very
11 beginning of this deposition, the PUP had the second
12 avenue, and I was not familiar with that really
13 occurring in government, and so that was my concern.
14 And I know we had the Office of General
15 Counsel doing research. We had outside counsel doing
16 research. And ultimately that's why I insisted that we
17 pursue -- and, by the way, all that research was very
18 well done, but they were not able to identify, at least
19 in my view, show stoppers.
20 And I wanted to make sure that everything was
21 fully vetted, and that's why I insisted, and both
22 Mr. Zahn and Mr. Gabriel supported, that we go to the
23 Attorney General initially for her review of the plan.
24 Q All right. So you had identified Ms. Dykes.
25 She told you that she told Mr. Zahn that the PUP was a

1 bad idea.
2 A That's correct.
3 Q Were there any other SLT members that you
4 either witnessed or are aware of providing the same
5 type of suggestions to Mr. Zahn?
6 A I think I have heard that Mr. Wannemacher
7 expressed his concerns, as well as Ms. Kerri Stewart.
8 Q Okay. Did you hear that from each of them?
9 A Lee, it's in the back of my mind, and I don't
10 have a clear recollection.
11 Q Was your concern a legal one or was it a
12 policy one?
13 A Well, on the Attorney General side it would
14 be the legal one: does the framework work from a legal
15 standpoint.
16 And I would suggest that the Florida Ethics
17 Commission, because that may be more subjective, may be
18 more on the policy side.
19 Q Okay. So we're --
20 A So I wasn't going to be satisfied with just
21 the Attorney General, because the Attorney General does
22 not have jurisdiction over ethical issues, so I've been
23 told.
24 Q All right. So we've kind of moved into the
25 second -- the second paragraph of this letter, which is

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1 the circuit breakers that you're talking about here.
2 And just so that I understand -- and I'm just
3 reading from your letter -- you instructed JEA's
4 outside counsel -- who? Who was that?
5 A Finish your sentence.
6 Q Yeah, to meet with the Attorney General's
7 office. Who did you direct?
8 A Yes. So that would be Kevin Hyde and/or
9 Chris Kise, both with Foley. But again, that would be
10 in conjunction with the Office of General Counsel
11 approving these steps.
12 Q Okay. So who met with the Florida Attorney
13 General's office in August 2019?
14 A I think Kevin Hyde and Chris Kise.
15 Q By themselves?
16 A Yes. To my knowledge, there was nobody else
17 with them.
18 Q Okay. And then later there was a formal
19 opinion requested of the AG's office?
20 A That's correct.
21 Q And who was responsible for working on that?
22 A So I think Kevin Hyde worked on it. I
23 probably had some wordsmithing. Lynne Rhode.
24 In the deposition -- my deposition in
25 January, Lawsikia said she had some edits to it. I

1 know that in September Lynne Rhode met with both Jason
2 Gabriel and Lawsikia about the request.
3 So I think a lot of hands were involved in
4 the request to the Attorney General.
5 Q Okay. Just going down the list, okay, we've
6 talked about the Commission on Ethics, we've talked
7 about the Attorney General's Office.
8 And then it said, finally, you advised that
9 no plan could move forward without approval of the IRS.
10 A (Nods head)
11 Q It seemed like that wasn't confirmed, though,
12 until December 23rd, 2019?
13 A That's incorrect.
14 Q Okay. So explain that -- explain that to me,
15 when that came about.
16 A So that was as we -- you know, as the team
17 started exploring all the requirements, it was brought
18 to my attention -- and it may have actually been the
19 Office of General Counsel that brought to my attention;
20 in fact, I think it was -- that Chapter 112.215
21 requires that any deferred compensation plan be
22 approved and then received by the plan administrator
23 before the plan could go into effect.
24 Q Would the PUP have required IRS approval if
25 it had been a bonus plan under 215.425?

1 A I don't think so, but you'll have to talk to
2 the lawyers about that.
3 Q So the IRS approval component was only if the
4 plan was treated as a deferred compensation plan;
5 correct?
6 A That is correct under 112.215.
7 Q Do you remember who at OGC brought your
8 attention to that issue?
9 A It may have been in a meeting that I had with
10 Jason Gabriel, Lawsikia, and Mr. Jon Phillips.
11 But it may have occurred before then.
12 Mr. Hyde could have flagged it for me.
13 Q Okay. So talk to me about the meeting that
14 Mr. Phillips attended. So walk me through what you
15 remember of that meeting.
16 A So it took place at JEA. And as I mentioned,
17 it was me, Ms. Rhode, Mr. Phillips, Ms. Hodges, and
18 Mr. Gabriel. And they had a laundry list of items that
19 they had flagged and they brought to our attention.
20 Probably some of them were already being addressed by
21 Mr. Hyde.
22 But there were two or three takeaways, and I
23 don't remember which one of the legal issues that they
24 asked to be researched, and then I provided those
25 issues to Mr. Hyde. I think Mr. Phillips also raised a

1 federal issue, and then that was assigned to
2 Ms. Lutrin.
3 Q Do you remember that meeting ever getting
4 slightly heated?
5 A Yes.
6 Q Okay. Can you describe that?
7 A Mr. Phillips and Ms. Rhode got into a -- I
8 think Mr. Phillips called it an acrimonious discussion,
9 and I concur that it was acrimonious.
10 I asked Jason to -- let's lower the
11 temperature because we all want to find out what the
12 answers are, and we're all on the same team. And so
13 Jason -- Mr. Gabriel did, and then things kind of went
14 back to normal.
15 Q Was that the result Mr. Phillips suggesting
16 that it was -- the PUP was unethical as it applied to
17 Ms. Rhode's participation?
18 A I don't remember specifically what got him
19 more exercised, but I just remember that it -- it
20 was -- it was uncomfortable to be in that meeting for a
21 very brief time.
22 But everybody kind of put their professional
23 hat back on, and we started working again.
24 Q And it's my understanding that the Foley
25 memos were an attempt to address the issues that were

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1 raised as part of these meetings?
2 A Oh, both from that particular meeting and
3 from the meetings that we had in Jason's office or at
4 Office of General Counsel, you know, this was a very
5 unique plan. And they were asking Kevin -- and I mean
6 it was very good questions that they asked him to
7 research. When I say Kevin, I mean Mr. Hyde.
8 Q At the July 23rd board meeting, a lot had
9 been discussed. At the very end of the meeting there's
10 a discussion about the PUP. It's not a very long
11 discussion.
12 But at the end of that discussion,
13 Mr. Howard, as the chairman of the board at the time,
14 asks Ms. Rhode if the OGC had signed off on the PUP.
15 And I'm paraphrasing.
16 MR. LOCKAMY: Very liberal paraphrase.
17 BY MR. WEDEKIND:
18 Q Her response I do remember being, Yes, sir.
19 MR. LOCKAMY: He did not ask if it had been
20 signed off. Do you have a transcript --
21 MR. WEDEKIND: You're not testifying.
22 MR. COXE: But you know that's not true.
23 MR. WEDEKIND: Let the witness testify. I
24 explained that I was paraphrasing.
25 MR. COXE: Show him the transcript of it.

1 BY MR. WEDEKIND:
2 Q Let's move on. So I want to understand from
3 your perspective whether or not you thought that was a
4 misrepresentation by Ms. Rhode in response to
5 Mr. Howard's question.
6 A So first thing is Mr. Howard wasn't chairman
7 anymore, just as a -- Ms. Green was chairman.
8 Q I'm sorry, you are right. I apologize, you
9 are right. That's exactly right. Thank you.
10 A July 23rd.
11 Q Yeah.
12 A And my response is -- is after -- is, you
13 know, six months afterwards, because I wasn't involved
14 in the conversation.
15 But I went back and looked at the video, and
16 Mr. Howard said had this been passed through OGC,
17 Office of General Counsel, with all the appropriate
18 restriction -- legal restraints or restrictions. And
19 so -- and Ms. Rhode said, Yes, sir. That's as I look
20 at the video today.
21 And I would -- I would say that the memo that
22 was signed off on by OGC on July the 22nd allowed it to
23 pass through to the next phase of research and
24 evaluation.
25 That's how OGC treated that memo. That's how

1 I treated that memo. That's how Lynne Rhode treated
2 that memo. And so -- because the document kept being
3 changed as -- for example, questions being raised by
4 OGC and such.
5 Q When you say "the document," you mean the
6 PUP?
7 A The -- or the plan itself.
8 Q But not the memo?
9 A No, no, no.
10 Q We're talking about the plan documents?
11 A That's correct.
12 Q Because they weren't -- they were not
13 finalized until after the July 23rd meeting. It never
14 really got finalized.
15 A It never really got finalized. And that's
16 another good point, Lee, is that this was always a work
17 in progress that was never completed and wasn't going
18 to be complete until all the sign-offs occurred from
19 the circuit breakers. And, you know, that's probably
20 even unlikely that that would have occurred.
21 But I think given the question -- and, again,
22 it was kind of a compound question to Ms. Rhode -- I
23 think that was a fair answer. And I think probably if
24 OGC thought that the answer was -- misrepresented the
25 memo, they certainly would have let the board know.

1 I did not think that it misrepresented the
2 memo. I think -- like I said, I think OGC reached the
3 same conclusion at the time.
4 Q Why?
5 A Well, to my knowledge, the issue was never
6 raised to our board or to Ms. Rhode by OGC.
7 Q Did you understand that the OGC's July 22nd
8 memo did not approve the underlying documents in the
9 resolutions that were being considered by the board?
10 A I do now.
11 Q At the time.
12 A I'm not certain that -- I mean the sequence
13 of events is, as I've kind of come to learn, either
14 Aaron and Ms. Rhode were talking with Jason Gabriel
15 about getting such a memo. It was becoming late in the
16 afternoon on July the 22nd.
17 Aaron Zahn said I'm not going to bring any of
18 these resolutions unless I get sign-off by OGC, and he
19 said, Would you go over there and check and see where
20 the memo is.
21 And that was the first time I knew that a
22 memo was forthcoming from OGC. So I went over there.
23 Jason had it up on his screen, was working on it. He
24 made a couple of modifications.
25 I think he got Lawsikia's electronic

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1 signature while I was there, and there was -- I wasn't
2 there that long, but he handed me the memo and I walked
3 back to JEA.
4 Q Was it unusual for you to walk over to OGC,
5 or was that a common practice?
6 A Oh, I was at OGC pretty frequently.
7 Q All right. The next section talks about the
8 Nixon Peabody memo. We've gone into a great deal of
9 detail about that already, and so instead of asking you
10 to go line by line, I'll just ask you if there's
11 anything else in connection with the Nixon Peabody memo
12 that we haven't talked about today that you think is
13 important for JEA to understand?
14 A I can't see the transcript. We kind of beat
15 that horse pretty dead earlier.
16 Q I agree with you. I just wanted to make
17 sure, give you an opportunity if you wanted to beat it
18 one more time.
19 All right. Explain to me the Deno Hicks
20 issue. It's mentioned in the letter. I have a general
21 understanding about it, but what was your involvement
22 in that?
23 A So Deno -- and I -- full disclosure, I've
24 known Deno for a number of years. He's been active in
25 political stuff. He's a friend of Aaron's.

1 There was going to be an awful lot of work
2 like, for example, with local governments, including
3 St. Johns and Nassau. Aaron was hopeful that Deno
4 would be retained by JEA.
5 At one point -- and I think Aaron is the one
6 that requested that Deno be a subcontractor to Foley.
7 And as I have come to learn, there was an eight-day
8 contract with Foley. Jason Gabriel talked to me and,
9 at least from what I understand, talked to Deno. And I
10 know he told me, I don't want any government affairs
11 people or public relations professionals being subs to
12 the law firms.
13 And so I made that known, and I don't think
14 we had any new government affairs professionals or PR
15 people being subs to law firms.
16 So -- but that was a directive from Jason.
17 Q Why did Mr. Zahn request that he be
18 subcontracted to Foley? Why did he request that
19 particular structure?
20 A I don't know why.
21 Q Were you aware that Steve Amdur was a friend
22 of Mr. Zahn's from college?
23 A Yes.
24 Q Was he Mr. Zahn's college roommate?
25 A I don't know if they were roommates.

1 Q It seems like Mr. Zahn worked very hard to
2 direct work to his friends; is that fair?
3 A Well, I do think that he had a lot of trust
4 in Stephen Amdur.
5 Although, just going back through the
6 records, I think Pillsbury has been doing work for
7 JEA -- I think they actually did some work on the
8 Vogtle matter in 2008, so a long time before.
9 But I do know that Aaron had a lot of trust
10 in Stephen and in Deno.
11 Q What do you know about JEA's hiring of
12 Capital City Consulting working in conjunction with
13 Anfield to lobby for the H2O project?
14 A So we had engaged on a two-year term the
15 GrayRobinson firm, which had subcontracted also to
16 another -- so I think GrayRobinson had some of the
17 political expertise. They subcontracted to another
18 firm. And this was before I was at JEA.
19 And then because of the dispute -- so they
20 had been contracted previously to do government affairs
21 work in Tallahassee for JEA.
22 Aaron got in a dispute with FMEA, and the
23 GrayRobinson firm and, I think, the subcontractor firm
24 also did work for FMEA, and they didn't want to be
25 caught in the middle. So they called me up. And I

1 knew Speaker Cannon was the GrayRobinson person, and
2 then I knew Ryan Matthews, who was with the
3 subcontractor, and they said because of this conflict,
4 we're not going to be able to represent JEA anymore.
5 And so this was just a week or two prior to
6 what's called committee week, where a lot of decisions
7 get made about budgets, and so we were left with a very
8 little time to get assistance of -- get assistance to
9 help us with our H2O project.
10 Anfield Consulting is a firm that's niche is
11 focused on water and water appropriations, and so I
12 approached our procurement team and said, Look, we've
13 got a very short fuse where we've got to get some help
14 immediately in Tallahassee.
15 And on top of that, our Tallahassee person
16 that was an employee at JEA retired.
17 And so Anfield was retained. Anfield has a
18 lot of technical expertise, and they clearly have some
19 political expertise as well, and they recommended to me
20 that -- they said we will take the same fee and share
21 it with Capital City Consulting, and they are very
22 close on the political side but probably have less
23 knowledge on water appropriations.
24 Q Why would a lobbying firm, when it registers,
25 change its name from JEA to Jacksonville Electric

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1 Authority and then back to JEA?
2 Do you know why a lobbying firm would do
3 that?
4 A No. But they did at one point register as
5 Jacksonville Electric Authority, and I saw it, and
6 that's not our name.
7 Q Right.
8 A And so I said, That's not our name. I mean
9 it's -- to be careful, though, we need to be -- have
10 the correct name, so it's JEA.
11 I don't -- I didn't know that they did it
12 back twice, but I do remember seeing Jacksonville
13 Electric Authority as the -- their client, and that
14 wasn't their client.
15 Q Do you have a basic understanding about how
16 rates are set for investor-owned utilities?
17 A Only that they have to go to the PSC, and the
18 PSC allows a certain amount of profit, but it's
19 regulated. And so that's my basic understanding of it.
20 Q And in connection -- as part of that, there
21 really -- as I understand it, there are two basic
22 components. You have the profit that you're allowed to
23 obtain but that the PSC grants you as an IOU, but
24 there's also a rate base.
25 Do you know what I say when -- what I

1 mean when I say rate base?
2 A I heard that phrase being used during the ITN
3 process, and I think that it is the amount of capital
4 expended by the utility or the amount -- the value of
5 their assets, something like that.
6 Q Do you know whether or not purchased power is
7 included in an IOU's rate base?
8 A I don't know.
9 Q Do you know if purchased power is considered
10 an asset of the utility?
11 A I don't know.
12 MR. WEDEKIND: I need a minute.
13 (Recess from 8:04 p.m. to 8:13 p.m.)
14 BY MR. WEDEKIND:
15 Q What was your understanding of the impact of
16 the Plant Vogtle agreement on JEA and its ratepayers if
17 JEA was not recapitalized?
18 A So basically status quo.
19 Q Right. What would the impact of the Plant
20 Vogtle agreement be if JEA was not sold?
21 A Certainly. And, again, this is what the
22 folks that know more about fuel costs and -- or
23 electricity costs than I do, that the ratepayers will
24 have electricity that is four to five times more
25 expensive than what JEA could purchase that same

1 electricity for today.
2 Now, that number may have been updated. They
3 announced last week that there's the Georgia PSC, I
4 just happened to read, said, oh, it's going to cost
5 even more money and even more time.
6 Q I saw that.
7 A So it continues to be problematic for JEA.
8 Q What would the same effect be on the
9 ratepayers if JEA were sold?
10 A Well, I guess it depends. My recollection is
11 the request from JEA to all of the respondents were,
12 Look, we all know that this is an expensive white
13 elephant. If you can find out a way to deal with JEA,
14 please put it in your proposal.
15 MR. LOCKAMY: You mean how to deal with
16 Vogtle?
17 THE WITNESS: I'm sorry, how to deal with
18 Vogtle.
19 And, again, I haven't read it, but we're
20 welcome for ideas if you've got some other
21 creative ways on how to deal with Vogtle.
22 And so -- because the only two ways, at least
23 from my understanding, that JEA looked at this
24 was, one, unwind the deal somehow, and that may be
25 a settlement with -- doing something with -- MEAG

1 is the Municipal Electric Authority of Georgia, so
2 unwind the deal either through a lawsuit or some
3 other kind of a settlement, or leave the purchased
4 power agreement that JEA has with MEAG behind.
5 And -- because the structure of the PPA, and
6 really the entire project, is dealing -- as it
7 relates to MEAG and JEA is dealing with tax-exempt
8 bonds.
9 I'm getting way out over what I'm comfortable
10 discussing, but that -- they were relying upon
11 tax-exempt bonds. And so if the power purchase
12 agreement was somehow sold or assigned, which --
13 to a for-profit entity, a nongovernmental entity,
14 it would saddle the ratepayers with, I think,
15 hundreds of millions of dollars of additional
16 cost, because you've destroyed the tax-exempt
17 nature of the financing.
18 So those are the two solutions that JEA
19 identified. And of course the lawsuit was filed
20 before I joined, and then they were constantly
21 looking for other ways to deal with this tax-
22 exempt issue. And JEA at least was not able to do
23 it. And I don't think any of the respondents had
24 any other ideas other than to leave the PPA
25 behind.

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BY MR. WEDEKIND:
Q Of course a buyer would want to leave a massive liability behind as part of an acquisition; right?
A Well, it -- it would be -- they would obviously get the power for 20 years.
Q Right.
A But if there was an ability to sell lower cost power somehow to the residents of Jacksonville, that's what we all want.
Q Okay. I want to go back and just ask a few questions about how you learned about your comments at Club Continental with respect to the PUPs.
So you said that Michael Munz told you about your comments?
A Uh-huh.
Q When did he tell you about your comments?
A Oh, this probably would have been January or February. Earlier this year.
Q And what were the circumstances around his telling you about your comments?
A I know we were on a phone call, but I'm not -- I don't remember the primary purpose of the call.
Q How did it come up?

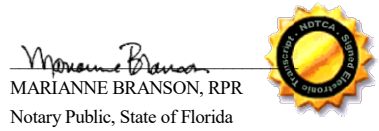
A I don't know if it's the -- the news media discussion or what.
Q Okay. You were interviewed before by OGC in connection with Mr. Zahn's investigation, and you understood the purpose of that interview; correct?
A Yes.
Q And you understood the importance of that interview to JEA?
A Well, I understood the purpose of the interview.
Q Okay. Why didn't you provide all of the information about the PUP and the Nixon Peabody memo and all of this -- the circuit breakers and all of this new information during that interview?
A Well, we discussed PUPs at length. We discussed circuit breakers. And so I have obviously had the opportunity to now review some other documents to refresh my recollection, because there wasn't -- there were very few documents provided to me during that deposition.
I -- my family left town, well, for the Christmas holidays to be with my parents out of state. I received the Garrity invitation -- Garrity invitation on New Year's Eve. I believe that was a Tuesday afternoon or evening. Wednesday is New Year's day. I

believe I worked Thursday. Friday I had a family commitment where we were all going out of town. And I think I had about two hours of time to prepare.
So I -- but I have since had more time to review documents.
Q How much time would you say that you've spent on preparing for today's interview?
A I don't want to guess.
Q A lot?
A Well, certainly more than two hours. And obviously some of the communication has occurred due to the work of counsel, and I don't want to get into any privileged discussion.
Q Nor do I.
A More time than two hours for sure.
MR. WEDEKIND: All right. Thank you very much.
THE WITNESS: Thank you, Lee.
MR. WEDEKIND: We are done.
MR. LOCKAMY: I assume that the record will reflect that we started at 1:00 and we are finishing at 8:22 p.m. without a lunch break or a dinner break.
(Concluded at 8:23 p.m.)

_ _ _

CERTIFICATE OF OATH
STATE OF FLORIDA)
COUNTY OF DUVAL)

I, the undersigned authority, certify that HERSCHEL THOMAS VINYARD, JR. personally appeared before me and was duly sworn on June 17, 2020.
WITNESS my hand and official seal this 25th day of June, 2020.



MARIANNE BRANSON, RPR
Notary Public, State of Florida
My Commission No.: GG 174097
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1 CERTIFICATE
2
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3
COUNTY OF DUVAL)
4
I, Marianne Branson, RPR, FPR, do hereby
5
certify that I was authorized to and did report the
6
foregoing proceedings, and that the transcript, pages 1
7
through 237, is a true record of my stenographic notes.
8
I further certify that I am not a relative,
9
employee, attorney, or counsel of any of the parties,
10
nor am I a relative or employee of any of the parties'
11
attorney or counsel connected with the action, nor am I
12
financially interested in the action.
13
Dated this 25th day of June, 2020.
14
15
16
17
18
Marianne Branson, RPR-CP
19
Court Reporter
20
21
22
23
24
25

1 ERRATA SHEET
2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE
3 IN RE: AARON ZAHN - TERMINATION OF EMPLOYMENT
AGREEMENT WITH JEA
4
5
6 PAGE NO. LINE NO. CHANGE REASON
7 _____ _____ _____
8 _____ _____ _____
9 _____ _____ _____
10 _____ _____ _____
11 _____ _____ _____
12 _____ _____ _____
13 _____ _____ _____
14 _____ _____ _____
15 _____ _____ _____
16 _____ _____ _____
17
Under penalties of perjury, I declare that I have read
18 my deposition and that it is true and correct subject
to any changes in form or substance entered here.
19
_____ _____
20 DATE HERSCHEL THOMAS VINYARD, JR.
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Subject: Discuss PSU Valuation Approach
Location: 866.242.0546, 1350489#

Start: Tuesday, April 02, 2019 9:00 AM EDT
End: Tuesday, April 02, 2019 9:30 AM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Wathen, David (Atlanta)
Required Attendees: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>

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Subject: TVA LTIP
Sent: Wed, 03 Apr 2019 07:15:39 -0500
To: "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>, "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>, "Hiers, Angelia R. - VP & Chief Human Resources Officer" <hierar@jea.com>

See link below...Tennessee Valley Authority has a LTIP. Page 150.

https://www.sec.gov/Archives/edgar/data/1376986/000137698618000046/tve-10xk09302018.htm#sEF8017378F4D506AA82B8BE68A11D429

Thanks,
Ryan
Ryan Wannemacher
Chief Financial Officer
Direct: (904) 665-7223

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EXHIBIT
2
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From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Tuesday, April 09, 2019 12:24 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Special Pay Increases & Extra Compensation | Human Resources | USF

https://www.usf.edu/hr/employment-resources/class-comp/extra-compensation.aspx

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Classification & Compensation

OVERVIEW

ESTABLISHING NEW POSITIONS

ESTABLISHING OR CHANGING A SALARY

FAIR LABOR STANDARDS ACT (FLSA) COMPLIANCE

JOB TITLES & PAY BANDS

POSITION DESCRIPTIONS

RECLASSIFICATIONS

EXTRA COMPENSATION

Extra compensation (formerly dual compensation) is compensation to Faculty, Administration, and Staff for contracted activities in excess of the established FTE of the position, or the simultaneous appointment of an employee in a benefit earning position and a Temporary non-benefit earning position. Activities that qualify for extra compensation include credit instruction, non-credit instruction, temporary assignments to sponsored projects, and other temporary consulting arrangements, normally across departmental lines.

Extra compensation does not include Special Pay Increases (SPI) for additional compensation for a temporary increase in responsibilities associated with the employee's primary appointment or Pay for Performance (PFP) for short-term accomplishments, performance on a special project, or reaching an established major goal or objective. The key to differentiating extra compensation from SPIs and PFPs is that extra compensation is pay for work that is

SALARY DELEGATION AUTHORITY

substantially different than the employee's primary duties and responsibilities or is similar work for a different administrative unit of the university (across colleges or departments).

EXTRA COMPENSATION

The processes and forms for extra compensation for Faculty may be found on the **Provost's Office website**.

UPDATING POSITION INFORMATION

Extra Compensation for all types of employee requires a **Request for Approval of Extra Compensation form** to be completed for each extra compensation appointment. The rationale for an Extra Compensation appointment is that an employee is performing two distinct jobs. If an employee receives extra duties in the course of their regular job, even if these duties result in working over 40 hours in a workweek, an extra compensation appointment may not be appropriate. It might be appropriate for a non-exempt (Staff) employee to be compensated through overtime payment or compensatory leave time. It might be appropriate for an exempt (Administration) employee to perform the duties temporarily as part of the regular job, to receive an "Acting" appointment on another position, or to receive a temporary stipend.

Extra Compensation requests are reviewed and approved by Human Resources in order to ensure that a second appointment is the appropriate way to pay the employee.

IMPORTANT INFORMATION:

- All requests for extra compensation must be completed and approved prior to the employee beginning work.
- A Graduate Assistant position may never be an extra compensation appointment.
- All payments for Research and Grants also require the completion of Appendix A.
- All extensions to an extra compensation appointment require completion and approval of a new **Request for Approval of Extra Compensation form**.
- There are times the use of the **Request for Non Recurring Compensation form** will also require completion of the **Request for Approval of Extra Compensation form** (NOTE: if

you're not using Internet Explorer, right-click and download this file).

IMPORTANT INFORMATION REGARDING REWARD PAYMENTS (SALARY INCREASES AND BONUS PAYMENTS) FOR EMPLOYEES WHO RECRUIT STUDENTS

Effective July 1, 2011, the Higher Education Act (HEA) is prohibiting any merit increase, commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the awarding of Title IV, HEA program funds. As a result, employees cannot be rewarded for enrollment, admissions or financial aid goals, or program completion, retention or graduation rates. If you have any questions regarding this regulation, please don't hesitate to contact your HR Service Center Manager.

4202 E. Fowler Avenue, SVC 2172,
Tampa, FL 33620, USA
813-974-2970

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This website is maintained by Human Resources.

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, April 10, 2019 9:36 AM EDT
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
CC: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: FW: LTIP
Attachment(s): "Performance Unit Scratch Sheet.xlsx","ATT00001.htm"

From: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>
Sent: Wednesday, April 10, 2019 4:35 AM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: LTIP

FYI - for you conversations w pilsbury.

Aaron F. Zahn
JEA
Managing Director & Chief Executive Officer
zahnaf@jea.com
(312) 286-1040

Begin forwarded message:

> **From:** "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>
> **Date:** April 10, 2019 at 3:47:15 AM EDT
> **To:** "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>
> **Subject:** LTIP
>
> Per our conversation, here is the spreadsheet I have been playing around with.
>
> Based on the latest due diligence, I think we are trending toward a structure closer to the first tab than the second.
>
> Thanks,
> Ryan
>
> Ryan Wannemacher
> Chief Financial Officer
> Direct: (904) 665-7223

EXHIBIT
4 mb
6/17/20 Vinyard
PENGAD 800-631-6989

	A	B	C	D	E	F	G	H
1					Based on 2016-2018 Book Value			
2					Combined			
3					Year	FY Beginning 2017	FY Beginning 2018	FY Beginning 2019
4					Cumulative units outstanding	841,422	1,601,432.01	2,327,303
5					Target Pool	$ 10,000,000	$ 10,000,000	$ 10,000,000
6								
7					Value based on book value			
8					Performance Unit Value	$ 11.88	$ 13.16	$ 13.78
9					Book Value	2,376,928,000	2,631,545,000	2,755,310,000
10					Total Performance Units	200,000,000	200,000,000	200,000,000
11					City Contribution	129,187,000	115,823,000	116,620,000
12				0.00000040%	Distribution based on City Contribution	103,349,600	92,658,400	93,296,000
13					Distribution per share	$ 0.52	$ 0.46	$ 0.47
14								
15					Total Distributions per share	$ 0.52	$ 0.46	$ 0.47
16					Yield per share	4.35%	3.52%	3.39%
17					Share Value	$ 11.88	$ 13.16	$ 13.78
18								
19					Example of a $10,000 annual grants			
20					Initial award	$ 10,000	$ 10,000	$ 10,000
21					Shares granted	841	760	726
22					Total Holdings	841	1,601	2,327
23					Annual cash distributions	$ 435	$ 742	$ 1,086
24					Value of holdings	10,000	21,071	32,062
25					Total Value of Grants	$ 10,000	$ 20,000	$ 30,000
26					Total Value Received	$ 10,435	$ 22,248	$ 34,325
27								
28					Total Pre-tax Return	4.35%	11.24%	14.42%
29					Annual CAGR Calcs	4.35%	5.47%	4.59%

	I	J	K
1			
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12	Dividend per share is a % of the city contributior		
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29			

	A	B	C	D	E	F	G
1					Based on 2016-2018 Book Value		
2					Electric		
3					Year	FY Beginning 2017	FY Beginning 2018
4					Cumulative units outstanding	100,000	990,824.95
5					Target Pool	$ 10,000,000	$ 10,000,000
6					% Electric	40.86%	47.23%
7					% Water	59.14%	52.77%
8							
9					Value based on book value		
10					Performance Unit Value	$ 9.71	$ 11.23
11					Book Value	971,310,000	1,122,555,000
12					Total Performance Units	100,000,000	100,000,000
13					City Contribution	103,720,000	92,271,000
14	Dividend per share is a % of the city contribution			0.00000035%	Distribution based on City Contribution	36,302,000	32,294,850
15					Distribution per share	$ 0.36	$ 0.32
16							
17					Accrued Distributions per share	$ 0.36	$ 0.32
18					Yield per share	3.74%	2.88%
19					Share Value	$ 9.71	$ 11.23
20							
21					Example of a $10,000 annual grants		
22					Initial award	$ 4,086	$ 4,723
23					Shares granted	421	421
24					Total Holdings	421	841
25					Annual cash distributions	$ 153	$ 272
26					Value of holdings	4,086	9,445
27					Total Value of Grants	$ 4,086	$ 8,809
28					Total Value Received	$ 4,239	$ 9,870
29							
30					Total Pre-tax Return	3.74%	12.04%
31					Annual CAGR Calcs	3.74%	5.85%

	H	I	J	K	L	M	N	O
1					Based on 2016-2018 Book Value			
2					Water			
3	FY Beginning 2019				Year	FY Beginning 2017	FY Beginning 2018	FY Beginning 2019
4	1,849,599				Cumulative units outstanding	100,000	763,892.92	1,392,484
5	$ 10,000,000				Target Pool	$ 10,000,000	$ 10,000,000	$ 10,000,000
6	48.99%				% Electric	40.86%	47.23%	48.99%
7	51.01%				% Water	59.14%	52.77%	51.01%
8								
9					Value based on book value			
10	$ 11.64				Performance Unit Value	$ 14.06	$ 15.06	$ 15.91
11	1,164,450,000				Book Value	1,405,615,000	1,506,267,000	1,590,859,000
12	100,000,000				Total Performance Units	100,000,000	100,000,000	100,000,000
13	91,472,000				City Contribution	25,467,000	23,552,000	25,148,000
14	32,015,200			0.00000035%	Distribution based on City Contribution	8,913,450	8,243,200	8,801,800
15	$ 0.32				Distribution per share	$ 0.09	$ 0.08	$ 0.09
16								
17	$ 0.32				Accrued Distributions per share	$ 0.09	$ 0.08	$ 0.09
18	2.75%				Yield per share	0.63%	0.55%	0.55%
19	$ 11.64				Share Value	$ 14.06	$ 15.06	$ 15.91
20								
21					Example of a $10,000 annual grants			
22	$ 4,899				Initial award	$ 5,914	$ 5,277	$ 5,101
23	421				Shares granted	421	350	321
24	1,262				Total Holdings	421	771	1,092
25	$ 404				Annual cash distributions	$ 37	$ 64	$ 96
26	14,697				Value of holdings	5,914	11,614	17,368
27	$ 13,708				Total Value of Grants	$ 5,914	$ 11,191	$ 16,292
28	$ 15,525				Total Value Received	$ 5,951	$ 11,715	$ 17,565
29	.							
30	13.26%				Total Pre-tax Return	0.63%	4.69%	7.81%
31	4.24%				Annual CAGR Calcs	0.63%	2.32%	2.54%

pillsbury

Tax ID No. 94-1311126

Lawsikia J. Hodges
Deputy General Counsel
JEA
21 West Church Street (T-16)
Jacksonville, FL 32202

May 13, 2019
Invoice No. 8266699
Client No. 047455
Matter No. 0000002
Stephen B. Amdur
(212) 858-1000

For Professional Services Rendered and Disbursements Incurred through April 30, 2019

Matter Name	Services	Disbursements	Balance Due
Employee Benefits Matters	$ 8,937.00	$ 0.00	$ 8,937.00
Total This Invoice:	**$ 8,937.00**	**$ 0.00**	**$ 8,937.00**

Current charges only. Time and disbursements not yet recorded will be included in future invoices.

Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street - New York, NY - 10019
Due Upon Receipt
Remittance Address
P.O. Box 30769 . New York, NY 10087-0769

PENGAD 800-631-6989
EXHIBIT
5
6/17/20 Vinyard

Employee Benefits Matters

For Professional Services Rendered and Disbursements Incurred Through April 30, 2019

Timekeeper	Date	Service	Hours
S. B. Amdur	04/08/19	Calls with team; review of background materials.	0.30
S. B. Amdur	04/09/19	Discussions with team; background review.	0.90
P. J. Hunt	04/09/19	Confer with S. Amdur and J. Lutrin re: long-term incentive plan; review precedent plans and background on JEA to prepare for same.	1.20
J. Lutrin	04/09/19	Discussions with S. Amdur and P. Hunt regarding LTIP; emails regarding same.	0.90
S. B. Amdur	04/10/19	Coordination with team; background matters.	0.20
K. Kasny	04/10/19	Research and obtain materials on incentive compensation or bonus arrangements maintained by "public authorities" for J. Lutrin.	2.00
J. Lutrin	04/10/19	Review of LTIP proposal; emails regarding same.	0.20
S. B. Amdur	04/11/19	Coordination and calls with client and team; review of draft model.	0.50
P. J. Hunt	04/11/19	Review additional email correspondence and spreadsheet analyses for proposed long-term incentive plan, and confer with J. Lutrin re: same.	1.00
J. Lutrin	04/11/19	Discussions with P. Hunt regarding LTIP proposal; drafting questions regarding same; emails regarding same.	1.20
J. Lutrin	04/22/19	Emails regarding retention bonus arrangements.	0.20
		Total Hours:	8.60
		Total Fees:	**$ 8,937.00**

Timekeeper Summary

Timekeeper	Hours
S. B. Amdur	1.90
P. J. Hunt	2.20
K. Kasny	2.00
J. Lutrin	2.50
Total:	**8.60**

Total Due For Matter 0000002: **$ 8,937.00**

From: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Sent: Thursday, April 11, 2019 4:49 PM EDT
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: RE: LTIP

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne,

I understand per a conversation with Aaron that we should hold off on this call for now. I will circle up as I learn more and would ask you to do the same.

Thanks,

Steve

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Thursday, April 11, 2019 11:47 AM
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Subject: RE: LTIP

Yes, let's say 11am.

From: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Sent: Wednesday, April 10, 2019 7:23 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Hunt, Peter J. <peter.hunt@pillsburylaw.com>; Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Subject: RE: LTIP

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne – would 1030 or 11 AM on Friday morning work for you? Please let us know. Looking forward to speaking further.

Best,

Steve

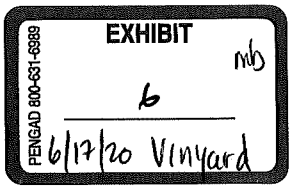
From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Wednesday, April 10, 2019 10:05 AM
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Subject: RE: LTIP

Thank you

From: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Sent: Wednesday, April 10, 2019 10:04 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: LTIP

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Of course – let me circle up with Jessica and Peter and we'll offer a few times. Looking forward to speaking further.



From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Wednesday, April 10, 2019 10:03 AM
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Cc: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: LTIP

Thanks Steve. When you've had a chance to take a preliminary look, could you and I schedule a call? I am available much of

tomorrow and Friday.
Thanks,
Lynne

From: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Sent: Wednesday, April 10, 2019 9:50 AM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Cc: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: RE: LTIP

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Thanks – we'll review

Stephen B. Amdur | Partner
Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway | New York, NY 10036-4039
t +1.212.858.1135 | f +1.212.881.9069 | m +1.203.676.8531
stephen.amdur@pillsburylaw.com | website bio

Pillsbury's New York office is on the move! Effective April 15, 2019, our new address will be:
31 West 52nd Street
New York, NY 10019
Phone numbers and email addresses will remain the same.

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, April 10, 2019 9:37 AM
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Cc: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: FW: LTIP

From: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>
Sent: Wednesday, April 10, 2019 4:35 AM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: LTIP

FYI - for you conversations w pilsbury.

Aaron F. Zahn
JEA
Managing Director & Chief Executive Officer
zahnaf@jea.com
(312) 286-1040

Begin forwarded message:

> **From:** "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>
> **Date:** April 10, 2019 at 3:47:15 AM EDT
> **To:** "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>
> **Subject: LTIP**
>
> Per our conversation, here is the spreadsheet I have been playing around with.
>
> Based on the latest due diligence, I think we are trending toward a structure closer to the first tab than the second.
>
> Thanks,
> Ryan
>
> Ryan Wannemacher
> Chief Financial Officer
> Direct: (904) 665-7223

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Saturday, April 13, 2019 12:20 PM EDT
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Nixon

Thank you

Sent from my iPhone

On Apr 13, 2019, at 7:24 AM, Wannemacher, Ryan F. - Chief Financial Officer wannrf@jea.com> wrote:

> I spoke to Barry yesterday and he was going to figure out who would be the best person on their end.
>
> If he doesn't get back to me by early next week I will ping him again.
>
> Thanks
> Ryan
>
> Get Outlook for iOS

On Sat, Apr 13, 2019 at 7:21 AM -0400, "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com> wrote:

> Gents
>
> Good day yesterday. Nice work.
>
> One of you mentioned that you would do an email introduction for me with the Nixon attorney (can't remember which one of you). Just a reminder.
>
> Have a great weekend.
>
> Herschel

PENGAD 800-631-6989
EXHIBIT
7
6/17/20 Vinyard

From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Tuesday, April 16, 2019 12:47 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; brothchild@nixonpeabody.com <brothchild@nixonpeabody.com>; Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: Intro call

Barry,

Per our conversation on the LTIP, Herschel and Lynne are cc'ed above.

Thanks,
Ryan

Ryan Wannemacher | Chief Financial Officer | **JEA** | T: 904 665 7223 | C: 214 770 4366 | wannrf@jea.com

PENGAD 800-631-6989
EXHIBIT
8 MB
6/17/20 Vinyard

#10

FEDERAL I.D. NO. 16-0764720

NIXON PEABODY
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Tower 46
55 West 46th Street
New York, NY 10036
TEL: (212) 940-3000
FAX: (212) 940-3111

JEA
21 West Church Street
14 FL.
Jacksonville, FL 32202

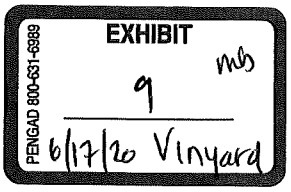
August 28, 2019
Invoice No. 10114853
Account: 059985
Terms: Due Upon Receipt

FOR PROFESSIONAL SERVICES RENDERED through July 31, 2019, including:

MATTER NO.: 000001 **GENERAL – EMPLOYEE INCENTIVE PLANS**

For Professional Fees:

Date	Timekeeper	Hours	Description of Services
03/22/19	B. Rothchild	1.50	Discuss question requiring research on Florida statutes with J. Orfano (JEA) and with E. Columbo; review information regarding the question to be researched.
03/22/19	E. Columbo	1.30	Call with J Orfano and B Rothchild regarding payment of incentive based bonuses; Confer with D Deaton and B Rothchild; discuss research assignment with O. Mao.
03/24/19	B. Rothchild	1.50	Review research regarding Florida law question and communicate with E. Columbo and D. Deaton regarding question.
03/24/19	E. Columbo	2.00	Research regarding payment of incentive driven bonuses for employees. Confer with B Rothchild.
03/26/19	E. Columbo	1.50	Research on payment of bonuses under Florida law.
03/27/19	E. Columbo	2.00	Call with B Rothchild, R Wannemacher and J Orfano to discuss employee bonus programs. Research on Florida law matters.
03/28/19	B. Rothchild	1.30	Review Florida law issues regarding performance incentive plan for employees.
03/28/19	D. Deaton	1.10	Telephone calls with E. Columbo and B. Rothchild.
03/28/19	E. Columbo	1.50	Review State v JEA; call with D Deaton; review charter and code of ethics.
03/29/19	B. Rothchild	1.60	Discuss Florida law issues regarding performance incentive plan for employees with E. Columbo, D. Deaton and A. McMahon and review related documentation.
03/29/19	D. Deaton	1.30	Telephone call with E. Columbo and A. McMahon. Telephone call with B. Rothchild.



Date	Timekeeper	Hours	Description of Services
			to discuss incentive plans.
04/22/19	T. McCord	1.00	Prepare for and conference with H. Vineyard and R. Wannemacher. Provide information regarding potential retention incentive compensation alternatives.
05/12/19	B. Rothchild	0.40	Communicate with E. Columbo by providing notes regarding key points in memo being drafted for long term incentive plan.
05/13/19	B. Rothchild	2.00	Review City of Jacksonville statutes and related information regarding memo with respect to long-term incentive plan; communicate with E. Columbo regarding memo.
05/13/19	D. Deaton	0.50	Telephone call with E. Columbo.
05/13/19	E. Columbo	2.00	Review and revise memo in long-term incentive compensation program. Call with D. Deaton. Conference with B. Rothchild.
05/14/19	E. Columbo	3.50	Review and revise memo for long-term incentive compensation plan; call with B Rothchild; call with D Deaton.
05/15/19	B. Rothchild	2.20	Review draft long-term incentive plan memo, communicate with E. Columbo regarding general comments, review research materials, mark changes to memo.
05/15/19	D. Deaton	0.80	Conference calls with E. Columbo and B. Rothchild regarding memorandum.
05/15/19	E. Columbo	3.00	Review and revise memo on incentive bonus programs.
05/16/19	B. Rothchild	1.50	Review and provide comments to long-term employee incentive plan memo.
05/16/19	D. Deaton	5.40	Review and comment on memorandum. Telephone calls with JEA and B. Rothchild. Telephone call with R. Wannemacher. Telephone call with E. Columbo.
05/16/19	E. Columbo	3.00	Review and further revise memo on employee incentive plans under Florida law.
05/17/19	B. Rothchild	1.30	Review and provide comments to long-term incentive program memo.
05/17/19	D. Song	5.70	Review and format citations and footnotes in the research memo.
05/18/19	B. Rothchild	1.00	Review and provide comments to long-term incentive plan memo.
05/19/19	D. Deaton	1.20	Review of memorandum.
05/19/19	E. Columbo	1.50	Review comments to memo; emails with D Deaton and B Rothchild; review sources for memo.
05/20/19	B. Rothchild	0.60	Review and provide comments and sign-off on long-term incentive plan memo.
05/20/19	D. Deaton	0.90	Telephone call with E. Columbo and B. Rothchild.
05/20/19	E. Columbo	1.50	Revise memo; review comments from proofreader.
06/30/19	D. Deaton	1.40	Telephone call with E. Columbo and B. Rothchild. Telephone call with E. Columbo.

******Nixon Peabody LLP Remittance Information ******
FEDERAL I.D. NO. 16-0764720

Client: 059985	JEA 21 West Church Street 14 FL. Jacksonville, FL 32202
Matter:	000001
Invoice Number:	10114853
Date of Invoice:	08/28/19
Terms:	Due Upon Receipt
Invoice Amount:	$ 54,800.00

Nixon Peabody LLP is pleased to offer three payment options: check, electronic funds transfer, and credit card. **To ensure prompt application of your payment, please reference the invoice number(s) with your payment by returning this page with your check, or by including the invoice number in the addenda information of your electronic funds transfer.** Questions may be directed to 617-345-1100 or to ClientPayments@nixonpeabody.com. Thank you.

Check - mail to:

NIXON PEABODY LLP
PO BOX 28012
NEW YORK, NY 10087-8012

Invoice(s)
Paid: _____

Electronic Payment:
(Wire/ACH)

Bank Name:	JPMorgan Chase Bank 1 South Clinton Ave. Rochester, NY 14604
ABA Routing #:	[redacted]
Account Name:	Nixon Peabody LLP
Account #:	[redacted]
SWIFT Code:	
Invoice(s) Paid:	*Please include in electronic payment's addenda information.*

Credit Card:

www.nixonpeabody.com/payment
Phone: (617) 345-1100

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Monday, April 22, 2019 10:39 AM EDT
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Subject: nixon

Please let me know when you have a few minutes to discuss the Nixon call.

Thank you.

PENGAD 800-631-6989
EXHIBIT
MS
10
6/17/20 Vinyard

Subject: LTIP call
Location: dial 1-877-870-5858 and use passcode 116324

Start: Monday, April 22, 2019 4:30 PM EDT
End: Monday, April 22, 2019 5:15 PM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Rothchild, Barry (NYC)
Required Attendees: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; Columbo, Elizabeth <EColumbo@nixonpeabody.com>; McCord, Thomas <TMCCORD@nixonpeabody.com>; Rosenthal, David <drosenthal@nixonpeabody.com>

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Please dial 1-877-870-5858 and use passcode 116324 at 4:30 on Monday (4/22).

Thanks,

Barry

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EXHIBIT
mb
11
6/17/20 Vinyard

From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Wednesday, April 24, 2019 5:09 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
CC: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>; Dykes, Melissa H. - President/COO <dykemh@jea.com>
Subject: Fwd: Updated Committee Meeting Materials
Attachment(s): "JEA Comp Committee_Draft_4.22.19 v2.pdf"

Herschel,

FYI...please see attached.

Thanks
Ryan

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---------- Forwarded message ----------
From: "**Maillis, Patricia L. - Director, Employee Services**" <mailpl@jea.com>
Date: Wed, Apr 24, 2019 at 8:33 AM -0400
Subject: FW: Updated Committee Meeting Materials
To: "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>, "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>
Cc: "Strackbine, Scott I. - Compensation Specialist" <strasi@jea.com>, "Dykes, Melissa H. - President/COO" <dykemh@jea.com>

Aaron and Ryan,

Attached is the draft Comp Committee presentation regarding the compensation study and recommendations from Willis Towers Watson. Once you have had an opportunity to review, we can schedule a brief conference call with WTW should there be any modifications needed and discuss Committee prep.

Pat

From: Wathen, David (Atlanta) <david.wathen@willistowerswatson.com>
Sent: Monday, April 22, 2019 4:58 PM
To: Hiers, Angelia R. - VP & Chief Human Resources Officer <hierar@jea.com>; Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>; Strackbine, Scott I. - Compensation Specialist <strasi@jea.com>
Cc: Deeb, Andrea (Atlanta) <andrea.deeb@willistowerswatson.com>; Hwang, Paul (Atlanta) <paul.hwang@willistowerswatson.com>; Meng, Patrick (Atlanta) <Patrick.Meng@willistowerswatson.com>
Subject: Updated Committee Meeting Materials

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Angie, Pat and Scott:

Attached is the updated committee meeting materials. We incorporated all of the edits we discussed on our last call. Please review and let us know if there are any additional changes.

Best regards,

EXHIBIT
12 mb
6/17/20 Vinyard
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David Wathen

Senior Director, Rewards

Willis Towers Watson

5 Concourse Parkway *(Please note new address and work phone number)*

Atlanta, GA 30328

Work: 678.684.0751

Cell: 404.285.9848

Email: david.wathen@willistowerswatson.com

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Subject: Conference Call w/Nixon Peabody
Location: Dial-in Instructions Below

Start: Friday, May 03, 2019 3:30 PM EDT
End: Friday, May 03, 2019 4:30 PM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Orfano, Joseph E. - Treasurer
Required Attendees: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>; Jake Payne <jpayne@rtlaw.com>; Jacquelyn.Watts@hklaw.com <Jacquelyn.Watts@hklaw.com>; Patrick.Reagin@hklaw.com <Patrick.Reagin@hklaw.com>; Columbo, Elizabeth <EColumbo@nixonpeabody.com>; Rothchild, Barry (NYC <brothchild@nixonpeabody.com>; Deaton, Daniel <ddeaton@nixonpeabody.com>; Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>

Dial-in Number: (877) 870-5858
Passcode: 116324

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MD
13
6/17/20 Vinyard
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From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Friday, May 03, 2019 4:01 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: No memo

Me too.

I will call Barry afterwards.

Thanks
Ryan

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On Fri, May 3, 2019 at 3:33 PM -0400, "Vinyard, Herschel T. - Chief Administrative Officer"<vinyht@jea.com> wrote:

| This must be a different call than I expected.

From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Thursday, May 09, 2019 9:26 AM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Nixon

I have not spoken to her but I know she was at the LPPC meeting the last couple days with Joe Orfano.

I will reach out again today.

Thanks
Ryan

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On Thu, May 9, 2019 at 9:24 AM -0400, "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com> wrote:

> We left a voicemail with the Nixon attorney on Tuesday; giving her numbers for you and me. Have you heard from her?
>
> Herschel

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14
6/17/20 Vinyard

From: Columbo, Elizabeth <EColumbo@nixonpeabody.com>
Sent: Friday, May 10, 2019 7:10 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Voicemail

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Good evening,

I received your voicemail and we are working on completing the memo and will have it to you early next week.

Liz

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6/17/20 Vinyard

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Monday, May 13, 2019 9:31 AM EDT
To: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: phone call

I can call you at 3:30.

On May 13, 2019, at 9:13 AM, Amdur, Stephen B. <stephen.amdur@pillsburylaw.com> wrote:

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It does. 3 or 330?

On May 13, 2019, at 9:00 AM, Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com> wrote:

Unfortunately, no. I am free all afternoon after 2:45. Does that work for you?

From: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>
Sent: Monday, May 13, 2019 8:52 AM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: phone call

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Of course. Would 1130 am ET work for you?

On May 13, 2019, at 8:19 AM, Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com> wrote:

Steve

Do you have some time today or tomorrow for a quick chat?

Regards,

Herschel Vinyard

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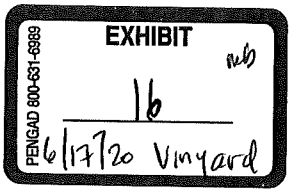
Stephen B. Amdur | Partner
Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street | New York, NY 10019-6131
t +1.212.858.1135 | f +1.212.881.9069 | m +1.203.676.8531
stephen.amdur@pillsburylaw.com | website bio

Pillsbury's New York office has moved! Effective April 15, 2019, our new address is:
31 West 52nd Street
New York, NY 10019-6131
Phone numbers and email addresses will remain the same.



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From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, May 15, 2019 10:15 AM EDT
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
CC: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: Beth

Ryan

Have you heard from Beth after we left her a message on Monday? If not, I think we need to find a law firm that values JEA.

HTV

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EXHIBIT
17
6/17/20 Vinyard

From: Columbo, Elizabeth <EColumbo@nixonpeabody.com>
Sent: Monday, May 20, 2019 11:19 AM EDT
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
CC: Deaton, Daniel <ddeaton@nixonpeabody.com>; Rothchild, Barry (NYC) <brothchild@nixonpeabody.com>
Subject: JEA Memorandum Regarding Employee Incentive Programs (Final dated May 20, 2019) 4820-9203-1639 v.2
Attachment(s): "JEA Memorandum Regarding Employee Incentive Programs (May 20, 2019) 4820-9203-1639 v.2.docx"

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Ryan and Herschel,

Please see attached a draft of the memorandum on the long-term employee incentive program. We are still in process of having it proofread and citations checked which is why it is marked as a draft.

Please let us know if you have any questions.

Thanks,

Liz

Elizabeth M. Columbo
Partner
ecolumbo@nixonpeabody.com
T 212-940-3183 | C 917-886-7284 | F 866-947-2264
Nixon Peabody LLP | Tower 46 | 55 West 46th Street | New York, NY 10036-4120
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18 mb
6/17/20 Vinyard

MEMORANDUM

Date: May 20, 2019

To: JEA

From: Elizabeth Columbo, Barry Rothchild and Daniel Deaton

Subject: Long-Term Employee Incentive Program

ISSUE

You have asked us to analyze whether JEA may create or establish a long-term employee incentive program (the "Program") to pay a bonus or additional amounts to the employees of JEA over a period of one-to-three years if JEA were to achieve specific and mechanical financial metrics (such as an increase in the net asset value of JEA or an increase in the amount transferred annually to the City of Jacksonville). In addition, you have asked us, if JEA could create the Program, whether JEA could pay such additional amounts to the employees for such program in the form of a JEA bond that JEA would issue directly to the employee.

BRIEF ANSWER

We do not believe that the Program would be able to clear legal hurdles under Florida law. While JEA is authorized to adopt a program to award employees bonuses, and has done so as recently as fiscal year 2018, the specific features of the Program present challenges past JEA bonus programs do not. Our main concern is that JEA would be presented with an unresolvable dilemma between two legal restraints. First, JEA's authorization to maintain an employee bonus program must be extended to all employees. Second, employees of JEA could influence financial and operating decisions of JEA could not participate in the Program as we read the conflicts of interest provisions of Florida law because they could impact the financial metrics being measured under the Program and would derive a direct financial benefit if the financial metrics were reached—which is the ostensible purpose of the Program. In addition, we have concerns regarding whether JEA would be able to establish a strong legislative record regarding the public purpose of the Program that could allow a court to conclude that the Program is in furtherance of a legitimate public purpose due to the narrowly focused objectives of the Program. While our analysis involved a general review of JEA's charter, the City's Charter, local and state laws and other available

sources, the attorneys involved in the preparation of this memorandum are not licensed to practice law in the State of Florida (the "State") nor do we have or maintain an office in the State and if JEA would like to move forward in developing such a program, we believe it would be prudent for JEA to retain Florida counsel to provide additional analysis or further determinations regarding the issues we have raised in this memorandum.

DISCUSSION AND ANALYSIS

JEA is a municipal utility owned by the City of Jacksonville, Florida (the "City"). JEA was established as a body politic and corporate and was renamed as the current JEA through Article 21[1] of the City's Charter[2] ("City's Charter"). Article 21 of the City's Charter serves as the charter for JEA ("JEA's Charter," together with the City's Charter, the "Charters"). Although it is the intent of the article "to grant to JEA full power and right to exercise all authority necessary for the effective operation and conduct of JEA," JEA's power is nevertheless limited in accordance with City, State, and Federal laws[3,4].

JEA's Authority to Create Incentive Program Plans or Bonus Schemes

JEA's Charter was created for "the specific purpose . . . to repose in JEA all powers with respect to electric, water, sewer, natural gas and such other utilities which are now, in the future could be, or could have been but for this article, exercised by the City of Jacksonville[5]." Acting as an extension of the City, JEA's power is limited in the same way that the City's would be. Accordingly, we must first look to the City's Charter and ordinance code of the City to determine what powers, if any, the City and therefore JEA has to create an employee incentive program.

While the City's Charter does not specifically authorize the creation of an employee incentive program, the City's Municipal Ordinance Code ("Code") does. The City's Municipal Ordinance Code Title V, Chapter 116, Part 11, (the "Incentive Program Ordinance") provides for the creation of "employee incentive programs, solely for the purpose of encouraging excellence in

[1] *See* Chapter 92-341, Special Acts, Laws of Florida; Establishing the JEA under the City's charter.
[2] *See* Laws of Fla. Ch. 78-538, §1.
[3] *See* City of Jacksonville, Florida, Municipal Code §21.05.
[4] This memorandum does not address issues of Federal law that are applicable to employee incentive programs.
[5] *See Id.* at 21.01.

public service[6]." This section 116.1101, which appears under the Employees and Employee Benefits section of the Code, authorizes the establishment of employee incentive programs in accordance with the following conditions:

> (a) Such programs may include recognition of performance or achievement in the form of cash, plaques, trophies, clothing, food and nonalcoholic beverage, and other forms of tangible personal property.
> (b) Such programs shall be in accordance with applicable pay plan or collective bargaining agreement, or both; and
> (c) Such programs shall be subject to prior approval of (1) the applicable department or agency head and (2) the Mayor or, as to the Council and its staff, the Council President[7].

Because the City's power is self-executing under the Florida Constitution, the Incentive Program Ordinance's authorization of the creation of employee incentive programs is clearly within the power of the City, and by extension, JEA. To satisfy the requirement of section 116.1101(c), an employee incentive program of JEA would be subject to the prior approval of the JEA Managing Director/CEO and the Mayor.[8]

While JEA is authorized under the Code to create employee incentive programs and expressly authorized to create employee suggestion plans[9], the terms of any such program would be subject to applicable Florida law. Section 215.425, Florida Statutes, addresses the payment of extra compensation and bonuses for public employees. While section 215.425(1) generally prohibits the payment of any extra compensation to public employees after service has been rendered or the contract made, section 215.425(3) (the "Bonus Statute") provides clear guidelines

---

[6] *See* City of Jacksonville, Florida, Municipal Code §116.1101; regulations granting authority and governing the establishment of an employee incentive program.
[7] *See Id.*
[8] In addition to authorizing employee incentive programs, the City's Municipal Ordinance Code Title V, Chapter 116, Part 10 (the "Employee Suggestion Plan Ordinance") expressly provides for the creation by the Mayor of "a program of meritorious awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing City expenditures or improving operations or who, by their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in the operations of City government." The Employee Suggestion Plan Ordinance also specifies that all suggestions meriting an award shall be classified as having tangible or intangible value and that no award shall exceed $1,000, except that the Council may approve a larger award in exceptional cases. We have not addressed the Employee Suggestion Plan Ordinance because it would not provide a legal basis for the implementation of the Program.
[9] Section Fla. Stat. §116.1005 contains express authorization for JEA to create an employee suggestion plan for meritorious awards to employees of JEA who (a) propose procedures or ideas which are adopted and which will result in eliminating or reducing JEA's expenditures or improving JEA's operations or (b) by their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in the operations of JEA.

for implementing a "bonus scheme[10]" for public agencies. The current version of the Bonus Statute, last amended in 2011, provides that:

> (3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:
> (a) Base the award of a bonus on work performance;
> (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
> (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
> (d) Consider all employees for the bonus[11].

As described above, under section 215.425(3), JEA clearly has the authority under Florida law to create an incentive program or bonus scheme for its employees provided that (1) all employees are considered for a bonus, (2) the award of the bonus is based on work performance and (3) the public agency describes the performance standards and evaluation process for which a bonus is awarded. As provided in section 116.1101 of the Code of the City, the award can take the form of "cash, plaques, trophies, clothing, food and nonalcoholic beverage, and other forms of tangible personal property." Stocks and bonds are considered intangible personal property under Florida law and so JEA would not be able to issue its revenue bonds to the employee as payment of such award.[12]

Analysis of Application of Conflict of Interest Statutes to Program

Section 112.311(5) of the Florida Code of Ethics for Public Officers and Employees (ss. 112.311-112.3261, Florida Statutes) (the "State Ethics Code") provides as follows:

> It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.

Similarly, the City Charter in providing for the enactment of an ethics code that would apply to officers and employees of the City and its independent agencies, including JEA, reiterated

---

[10] *See* Fla. Stat. §215.425(1) and (3); Section 3 was included through amendment in 2011 specifically to allow public agencies to administer bonus schemes for public employees, notwithstanding section 1 of the same.
[11] *See* Fla. Stat. §215.425(3)(2011).
[12] *See Fla. Stat.* §192.001(11)(b).

that "[t]he proper operation of responsible government requires that public officials and employees be independent, impartial, and responsible to the people; that government decisions and policy be made in the best interests of the people, the community and the government; that public office not be used for personal gain, and that the public have confidence in the integrity of its government"[13] and the City's ethics code expressly makes the State Ethics Code applicable to officers and employees of the City and to JEA.[14]

To further reduce the likelihood or appearance of conflicts of interest, Section 112.311(3)(a), Florida Statutes, provides that "[n]o county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss" (emphasis added). Similarly, Section 112.311(4), Florida Statutes, provides that "[n]o appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter."[15]

These state law provisions governing conflicts of interest would effectively prohibit any JEA employee from participating[16] in any business transaction from which the JEA employee would personally benefit. To us, this strikes at the heart of the Program. The very nature of the Program is that employees of JEA will be incentivized to make financial and operating decisions that will increase specific financial goals. If implemented, the Program would vest any employee involved in or in a position to influence financial and operating decisions that could increase those financial goals with a concrete financial interest in the outcome of those decisions. This would make it very difficult for such an employee to demonstrate that their actions are in the public interest and not based on their own private interest. Past JEA bonus programs have not operated like this. Instead, the JEA Board retained the authority to award bonuses based on the totality of

[13] *See* Charter of the City of Jacksonville, Part A §1.201.
[14] *See* City of Jacksonville, Florida, Municipal Code §602.1203.
[15] The City's ethics code may also create some concerns in that it requires employees to perform their responsibilities "regardless of personal considerations."
[16] The term "participate" is defined in section 112.3143(4)(c), Florida Statutes, to mean "any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction."

numerous factors, many of which were not quantitative at all[17]. This creates space between the employee's compensation and the financial or operating decision. Under the Program, however, there would be no such space—in fact, that would be the entire purpose of the Program.

Tension between the Program and JEA's Public Purpose

In addition to our concerns above, we are also concerned that a court could call into question whether the narrow focus of the Program on a few financial metrics is in reasonable furtherance of JEA's public purpose. The authority of municipal governments to issue bonds and to make expenditures of public funds are required to be exercised in furtherance of a public purpose and the concept of public purpose in consistently used by courts in Florida and across the country to evaluate whether a particular expenditure is a "legitimate exercise of the people's power surrendered to the state".[18] Most of the case law interpreting what constitutes a public purpose in Florida involves the validation of debt issued by a government entity and an examination of whether the state or local government is lending its credit to a private party in violation of Article VII, section 10 of the Florida state constitution.[19] The courts in Florida have generally held that if a local government issues bonds where a pledge of public credit or taxing power is involved for a project that includes a private component, the bonds are validly issued only if the bond issuance serves a "paramount public purpose" and any benefits to a private party are merely incidental.[20] If it is a revenue bond financing and there is no lending of credit the courts have often found that it is enough to show only that an ordinary public purpose is served by the issuance of such bonds[21], however this rule has not always been followed by the courts.[22] The lack of a specific definition of public purpose and inconsistent analysis by the courts creates uncertainty as to whether the

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[17] JEA's Pay for Performance Program tracks five key metrics: (1) Customer Satisfaction; (2) Safety; (3) Cost per unit of Electricity delivered (Kwh); (4) Cost per unit of Water delivered (Kgal); and (5) Cost per unit of Wastewater collected (Kgal). See JEA Board Meeting Agenda Item Summary, October 24, 2018.

[18] See Douglas J. Sale, Free Enterprise vs. Economic Incentives: The Evolution of the "Public Purpose" Fulcrum, Stetson Law Review, Vol. 46 482, at 483 (2017)

[19] See Douglas J. Sale, Free Enterprise vs. Economic Incentives: The Evolution of the "Public Purpose" Fulcrum, Stetson Law Review, Vol. 46 482, at 483 (2017)

[20] See *Poe v. Hillsborough County*, 695 So. 2d, 672, 675 (Fla. 1997) (holding that "a bond issue does not violate [A]rticle VII, [s]ection 10 so long as the project serves a 'paramount public purpose,' and any benefits to private parties from the project are incidental").

[21] See Douglas J. Sale, Free Enterprise vs. Economic Incentives: The Evolution of the "Public Purpose" Fulcrum, Stetson Law Review, Vol. 46 482, at 489 (2017).

[22] See Douglas J. Sale, Free Enterprise vs. Economic Incentives: The Evolution of the "Public Purpose" Fulcrum, Stetson Law Review, Vol. 46 482, at 490 (2017).

establishment of the Program and the issue of bonds to provide awards under such program would survive a legal challenge. However, the courts are clear that if there are specific findings "by the legislature, the Board of County Commissioners, and the Authority that the project is related to the health, safety, morals, and welfare of the residents" then

> What constitutes a public purpose is, in the first instance, a question for the legislature to determine, and its opinion should be given great weight. A legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature[...] and the issuance of the Authority's revenue bonds is adequately supported by a proper public purpose.[23]

In making such a legislative declaration, one commentator itemized the list of elements that a governing body should consider in any legislative record to establish that an action is in furtherance of a "public purpose" so that a subsequent review by a court would make it difficult for the court to overturn the findings of the legislative body:

- A concise statement of the problem;
- How the problem is affecting the public;
- Identification of the factors causing or contributing to the problem;
- Which factors the proposal will influence, including the ones that will not or cannot be affected;
- How the proposal will operate to influence the factors that will be affected; that is, the mechanics of the nexus between action and purpose;
- What the alternatives are; what has been tried that didn't work or why this proposal is being suggested over alternatives;
- How the success of the proposed project will be measured and when;
- How the public will be protected if the project fails and rewarded if it succeeds; and
- What the city's risks and upsides are, what the private party's risks and upside are, and a comparison of the two.[24]

In connection with any approval of the Program by JEA's Board, the Board should specifically articulate what problem the Program solves and how the Program is reasonably related to solving that problem. In doing that, if the Board articulates the purposes of the Program solely in terms of the financial goals of JEA, then it could expose JEA to a court that questions whether that purpose is consistent with JEA's mission. Conversely, if the Board articulates its purpose as

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[23] Housing Finance Authority of Polk County, 376 So .2d at 1159. (

[24] See Douglas J. Sale, Free Enterprise vs. Economic Incentives: The Evolution of the "Public Purpose" Fulcrum, Stetson Law Review, Vol. 46 482, at 483 (2017).

broad as its traditional mission has been, then a court could question why the Program furthers only a portion of that overall mission.

While we do not suggest that it represents a clear legal prohibition, we do note that the Program would potentially be viewed by a court as in tension with JEA's stated public purpose and role as a municipal utility—particularly since the Program would be unusual for municipal-owned utilities. JEA as a municipal utility is a not-for-profit entity. As JEA's website states, "As your not-for-profit, community-owned utility, JEA is committed to providing you the most reliable service at the lowest possible cost in an environmentally friendly way." This is consistent with how JEA has approached its mission in the past and is consistent with other municipal-owned utilities. Municipal-owned utilities exist for an array of quantitative and qualitative purposes which further the interests of the communities they serve. Low utility rates for low-income members of the community, environmental considerations and securing long-term power sources to support the local economy are as important of purposes as generating net revenues in the short term.

Our observation of the Program is that it furthers a very small set of the overall purposes of JEA while giving at least the perception of being inconsistent with other critical aspects of JEA's stated mission. Since the Program would be unique in nature among municipal-owned utilities (we are not aware of another similar program and particularly in Florida), we believe that the Program's narrow focus on the generation of profits and financial performance to the exclusion of other considerations exposes the Program to a legal challenge that it is not in furtherance of JEA's overall public purpose. As the Supreme Court of Florida stated in *State v. City of Panama City Beach*:

> The constitutional prohibition against pledging public credit to private enterprise, article IX, section 10, Florida Constitution (1885) (now contained in article VII, section 10), was designed "to restrict the activities and functions of the State, county and municipality to that of government and forbid their engaging directly or indirectly in commercial enterprises for profit." This prohibition is closely tied to revenue bonds and to what constitutes a proper public purpose. [25]

We do not consider this to represent a clear legal prohibition but one of those uncertain legal issues that will affect any employee incentive program that awards bonuses solely on the basis of a few narrow financial metrics instead of an after-the-fact assessment by the Board of

[25] *See* State v. City of Panama City Beach, 529 So. 2d 250, 253 (Fla. 1988).

whether employees furthered the full public purposes of JEA. It also could be viewed as a possible interpretative framework a court would use in evaluating any legal analysis of the Program.

CONCLUSION

While JEA is authorized to adopt a program to award employees bonuses, and has done so as recently as fiscal year 2018, the specific features of the Program present challenges past bonus programs do not. Under Florida law, JEA would be legally required to make the Program available to all employees – which would include high-level employees who are involved or influence many if not all significant financial and operating decisions. But, under Florida conflict of interest laws, no employee could participate in the making of a financial decision if he or she has a financial interest in that decision without first disclosing the financial interest and concluding that the financial interest is not in substantial conflict with the duties that employee has to act first and foremost in the public interest. In our view, we believe this creates an unresolvable dilemma where JEA would either have to exclude several employees from the Program thereby rendering the Program in violation of Florida law or several employees would be unable to carry out their responsibilities under Florida conflict of interest laws.

In addition, the narrowly focused goals of the Program could present challenges whether the Program is in furtherance of a legitimate "public purpose." Key to any expenditure or transfer of property by a municipality is whether that expenditure or transfer furthers a "public purpose." To protect it from a court having the ability to fully re-consider whether the Program were in furtherance of a "public purpose," JEA's Board would likely need to have a complete record as to the problem the Program solves and how the Program is reasonably connected to the solution of the problem. To that end, the Program may present challenges if JEA's Board narrowly articulates JEA's purposes – as it exists for an array of public purposes and not just narrow financial ones – or broadly articulates JEA's purposes and cannot explain why the narrow focus of the Program on a few financial goals reasonably furthers those more-broadly articulated goals.

Granat, Sean

From: Datz, Stephen H. - Dir IT Infrastructure & Compliance Assurance <datzsh@jea.com>
Sent: Friday, June 5, 2020 6:00 PM
To: Granat, Sean; Teodorescu, Adina
Subject: RE: Privileged & Confidential - Investigation

Categories: Purple Category, Birthday, Green Category

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

I expect that we'll be in a position to provide multiple updates next week but here's a summary of findings and plans for next week.

1. As of the end of last week up through Monday, we scanned the entire corporate shared file space to identify all instances of files named "JEA Memorandum Regarding Employee Incentive Programs (May 20, 2019) 4820-9203-1639 v2.docx". The scan result did not show any instances of this file on the network file share except under an area that Records Compliance uses to stage evidence (Services\Shared\RecordsRetention\Restricted\Jasen\memo\). As a separate request, the backups going back several months did not show any other instance of this file either which further validates that the file does not exist on the corporate file share outside of the Records Compliance area. An additional search was initiated Tuesday using several key text criteria, i.e. "unresolvable" and "112.311" and "116.1101" and "215.425" and "112.311-112.3261" and "4820-9203-1639.2" and "Title V, Chapter 116, Part 11" to identify a similar or renamed file. This type of search takes more time but we are expecting most of the search process to be complete by the end of next week. The email journal was also examined this week beginning May 1, 2019 to date and the only instance of this file was the original email sent from ecolumbo@nixonpeabody.com on May 20, 2019 to Ryan Wannemacher and Herschel Vinyard. This email was not forwarded. We do not have the ability to identify whether the file was opened and printed.

- KLD collected an image of Ryan and Herschel's computer while they were onsite at JEA back in March. My recommendation would be to examine the computer logs and scan the hard drive image for evidence of this file but this will require that we expand the scope of people involved. The other option is to have one of our internal Information Security Managers examine Ryan's computer and once we receive Herschel's computer, we can do the same. Let me know which option you prefer.

2. GroupMe content (GroupMe - SLT.7z) has been uploaded to the COJ File Share. I'll send a separate email with the password.

3. We are planning on completing an email Journal search early next week using October 1, 2018 - December 31, 2019 for files "FY2020 LTI Estimate.xlxs", "PUP Specifications.pdf" and "Orfano Exh. 9.pdf". We are also planning on initiating a scan of the entire corporate shared file space to identify all instances of these files and any metadata associated.

I will provide further updates as information becomes available.

EXHIBIT
19 mb
6/17/20 Vinyard
PENGAD 800-631-6989

Stephen Datz

Director, IT Infrastructure and Compliance Assurance
Direct: (904) 665-8872

From: Teodorescu, Adina <Teodores@coj.net>
Sent: Friday, May 29, 2020 3:46 PM
To: Datz, Stephen H. - Dir IT Infrastructure & Compliance Assurance <datzsh@jea.com>
Cc: Granat, Sean <SGranat@coj.net>
Subject: Privileged & Confidential - Investigation
Importance: High

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Steve,

This is another document for which we need the same type of information. Let me know if you want to talk about it.

Thank you for all your help.

Adina
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From: Rhode, Lynne C. (City of Jacksonville)
To: "Roesle-Parde, Kort Parde"
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT
Date: Tuesday, June 4, 2019 3:09:40 PM

I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. I think if we hit those four general brackets, that will suffice. Any specific program can be analyzed later. Does that make sense?

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Tuesday, June 4, 2019 1:46 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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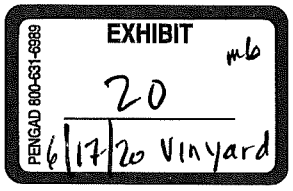
Lynne,

I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you and just received the memo from the other firm.

I will work on this tonight and believe I can answer most of the questions you have posed but any information you can provide me with will really help the end product.



Thank you,
Kort

Sent from my Verizon Motorola Droid
On Jun 4, 2019 1:38 PM, "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com> wrote:

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open any attachments unless you trust the sender and know the content is safe.

Thanks Kort. I think there are some key questions/thoughts that need developing.

(1) You state on p. 4 that statutory language would not permit a bonus based on JEA's overall financial improvement. Why not? This is THE KEY question and needs to be fleshed out. I don't see that restriction anywhere.
(2) Need to include language confirming (if accurate) that an LTIP award of *cash or stock* to any employee is permissible
(3) Need to include language/ analysis about how LTIPs are consistent (if accurate) with municipal purpose, public purpose, and ethical considerations
(4) I don't understand the "consequences" section and think it can come out. We don't need details on specific aspects of the plan at this point. We just need to know if a long-term incentive cash or stock bonus program available to all employees and based on JEA's financial performance is permissible.
(5) Need statement about relationship between FS 215.425 and Ord Chap 116
(6) JEA Charter 21.08 gives JEA broad authority over employment policies – I think JEA's Charter (as the relevant Special Law) must be included in the analysis. JEA employees, by Charter, are expressly subject to City Charter Art 16 & 17 (Civil Service, which excludes management).
(7) While the 943.22 and 1012.02 programs for police and teachers may be examples for a footnote, don't think they (or their restrictions, except potentially to show the lack of such express restrictions on utilities) are really relevant to the analysis
(8) All of the 116 examples can just be a footnote – don't need the details if they are not relevant to the LTIP.
(9) Civil Service and union discussions can be shortened to a note about compliance as long as you don't see any specific conflict with an LTIP (they know that CS and Unions are a factor in any bonus program)

Overall, I think they are looking for a more direct answer (yes, no, or maybe as to each aspect) related to the specific contemplated LTIP program. I think the structure of that analysis (considering at each step constitutional, state, and local laws and ethical factors) would be most useful as – (1) Authority for bonus programs by independent agencies generally, (2) general constraints on such programs, (3) authority for and constraints on the LONG TERM (1-3 years) aspect of the incentive program, (4) authority for and constraints on the availability of the incentive program to MANAGEMENT AND ALL OTHER employees, (5) authority for and constraints on use of FINANCIAL PERFORMANCE as the program's metric , and (6) authority for and constraints on the TYPE of the award (cash, stocks, other).

I don't know if you have any availability to discuss before tomorrow, but if so I am generally available today/tonight and can also be reached on my cell – 904-212-7943 – if not, we can discuss tomorrow at 10.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202

Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Tuesday, June 4, 2019 11:39 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

As discussed here is the rough draft for us to start with. I look forward to speaking with you tomorrow morning. I have attached it both in word and pdf, just in case it helps.

Kort

Tracey Kort Parde
Assistant General Counsel
480 West Duval Street, Suite 480
Jacksonville, Florida 32202

Direct: (904) 255-5079
Fax: (904) 630-1316
E-mail: kparde@coj.net

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Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

Subject: FW: Compensation Meeting
Location: JEA Building

Start: Wednesday, June 05, 2019 10:00 AM EDT
End: Wednesday, June 05, 2019 11:00 AM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Roesle-Parde, Kort Parde
Required Attendees: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>

-----Original Appointment-----
From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Thursday, May 30, 2019 1:01 PM
To: Roesle-Parde, Kort Parde; Rhode, Lynne C. (City of Jacksonville); Gay, Kamaran
Subject: Compensation Meeting
When: Wednesday, June 5, 2019 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: JEA Building

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PENGAD 800-631-6989
EXHIBIT
21
6/17/20 Vinyard

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Thursday, June 06, 2019 11:45 AM EDT
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: comp

I have a meeting at 4 regarding comp. Please do what you can to get me Court's memo in advance. Thank you

PENGAD 800-631-6989
EXHIBIT
22
6/17/20 Vinyard

From:	Rhode, Lynne C. (City of Jacksonville)
To:	"Roesle-Parde, Kort Parde"
Cc:	Granat, Sean; Gay, Kamaran
Subject:	RE: CONFIDENTIAL ATTORNEY WORK PRODUCT
Date:	Monday, June 10, 2019 9:34:06 AM

Assuming Jon / Sean agree and you are okay with this approach -- would you mind please rewording subsection b to summarize what you say below (including a statement that management should not be the sole arbiter of whether JEA achieves financial success but rather should use an independent analyst) and include a statement about how you could not find any ethics opinions or case law on point and recommend that the City Ethics Officer be contacted to further analyze the proposed program?
Then if you could send me a full draft, I will take another look and share any edits/questions.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Monday, June 10, 2019 9:27 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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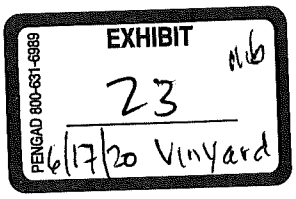

I spoke with Sean Granat and he said that Jon Phillips had some experience, but my research indicates that the City's Ethic Office would have the most knowledge.

I worked this weekend attempting to draft the analysis you seek, i.e. how to design the program to avoid violations of State's misuse of position and unauthorized compensation ethical provisions. The problem is that an analysis is almost impossible without specifics. The potential to avoid violations is both position specific and bonus terms specific. The best I could do is to generalize which positions, i.e. those JEA management involved in choosing the parameters for the LTIP, are most likely to have potential violation of specific ethics standards. The best we could say is that if JEA wished to implement a bonus scheme based solely on financial metrics, ethical constraints on management

would prevent management from being able to be the sole "measure" JEA's finances.

The case law is not on point. I could not find a single decision involving an ethical violation associated with the implementation of a bonus scheme under 215.425.

Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Monday, June 10, 2019 9:00 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Thank you, Kort. I think subsection b needs explanation and recommendation (an analysis of the ethical constraints on management of an LTIP in light of the quoted footnoted language and how the program should be designed to avoid violations). Were you able to find anyone at OGC with expertise here who could help provide that analysis? Are there ethics opinions on point?

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Sunday, June 9, 2019 7:09 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

Attached please find a draft for Section 3 of the Comp Memo. Our server at the City is having issues, and I also wasn't sure I had the latest draft. I

Thanks
Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Friday, June 7, 2019 4:31 PM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Thank you. Let's discuss possibly a less formal approach.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Friday, June 7, 2019 4:27 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: FW: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Here is the Ordinance provision we discussed to seek an advisory opinion from the City.

Kort

From: Rhode, Lynne C. (City of Jacksonville)
To: "Roesle-Parde, Kort Parde"
Cc: Granat, Sean; Gay, Kamaran; Phillips, Jon
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT
Date: Monday, June 10, 2019 10:56:38 AM

Thank you, Kort. I really appreciate your continued hard work on this and realize we have asked you to opine on an area (ethics) that is difficult and somewhat subjective. Sean and Jon, JEA management is really focused on making sure they address any ethical concerns before moving forward with any program. If either of you have time to review the memo today, I would appreciate your comments. I too will review. I need to get Herschel the memo by COB today.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

Building Community

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Monday, June 10, 2019 10:27 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>; Phillips, Jon <JPhillips@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne,

Attached please find the most recent draft memo. Both Jon and Sean are in meetings but I have copied them on this email.

Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Monday, June 10, 2019 9:34 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>

Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Assuming Jon / Sean agree and you are okay with this approach -- would you mind please rewording subsection b to summarize what you say below (including a statement that management should not be the sole arbiter of whether JEA achieves financial success but rather should use an independent analyst) and include a statement about how you could not find any ethics opinions or case law on point and recommend that the City Ethics Officer be contacted to further analyze the proposed program?
Then if you could send me a full draft, I will take another look and share any edits/questions.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

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To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
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Lynne C. Rhode
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Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

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To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: FW: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Here is the Ordinance provision we discussed to seek an advisory opinion from the City.

Kort

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Thursday, June 6, 2019 12:16 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Subject: FW: CONFIDENTIAL ATTORNEY WORK PRODUCT

Sec. 602.940. - Advisory opinions.

Any person within the jurisdiction of the Commission, when in doubt about the applicability or interpretation of any provision within the Commission's jurisdiction to himself or herself in a particular context, may submit in writing the facts of the situation to the Commission with a request for an advisory opinion to establish the standard of public duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to ten days before the Commission convenes a public meeting to consider the request. An advisory opinion shall be rendered by the Commission on a timely basis, and each such opinion shall be numbered, dated and published.

(Ord. 2011-167-E, § 2)

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Tuesday, June 4, 2019 3:10 PM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. I think if we hit those four general brackets, that will suffice. Any specific program can be analyzed later. Does that make sense?

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>

Sent: Tuesday, June 4, 2019 1:46 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Lynne,

I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you and just received the memo from the other firm.

I will work on this tonight and believe I can answer most of the questions you have posed but any information you can provide me with will really help the end product.

Thank you,
Kort

Sent from my Verizon Motorola Droid
On Jun 4, 2019 1:38 PM, "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com> wrote:

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Thanks Kort. I think there are some key questions/thoughts that need developing.

(1) You state on p. 4 that statutory language would not permit a bonus based on JEA's overall financial improvement. Why not? This is THE KEY question and needs to be fleshed out. I don't see that restriction anywhere.
(2) Need to include language confirming (if accurate) that an LTIP award of *cash or stock* to any employee is permissible
(3) Need to include language/ analysis about how LTIPs are consistent (if accurate) with municipal purpose, public purpose, and ethical considerations
(4) I don't understand the "consequences" section and think it can come out. We don't need details on specific aspects of the plan at this point. We just need to know if a long-term incentive cash or stock bonus program available to all employees and based on JEA's financial performance is permissible.
(5) Need statement about relationship between FS 215.425 and Ord Chap 116
(6) JEA Charter 21.08 gives JEA broad authority over employment policies – I think JEA's Charter (as the relevant Special Law) must be included in the analysis. JEA employees, by Charter, are expressly subject to City Charter Art 16 & 17 (Civil Service, which excludes management).
(7) While the 943.22 and 1012.02 programs for police and teachers may be examples for a footnote, don't think they (or their restrictions, except potentially to show the lack of such express restrictions on utilities) are really relevant to the analysis

(8) All of the 116 examples can just be a footnote – don't need the details if they are not relevant to the LTIP.
(9) Civil Service and union discussions can be shortened to a note about compliance as long as you don't see any specific conflict with an LTIP (they know that CS and Unions are a factor in any bonus program)

Overall, I think they are looking for a more direct answer (yes, no, or maybe as to each aspect) related to the specific contemplated LTIP program. I think the structure of that analysis (considering at each step constitutional, state, and local laws and ethical factors) would be most useful as – (1) Authority for bonus programs by independent agencies generally, (2) general constraints on such programs, (3) authority for and constraints on the LONG TERM (1-3 years) aspect of the incentive program, (4) authority for and constraints on the availability of the incentive program to MANAGEMENT AND ALL OTHER employees, (5) authority for and constraints on use of FINANCIAL PERFORMANCE as the program's metric , and (6) authority for and constraints on the TYPE of the award (cash, stocks, other).

I don't know if you have any availability to discuss before tomorrow, but if so I am generally available today/tonight and can also be reached on my cell – 904-212-7943 – if not, we can discuss tomorrow at 10.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Tuesday, June 4, 2019 11:39 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

As discussed here is the rough draft for us to start with. I look forward to speaking with you tomorrow morning. I have attached it both in word and pdf, just in case it helps.

Kort

Tracey Kort Parde
Assistant General Counsel
480 West Duval Street, Suite 480
Jacksonville, Florida 32202

Direct: (904) 255-5079
Fax: (904) 630-1316
E-mail: kparde@coj.net

Disclaimer regarding Uniform Electronic Transactions Act (UETA) (Florida Statutes Section 668.50): If this communication concerns negotiation of a contract or agreement, UETA does not apply to this communication; contract formation in this matter shall occur only with manually-affixed original signatures on original documents.

Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

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released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

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Subject: Meeting OGC/JEA
Location: [Conf Rm - T16 West]

Start: Monday, June 10, 2019 12:00 PM EDT
End: Monday, June 10, 2019 1:00 PM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Vinyard, Herschel T. - Chief Administrative Officer
Required Attendees: Roesle-Parde, Kort Parde <KParde@coj.net>

Lunch will be provided. NM 6/6/19

PENGAD 800-631-6989
EXHIBIT
24 mb
6/17/20 Vinyard

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Thursday, June 13, 2019 10:19 AM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Ltl

Ok. Let me talk with sean. I'll find him.

Sent from my iPhone

> On Jun 13, 2019, at 10:11 AM, Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com> wrote:
>
> Lynne
>
> Aaron insists that he has to have the memo by his meeting on Tuesday. I will call with ideas. In the meeting now.
>
> H

EXHIBIT
25
mb
6/17/20 Vinyard
PENGAD 800-631-6989

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Thursday, June 27, 2019 8:06 PM EDT
To: Maillis, Patricia L. - Director, Employee Services <mailpl@jea.com>
CC: Kendrick, Jonathan A. - Interim VP & HR Officer <kendja@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Legal Opinion re Incentive Plans
Attachment(s): "image002.jpg","image004.jpg","image006.jpg","image008.jpg","image010.jpg"

Let's discuss. Thx.

On Jun 27, 2019, at 8:40 AM, Maillis, Patricia L. - Director, Employee Services mailpl@jea.com> wrote:

Hi Herschel,

Jon and I are preparing the follow-up deliverable for Aaron and the Board on the design of the 2020 plans. Please forward a copy of the opinion or interpretation rendered in May regarding incentive plans.

Thanks.

Pat Maillis
Director, Employee Services
Direct: (904-665-4132)
Cell : (904-703-3453)
<image010.jpg>

<image006.jpg><image004.jpg><image002.jpg>

EXHIBIT
26
6/17/20 Vinyard
PENGAD 800-631-6989

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Monday, July 01, 2019 10:59 AM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: FW: CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED – OGC JEA Compensation Memorandum
Attachment(s): "GC-#1288527-v1-JEA_Comp_Memo_Granat_Edits.docx","image001.jpg"

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

Building Community

From: McDonald, Nancy M - Executive Assistant <mcdonm@jea.com>
Sent: Monday, June 17, 2019 4:14 PM
To: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Cc: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED – OGC JEA Compensation Memorandum

Please see attached memo. Hard copies are on your chair in your office. Lynne is in a meeting but can step out if you need to discuss this with her.

Nancy McDonald
Executive Assistant to
Herschel Vinyard, Chief Administrative Officer
Lynne Rhode, Vice President & Chief Legal Officer
Direct: (904) 665-4290
Mobile: (904) 626-5989
Fax: (904) 665-4238

PENGAD 800-631-6989
EXHIBIT
27
mb
6/17/20 Vinyard

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5100

MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

TO: Lynne Rhode, Vice President & Chief Legal Officer, JEA

FROM: Kort Parde, Assistant General Counsel, OGC
Sean Granat, Deputy General Counsel, OCG

RE: Compensation Plans

DATE: June 17, 2019

ISSUE:

You have asked whether JEA may create or establish a long-term employee incentive program to pay a bonus or additional amounts to the employees of JEA over a period of years.

ANSWER:

Yes, JEA is authorized to adopt a bonus or incentive program so long as the program complies with the requirements of § 215.425, Florida Statutes. The program must (1) be based on work performance; (2) have pre-determined performance standards and evaluation processes; (3) provide notice of the program to all JEA employees prior its commencement; and (4) be available to all JEA employees. In addition to the requirements of §215.425, Florida Statutes, any bonus or incentive program JEA adopts should provide for objective metrics measured by impartial analysts and not potential program award recipients. Also, the program would have to comply with the specific constraints itemized in Part III of this memo, which include ethics laws, Civil Service Rules, and collective bargaining.

public would be at most only incidentally benefited." *Fla AGO 2012-26 citing Bannon v. Port of Palm Beach District*, 246 So.2d 737, 741 (Fla. 1971). "If the expenditure primarily or substantially serves a public purpose, however, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, § 10. *Id.* citing *State v. Housing Finance Authority of Polk County*, 376 So.2d 1158, 1160 (Fla. 1979). The Legislature "has recognized that lump sum bonus payments for county and municipal employees serve the public interest and represent a progressive innovation in personnel management." *Id.* In the past, Florida Statues expressly authorized counties and municipalities "to adopt extra compensation programs to reward outstanding employees. *See* §§ 125.01 and 166.021, Florida Statutes (2010). These statutes allowed for lump-sum bonus payments, but required that the bonuses not be included in an employee's regular base rate of pay and not be carried forward in subsequent years. *Id.* In 2011, the Florida Legislature revised § 215.425, Florida Statutes, and deleted the express authorization to pay bonuses in §§ 125.01 and 166.021, Florida Statutes. The restriction that a bonus payment not be included in an employee's regular base rate of pay and not be carried forward in subsequent years was also deleted. Instead, the Legislature created §215.425(3), Florida Statutes, which permits any unit of government to establish a bonus or incentive program as long the program strictly complies with § 215.425(3)(a)-(d), described in section 1(a) above.

II. General Authority for Incentive Programs by JEA

Article 21 of the Consolidated City of Jacksonville's Charter[2] "created and established a body politic and corporate to be known as JEA." *City Charter*, §21.01. Under § 21.01 the City delegated to JEA "all powers with respect to electric, water, sewer, natural gas and such other utilities which are now, in the future could be, or could have been but for this article, exercised by the City of Jacksonville". *Id.* Section 21.04 explicitly prescribes the powers of JEA to include the right to contract, and the more broad authority "to do all acts and deeds necessary, convenient or desirable, incidental to the exercise and performance of the power and duties granted to JEA in this article." *City Charter,* §§21.04(e) and (t).

---

[2] See *Jacksonville, Fla., City Charter*, §3.01(a), providing that the Consolidated City of Jacksonville:

> Shall have and may exercise any and all powers which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of the State of Florida, including, but not limited to, all powers of local self-government and home rule not inconsistent with general law conferred upon counties operating under county charters by s. 1(g) of Article VIII of the State Constitution; conferred upon municipalities by s. 2(b) of Article VIII of the State Constitution; conferred upon consolidated governments of counties and municipalities by section 3 of Article VIII of the State Constitution; conferred upon counties by ss. 125.85 and 125.86, Florida Statutes; and conferred upon municipalities by ss. 166.021, 166.031, and 166.042, Florida Statutes; all as fully and completely as though the powers were specifically enumerated herein.

Most relevant to the issue of whether JEA has the authority to create a bonus or incentive program is § 21.08 of the Charter, which prescribes JEA's powers with respect to its employees. Under § 21.08, the City delegated to JEA the following authority:

> JEA shall have full and independent authority to hire, transfer, promote, discipline, terminate and evaluate employees engaged to provide any and all of the utilities services for which it is responsible and accordingly, consistent with the provisions of article 17, JEA may establish employment policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment and take such other employment related action as needed to assure effective and efficient administration and operation of the utilities system. In order to effectively implement the foregoing, JEA shall perform all functions with regard to its own employees that are performed by the City department or division which oversees city employees in regard to personnel matters.

Id. at §21.08. Section 21.08 gives JEA the express authority to establish employment policies and the implied authority to establish bonus or incentive programs under the authority to establish "other term and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment." *Id.*

III. Specific Constraints on the Contemplated Incentive Program

JEA may establish a bonus program, subject to several constraints. First, as explained above, a bonus or incentive program policy must be strictly implemented under the requirements of §215.425(3), Florida Statutes, in that it must base the award of the bonus on work performance, provide for performance standards and an evaluation process, notify all employees of the policy before the beginning of the evaluation period, and consider all employees for the bonus. Further, the program must comply with state and local ethics laws. Lastly, bonus plans must comply with the City's Civil Service Personnel Rules and Regulations and collective bargaining requirements.

A. Constraints Under State and Local Ethics Law

Under state and local ethics laws, an otherwise proper JEA long-term incentive program benefiting both management and non-management employees is permissible within the following key parameters designed to prevent the misuse of public funds:

Article II, § 8 of the Florida Constitution (Ethics in Government) requires financial disclosure by public officials and generally prohibits public officials from acting in a manner in breach of the public trust. This general prescription has been codified by Florida Statute, namely

Chapter 112 Part III (Code of Ethics for Public Officers and Employees), and further enumerated for Jacksonville officials and employees within the Jacksonville Ethics Code (Chapter 602 of the Jacksonville Ordinance Code).

Within the state ethics code, which generally applies to all public officials and employees within the state, § 112.313, Florida Statutes, is the primary provision that should be considered when analyzing an incentive program adopted by an independent agency of the City. Section 112.313 (Standards of conduct) subsection (6) (Misuse of public position) states, in relevant part and with emphasis added, that "no public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. ...". Pursuant to subsection (6), an independent agency employee may not corruptly use his position or perform his official duties in order to secure for himself or other individuals a unique benefit.

Similar to § 112.313(6), Florida Statutes, the city ethics code (which expressly at §602.631, Ordinance Code, applies to officers and employees of independent agencies) at §602.401 (Misuse of position, information, resources etc.) subsection (a) prohibits an employee of an independent agency from intentionally using his position or otherwise acting in a manner inconsistent with his official duties in order to obtain a special privilege, financial or otherwise.

Both § 112.313(6), Florida Statutes, and Jacksonville, Florida, Municipal Code §602.401(a) contain intent and uniqueness components. An incentive program developed and implemented by managers generally responsible for developing and implementing compensation measures, that fully comports with all § 215.425, Florida Statutes, and JEA Charter strictures, under which all JEA employees are considered for the bonus in a transparent, impartial manner, and which is based upon objective financial metrics measured by an independent party generally would not run afoul of either the state or city ethics codes.

B. Constraints Under Civil Service Rules and Collective Bargaining Agreements

JEA is constrained in the type of award it may issue to the extent that it is bound by the City's Civil Service Personnel Rules and Regulations. Those JEA employees covered by the Civil Service Personnel Rules and Regulations are subject to pay plans and salary schedules. Civil Service Personnel Rules and Regulations 2.01, 2.11, 10.01 and 10.02 serve to limit JEA to the award of lump sum bonuses, as JEA employees' base salary may not exceed their pay bands.

Additionally, many of JEA's employees are members of collective bargaining units. Florida Law requires that changes to wages and terms and conditions of employment are collectively bargained prior to being implemented. Thus, any bonus or incentive plan would have to be collectively bargained prior to implementation. *See Hamilton County Education Association v. Hamilton County School District*, 30 FPER ¶ 180(2004)(Unfair labor practice to unilaterally implement a bonus plan without negotiating its terms).

JEA COMPENSATION COMMITTEE MINUTES
June 18, 2019

The Compensation Committee of JEA met on Tuesday, June 18, 2019, in the 8th Floor Conference Room, JEA Plaza Tower, 21 W. Church Street, Jacksonville, Florida.

Agenda Item I – Opening Considerations

A. Call to Order –Committee Chair Johnson called the meeting to order at 2:01 PM with Committee Member April Green in attendance, as well as Board Chair Alan Howard in observance. Also present were Aaron Zahn, Ryan Wannemacher, Jon Kendrick, Lynne Rhode, Herschel Vinyard, and Gina Kyle.

B. Adoption of Agenda – The Agenda was adopted on **motion** by Ms. Green and second by Board Chair Howard.

C. Approval of Minutes – The January 15, 2019 minutes were approved on **motion** by Ms. Green and second by Board Chair Howard.

Agenda Item II – New Business

A. Introduction – Aaron Zahn, Managing Director/CEO introduced the subjects that would be discussed during the meeting.

B. Towers Watson Analysis of JEA vs Industry Compensation – Jon Kendrick, Interim Chief Human Resource Officer provided the committee an overview, as well as, answered questions related to the Towers Watson presentation. This item was presented for information to the committee.

C. Long Term Compensation Update – Aaron Zahn, Managing Director/CEO and Herschel Vinyard, Chief Administrative Officer presented the Long Term Compensation Update. With this program, employees are eligible to receive self-funded long term incentives based on clear measurable factors on a three year industry standard cycle. Mr. Zahn advised the committee that if they commissioned JEA leadership to move forward the team would work to develop an appropriate plan. This item was presented for information to the committee.

   Board Chair Howard made a **motion** to direct JEA management to start the process of finalizing the long term compensation framework, with a second by Ms. Green, motion carries.

D. Executive Contract – Aaron Zahn, Managing Director/CEO and Committee Chair Johnson discussed the executive contract and discussed extending the current contract until July 31, 2019, to allow time for the total compensation plan to be worked out prior to finalizing the contract for the Managing Director/CEO. Contract discussions were deferred.

E. Other New Business

F. Announcements
   1. Schedule Next Meeting as Appropriate

G. Adjournment

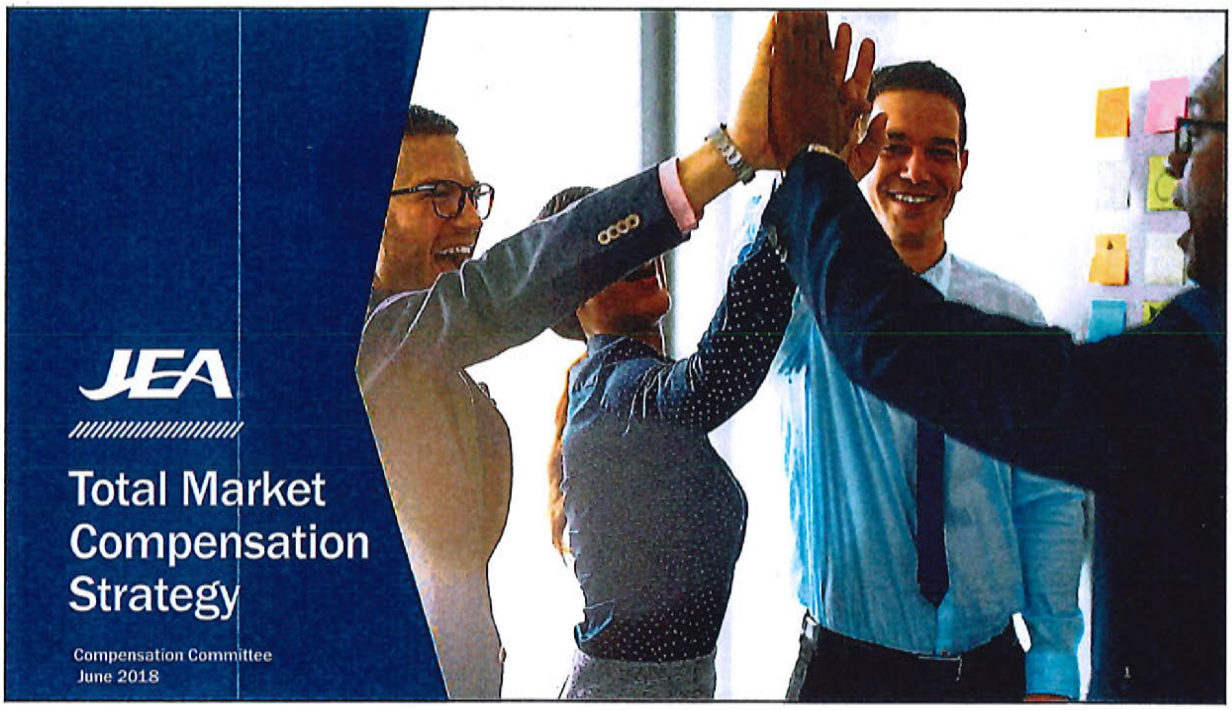
PENGAD 800-631-6989
EXHIBIT
28
mh
6/17/20 Vinyard

APPROVED BY:

_____
Camille Lee-Johnson, Committee Chair
Date: _____

Submitted by:

_____
Brandi Taylor
Executive Assistant



JEA

GUIDING PRINCIPLES

ACCELERATING UTILITY INNOVATION

Core Competencies

The things we need to be exceptionally and uniquely good at in order to yield better and better results of our Corporate Measures which drive our Mission to demonstrate our Vision

→ **Work together to elevate the entire team**

Core competencies accelerate results

2

EXHIBIT 29 mb 6/17/20 Vinyard

PENGAD 800-631-6989

ELEVATE THE ENTIRE TEAM

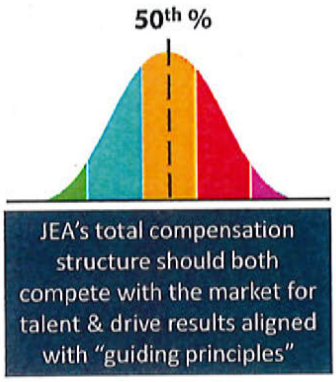
1. Ensure JEA's corporate compensation philosophy is aligned with JEA's Guiding Principles
2. Encourage long-term culture of value creation
3. Establish formal compensation policy to align behavior to 4 Corporate Measures of Value and market based compensation
4. Ensure policy promotes collaboration to drive Vision and Mission

Employee incentives should drive "value" & "teamwork"

3

Compensation Efforts to Date

January	February - June
Board Approval of: • Guiding Principles • Development of a Compensation Framework • Extending CEO contract through 7/31/19 • Change to Board Policy Manual	Status Quo developed and presented to the Board Total Compensation Framework developed with the assistance of Willis Towers Watson Draft CEO Contract prepared



JEA'S COMPENSATION PHILOSOPHY

JEA Board Policy Manual

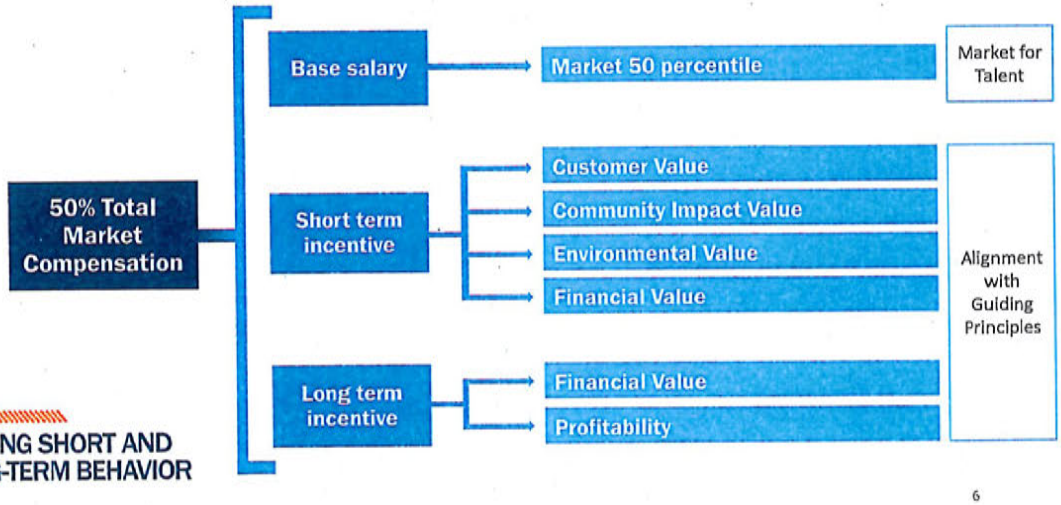
(Revision to Policy 2.7 adopted by JEA Board on June 17, 2014)

"With respect to employment, compensation, and benefits to employees, consultants, and contract workers, the CEO shall promote a compensation philosophy that encompasses salary/wages, retirement benefits, incentives and health and welfare benefits that align with and drive JEA's Corporate Measures of value: 1) Customer; 2) Financial; 3) Environmental; and 4) Community Impact.

Total compensation will meet the market (50% percentile), which is where the majority of companies in the industry and geographical area reside. Total compensation will include Base Salary, Short Term Incentives and Long Term Incentives. The 50th percentile pays competitively for behavior that meets expectations. Short term and long term incentives will align to and drive JEA's Corporate Measures of Value. Internal equity will be achieved by evaluating differences in skill, effort, responsibility and working conditions among jobs."

5

Establish a Formal Compensation Policy to Align with: 1) Talent Market and 2) Guiding Principles



DRIVING SHORT AND LONG-TERM BEHAVIOR

6

Compensation Benchmarking Summary

Appointed Population vs. Market 50th Percentile Variances By Job Level

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels
  - JEA provided performance bonuses to Appointed employees in April to begin closing the gap on base salary – the budget was 2.5%.

Job Weighted:

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
Total	-2%	-7%	-6%	--	-7%

Short-Term Incentive Plan Practices

Target Incentive Award Opportunities

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to "close the gap" between market and JEA's desired competitive positioning

Target Incentive Award Opportunities – By Job Level

Role/Career Level	Target STI Opportunities	
	Utilities	General Industry
Senior Directors	[redacted]	
Managers		
Supervisors		
Senior Level Professionals		
Entry-Mid Level Professionals		
Non-exempt		

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.

Long-Term Incentive Plan Design

Introduction

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

Long-Term Incentive Plan Design

Proposed Design

- *Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:*

* Value of units tied to JEA Net Book Value.

Long-Term Incentive Plan Design

Proposed Design Details: Performance Unit

Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	• Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined
Eligibility	• All employees would be eligible in order to drive collective focus on JEA long-term performance
Target Award Opportunity (as % of base salary)	• Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50th percentile
Award Frequency	• Annual
Circuit Breaker	• Defined level of contribution to the City will be established for each award cycle; Intent is for contribution level to ensure LTI plan is self funded
Performance Measures	• Net Book Value: used to determine Performance Unit value • Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined
Performance Period	• 3-year performance cycle with overlapping cycles due to annual grant frequency 2019 2020 2021 2022 2023 2024 Target Established — Award Payout Target Established — Award Payout
Payout Range	• Threshold: 50% of Target • Maximum: 150% of Target
Estimated Cost	• Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is $3.4M

*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

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Proposed Compensation Adjustments

Market Positioning Based on Proposed Pay Adjustments

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
Executive	-12%	45%	[redacted]	-6%	40%	[redacted]	-2%
Director	-1%	20%	[redacted]	2%	5%	[redacted]	1%
Manager	-2%	10%	[redacted]	-3%	3%	[redacted]	-1%
Individual Contributor	-1%	7%	[redacted]	-1%	3%	[redacted]	2%
Bargaining Units	11%	2%	[redacted]	8%	1%	[redacted]	9%
Total	3%	8%	[redacted]	2%	3%	[redacted]	3%

Note: Market data provided by JEA.

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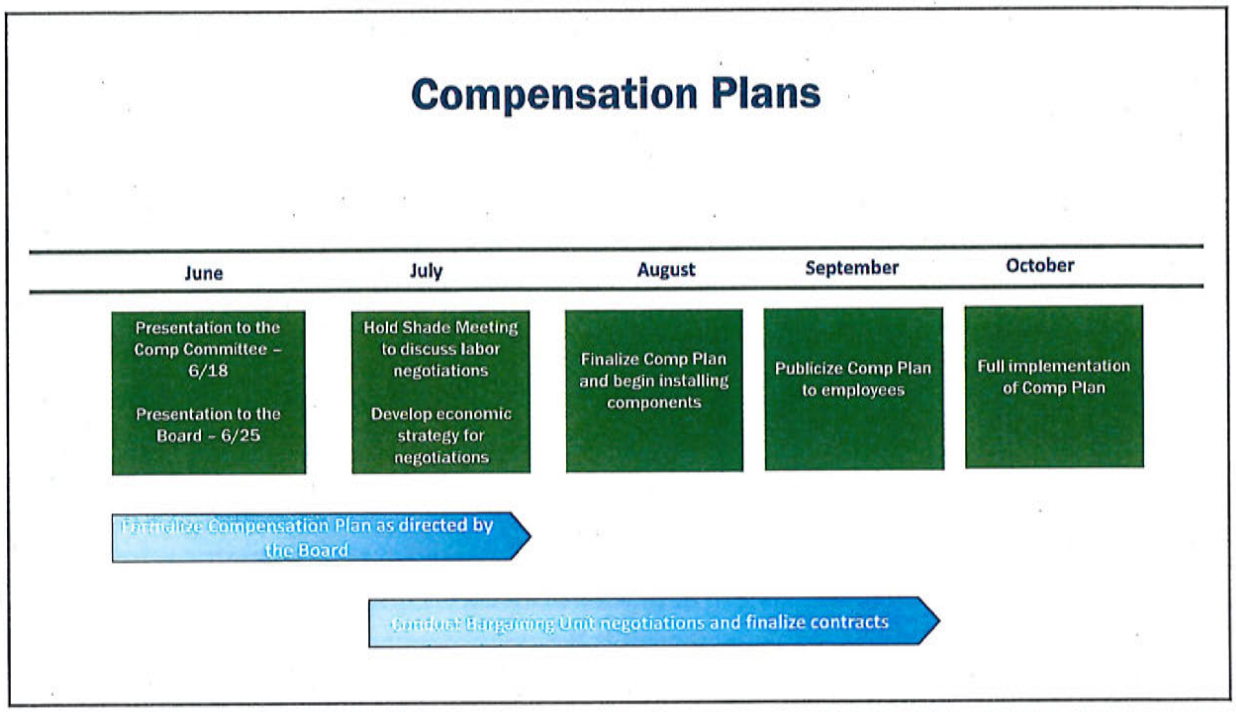
Compensation Plans
June
July
August
September
October
Presentation to the Comp Committee – 6/18
Presentation to the Board – 6/25
Hold Shade Meeting to discuss labor negotiations
Develop economic strategy for negotiations
Finalize Comp Plan and begin installing components
Publicize Comp Plan to employees
Full implementation of Comp Plan
Finalize Compensation Plan as directed by the Board
Conduct Bargaining Unit negotiations and finalize contracts

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Introduction
Summary

- JEA engaged Willis Towers Watson ("WTW") to complete the following:
  - Conduct a competitive market assessment for JEA's entire employee population
  - Provide a summary of market practices related to short-term incentive plan design
  - Conduct a competitive market analysis of long-term incentive ("LTI") plan design practices and develop a proposed design
- This report includes the following:
  - Confirmation of JEA's current compensation philosophy
  - Review of the evolution of JEA's compensation programs
  - Analysis of the compensation variances for JEA's employee population
  - Analysis of the gaps to market for JEA's Appointed population and Bargaining Units
  - Proposed LTI plan design
  - Total rewards market best practices

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Compensation Philosophy Review
JEA's Current Compensation Philosophy

- The following table summarizes JEA's current compensation philosophy, which guided WTW's review of JEA's competitive market assessments:

Compensation Philosophy Element	Details
Alignment of Interest Between Employees, Stakeholders, and Organization	JEA's compensation philosophy should support the overall business and board strategy with the ultimate goal of driving performance of the organization
Market for Talent	JEA's geographic market for talent varies by job level: • Individual Contributors/Managers – local and regional scope • Directors/Executives – national scope
Target Competitiveness	Targets the market 50th %ile for all pay elements (Base Salary, Short-Term Incentive, and Long-Term Incentive)
Pay Mix	JEA's pay mix currently consists of base salary and a short-term incentive award, but JEA is implementing a long-term incentive plan in 2020 to align the interests of employees to JEA's Guiding Principles and four (4) Corporate Measures of Value (Customer, Community, Environmental and Financial)
Industry Perspectives	For functional roles – a 50/50 weighted mix of Utility/General Industry market data For operational roles – only Utility Industry market data

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Evolution of JEA's Compensation Program

Timeline of Goals and Major Changes

Year of WTW's Review

Competitive Position Improving

2011

- Conducted competitive cash compensation analysis for approximately 200 Appointed positions, as well as a benefits assessment
- While total cash compensation levels were generally below market, benefit programs were generally above market (retirement plan significantly above market)
- JEA re-instituted a short-term incentive plan where all employees were eligible to receive an award (re-instated forFY12)

2013

- Conducted competitive market analysis, which showed JEAremained below market but had an improved competitive positioning

2017

- Updated 2013 analysis, which showed that competitive positioning continued to improve
- Effective beginning FY18, the defined benefit plan was closed to new hires. All new hires will participate in the new defined contribution plan

2019

- Competitive market positioning continues to improve JEA value creation
- JEA Board's objective is to create and implement a short-term and long-term incentive plan where all employees are eligible to receive an award based on individual and organization performance

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CEO Competitive Market Pricing

Methodology

- To conduct the competitive market pricing for the CEO position, a peer group was developed reflecting:

[redacted]

  - Survey source: Willis Towers Watson's *2018 Energy Services Industry Executive Compensation Database*
- Target TDC for the Combined Peer Group perspective is built up by using this formula:

[redacted]

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CEO Competitive Market Pricing

Market Pricing Details

Chief Executive Officer		Competitive Market Data[5]		
Pay Component	Data Perspective	25th %ile	50th %ile	75th %ile
Base ($000s)	Combined Peer Group	[redacted]		
	Investor Owned Utility Peers			
	Public Power Peers			
Target Bonus % [1]	Combined Peer Group			
	Investor Owned Utility Peers			
	Public Power Peers [2]			
Target TCC ($000s)	Combined Peer Group			
	Investor Owned Utility Peers			
	Public Power Peers			
LTI % [2]	Combined Peer Group			
	Investor Owned Utility Peers			
	Public Power Peers			
Target TDC ($000s)	Combined Peer Group [4]			
	Investor Owned Utility Peers			
	Public Power Peers			

"---" = Data not available.

(1) Target bonus percentages are represented as a percentage of base salary.

(2) [redacted]

(4) Target TDC for the Combined Peer Group perspective is built up by using Base Salary, Target TCC, and LTI % data.

(5) Market data greater than $100,000 rounded to the nearest $5,000.

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Compensation Benchmarking Summary

Methodology

- The following page contains a summary of WTW's review of JEA's competitive market data for its Appointed population (including 13 executives)
- WTW reviewed the most current incumbent and market data provided by JEA
  - Market data for the positions below the Director-level reflect a -5% geographic differential to account for the cost of labor of Jacksonville, FL vs. the US national average
  - Analysis of competitive positioning focused on market data at the 50th percentile

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Compensation Benchmarking Summary

Appointed Population vs. Market 50th Percentile Variances By Job Level

- The following exhibits summarize variances comparing incumbent pay data with market data from job weighted perspective for the Appointed population only
- Variances are lower to market for executives and directors at target bonus %, target TCC, and target TDC compared to the other job levels

Job Weighted:

Level	Average Base Salary Variance	Average Target Bonus % Absolute Variance	Average Target TCC Variance	Average Long-term Incentive % Absolute Variance	Average Target TDC Variance
Executive	-12%	-33%	-28%	--	-42%
Director	-1%	-10%	-8%	--	-13%
Manager	-2%	-5%	-6%	--	-6%
Individual Contributor	-1%	-2%	-1%	--	-1%
Total	-2%	-7%	-6%	--	-7%

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Short-Term Incentive Plan Practices

Introduction

- JEA re-instated a broad-based short-term incentive plan several years ago, both to address competitive pay levels, as well as to reinforce specific messages related to performance expectations
- The following pages summarize market practices related to short-term incentive plan design
  - As appropriate, JEA may consider these practices as they continue to evolve their incentive plan design
  - Key design features covered include eligibility, target award opportunities, payout ranges, bonus pool funding, performance measures and performance range
- The market practices information has been summarized from survey research, as well as our consulting experiences

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Short-Term Incentive Plan Practices

Eligibility

- Eligibility for short-term incentive plans is typically broad for both the Utility and General Industries, with prevalence actually higher in the Utility Industry (particularly at the lower job levels)
- Over 60% of organizations in the industry extend eligibility to the lower exempt and non-exempt roles
  - Lower roles may not have an expressed target opportunity, but they may be part of a "sharing program" based on organizational performance
  - In some cases, overall funding and participation at lower levels may bediscretionary

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Short-Term Incentive Plan Practices

Target Incentive Award Opportunities

- Target incentive opportunities typically increase with job level, and are relatively similar in both the Utility and General Industries
- Note that we have recommended STI targets as part of our analysis to "close the gap" between market and JEA's desired competitive positioning

Target Incentive Award Opportunities – By Job Level

	Target STI Opportunities	
Role/Career Level	Utilities	General Industry
Senior Directors	[redacted]	[redacted]
Managers	[redacted]	[redacted]
Supervisors	[redacted]	[redacted]
Senior Level Professionals	[redacted]	[redacted]
Entry-Mid Level Professionals	[redacted]	[redacted]
Non-exempt	[redacted]	[redacted]

Source: Willis Towers Watson 2018 General Industry and Energy Services MMPS Compensation Survey Reports – U.S.

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Short-Term Incentive Plan Practices

Payout Ranges

- Payout ranges reflect the total award opportunity as a percentage of the target award, and represent the minimum award opportunity if threshold performance is achieved, and the maximum opportunity if maximum performance is achieved
- Payout ranges are typically 50% of target at threshold performance and 200% of target at maximum performance
- [redacted]
- In most cases (and based on the specific performance standards), organizations will interpolate actual performance between threshold, target and maximum to provide appropriate incentive to improve performance at every possible increment
- Note that it is important to calibrate the payout range with the performance range to ensure that the awards are aligned with the probability of achievement

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Short-Term Incentive Plan Practices

Bonus Pool Funding

- There are two primary approaches to determine bonus pool funding:
  1. Sum-of-targets: specific target opportunities are defined (typically by role or grade) and the sum of these targets determines the bonus "pool" (the aggregated award which would be generated at target performance)
  2. Financial results-based formula: typically a financially-driven formula (e.g., bonus pool equals 10% of profits above a specific threshold)
- The sum-of-targets approach is typically the most common in both the Utility and General Industries
  - Prevalence for financial results-based formulas increases slightly for broad-based plans that are separate from executive plans because there is often a greater requirement that they be self-funding
- Particularly for sum-of-target plans, circuit breakers are a common design feature
  - A circuit breaker represents a single performance measure (typically a financial measure) that must be reached before any incentive award is paid regardless of performance in other measures
  - In other words, if the circuit breaker financial performance isn't achieved, it shuts down the entire plan regardless of performance on other performance measures
  - Note that a financial circuit breaker may be set at levels below threshold levels for payout
- Another design feature is a modifier, which can be used to adjust the initial funding up or down based on another important measure (e.g. determine pool based on financial performance, and then modify by operational or customer performance measures)

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Short-Term Incentive Plan Practices
Performance Measures

- Performance measures send an important message about what an organization must achieve, and how individual employees can contribute to those objectives
- We consider it a best practice to have a portfolio of performance measures to balance expectations across financial, operational and customer service categories
  - However, in order to ensure appropriate focus, we typically see 4-6 performance measures, with each measure having at least a 10% weight
- It is typical for organizations in both the Utility and General Industries to include at least one profit or income measure, with profit / operating income being the most common in both industries
- For non-financial performance measures, environmental health and safety, as well as operating / strategic measures are the most common in the Utility Industry
- Individual performance measures are also common in the Utility and General Industries
  - These measures help create line-of-sight to broader corporate measures

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Short-Term Incentive Plan Practices
Performance Range

- Performance ranges reflect the minimum acceptable performance as a percentage of target performance, and the maximum performance recognized as a percentage of target performance
- Narrow performance ranges are typically used for measures where results are not expected to vary significantly from target (e.g., revenues)
- Wider performance ranges are typically used for measures where performance can fluctuate significantly year to year (e.g., profitability)
- In the Utility Industry, performance ranges for profitability at minimum is typically set to be 90% of target and for maximum is typically set to be 115% of target
- An important consideration in establishing the performance range is the probability of achievement
  - A best practice is to set threshold performance goals where the probability of achievement is 80-90% to ensure appropriate motivation
  - Similarly, probability of achievement for target performance should be 50-60% and 10-20% for maximum performance
  - As noted earlier, it is important to calibrate the performance range with the payout range

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Long-Term Incentive Plan Design
Introduction

Why Companies Have Long-Term Incentive Plans	Factor Driving JEA Inclusion of LTI
Focus on long-term performance and align performance to long-term business strategies	✓
Necessary component of a market competitive compensation program for investor owned utilities	✓
Aligns the interests of employees with stakeholders	✓
Fosters long-term retention	✓
Encourages teamwork and collaboration across groups, functions, businesses, etc.	✓
Rewards for long-term shareholder/stakeholder value creation	✓
Balances focus on short-term results that are driven by annual incentives	✓

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Long-Term Incentive Plan Design
Market Practices Summary

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
Prevalence	LTI plans are used selectively	All 13 IOU peers have an LTI plan	LTI plans are very prevalent with almost all IOUs using an LTI plan
Eligibility	For those Public Power Utilities with an LTI plan, eligibility typically limited to select executives	Typically executives down to director level positions	Typically executives down to director level positions
Target Opportunity (% of Base Salary)	Varies widely based on the organization, but targets will be lower than IOU levels	Median for CEOs: 230% Median for NEOs*: 110% Median for Directors: NA	[redacted]
Award Frequency	Annual awards with overlapping cycles are most common	All 13 peers grant annual awards with overlapping cycles	[redacted]

NEOs* = Named Executive Officers, as disclosed in the IOU's proxy statement.

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Long-Term Incentive Plan Design

Market Practices Summary (continued)

Design Aspect	Public Power Utilities	Investor Owned Utility (IOU) Peer Group	Broader Utility Industry
Award Vehicles	Cash-based performance plans	100% of peers use performance plans 69% use restricted stock No peers use stockoptions	[redacted]
Performance Metrics	Financial and operational	TSR (100%) EPS (38%) Operational (15%)	[redacted]
Performance Metrics Weights	Operational metrics weighted more heavily than financial metrics	TSR and financial metrics weighted more heavily than operational metrics	Not available
Performance Range	More conservative compared to IOUs	Relative TSR: 28th %ile at threshold, 50th %ile at target, and 90th %ile at maximum	[redacted]
Payout Range	Threshold: 50% of Target Maximum: 150% of Target	Threshold: 0-50% of Target Maximum: 150-200% of Target	[redacted]

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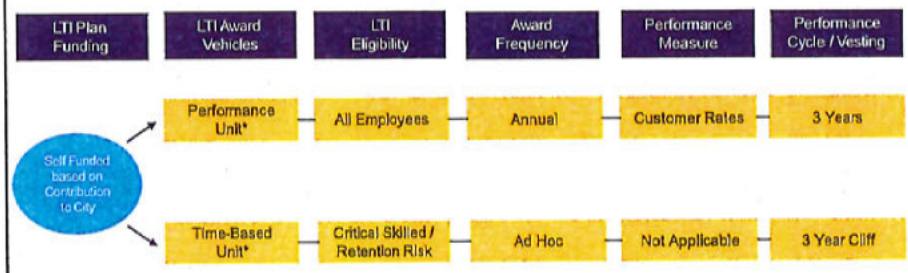
Long-Term Incentive Plan Design

Proposed Design

- *Given consideration of the overarching goal to allow all employees the opportunity to share in the long-term success of the company, we propose a multi-pronged LTI design approach below:*



* Value of units tied to JEA Net Book Value.

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Long-Term Incentive Plan Design

Proposed Design Details: Performance Unit

Performance Unit

Plan Design Element	Plan Design Details
Award Vehicle	• Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined
Eligibility	• All employees would be eligible in order to drive collective focus on JEA long-term performance
Target Award Opportunity (as % of base salary)	• Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50th percentile
Award Frequency	• Annual
Circuit Breaker	• Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded
Performance Measures	• Net Book Value: used to determine Performance Unit value • Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined
Performance Period	• 3-year performance cycle with overlapping cycles due to annual grant frequency
Payout Range	• Threshold: 50% of Target • Maximum: 150% of Target
Estimated Cost	• Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is $3.4M

*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

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Long-Term Incentive Plan Design

Proposed Design Details: Time-Based Unit

Time-Based Unit

Plan Design Element	Plan Design Details
Award Vehicle	• Time-Based Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined
Eligibility	• All employees eligible, but awards targeted to critically skilled employees or employees viewed as retention risk; awards generally intended for Manager level positions and below in order to enhance employee retention • Target 10% of employees below the Director level (approximately 1,500 including Bargaining Units) or approximately 150 employees below the Director level to receive awards each year
Target Award Opportunity (as % of base salary)	• Retention award values range from 10% to 20% depending on criticality of role and/or retention need
Award Pool Funding	• Defined level of contribution to the City will be established each year with intent for contribution level to ensure LTI plan, covering both Performance Unit and Time-Based Unit awards, is self funded
Award Frequency	• Ad hoc awards
Vesting Period	• 3-year cliff vesting period
Estimated Cost	• Estimated cost of annual Time-Based Unit awards to employees below the Director level based on current incumbent base salaries* is $1.2M

*Bargaining Unit costs calculated based on step structure data if incumbent data are not available.

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Proposed Compensation Adjustments

Competitive Pay Gaps to Market by Pay Element

- The following exhibit summarizes the current gaps to market for JEA's population (excluding the M&C roles due to lack of incumbent data) by each pay element:
  - JEA's base salary, target TCC, and target TDC show variances comparing incumbent pay to market for the Appointed population
  - Bargaining Units' pay elements and JEA target bonus % are based off of pay structures (many of the Bargaining Units are in step structures)
- Gaps to market exist at target bonus % and long-term incentive %, particularly for the executives and directors, which lead to higher variances to market at target TCC and target TDC

Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA	Market	JEA	JEA	Market	JEA
Executive	-12%	10%	[redacted]	-28%	--	[redacted]	-42%
Director	-1%	8%	[redacted]	-8%	--	[redacted]	-13%
Manager	-2%	7%	[redacted]	-6%	--	[redacted]	-6%
Individual Contributor	-1%	7%	[redacted]	-1%	--	[redacted]	-1%
Bargaining Units	11%	2%	[redacted]	8%	--	[redacted]	8%
Total	3%	5%	[redacted]	-1%	--	[redacted]	-2%

Note: Market data provided by JEA.

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Proposed Compensation Adjustments

Proposed Base Salary, Target Bonus and Long-Term Incentive Adjustments

- **Base Salary:** assess individual competitive position to market; for individual positions well below market, JEA could bring positions to within the competitive range of the market median within two to three years, assuming performance expectations are being met
- **Target Bonus % and LTI % (as % of salary):** the tables below summarize JEA's current average target bonus and LTI incentive opportunities and proposed target values
  - The incentive targets below are intended to close the gap to market for target total direct compensation within the first year in order to align with the Board's compensation philosophy
  - Note: when material gaps to market exist, typical market practice is to make incremental adjustments over a multi-year period (2 to 3 years) to close the gap to market. Company performance, cost considerations and stakeholder optics will influence the level of pay adjustment and the timeframe over which pay is brought to market

Level	Target Bonus %			LTI Opportunity %			Total At Risk Compensation		
	Current	Market	Proposed	Current	Market	Proposed	Current	Market	Proposed
Executive	10%	[redacted]	45%	--	[redacted]	40%	10%	[redacted]	85%
Director	8%	[redacted]	20%	--	[redacted]	5%	8%	[redacted]	25%
Manager	7%	[redacted]	10%	--	[redacted]	3%	7%	[redacted]	13%
Individual Contributor	6%	[redacted]	7%	--	[redacted]	3%	6%	[redacted]	10%
Bargaining Units	2%	[redacted]	2%	--	[redacted]	1%	2%	[redacted]	3%

- **Estimated Cost Impact:** estimated incremental cost impact of proposed target bonus and LTI adjustments to bring JEA compensation to the market median is **$5.8M**; see details below for cost breakdown:
  - Target Bonus Cost: **$2.4M** based off current incumbent base salaries
  - LTI Cost: **$3.4M** based off current incumbent base salaries for performance unit award (total cost of **$4.6M** if time-based unit award is included)

Note: Market data provided by JEA.

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Proposed Compensation Adjustments

Market Positioning Based on Proposed Pay Adjustments

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)	Average Target Bonus %		Proposed Target TCC Variance (Median)	Average Long-term Incentive %		Proposed Target TDC Variance (Median)
	JEA	JEA Proposed	Market	JEA	JEA Proposed	Market	JEA
Executive	-12%	45%	[redacted]	-6%	40%	[redacted]	-2%
Director	-1%	20%	[redacted]	2%	5%	[redacted]	1%
Manager	-2%	10%	[redacted]	-3%	3%	[redacted]	-1%
Individual Contributor	-1%	7%	[redacted]	-1%	3%	[redacted]	2%
Bargaining Units	11%	2%	[redacted]	8%	1%	[redacted]	9%
Total	3%	8%	[redacted]	2%	3%	[redacted]	3%

Note: Market data provided by JEA.

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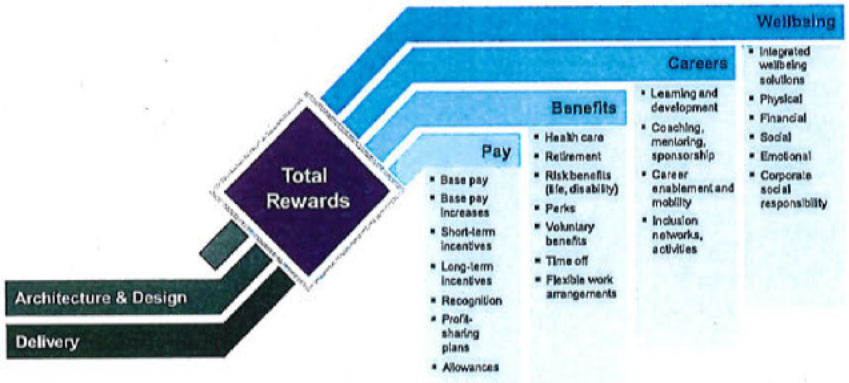
Modernizing Total Rewards

Integrated Total Rewards strategy, architecture & design and delivery for a superior Talent Value Proposition



Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

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Modernizing Total Rewards

Key themes emerging in the market with implications for Total Rewards

1. Future focused
Emerging work dynamics and skills and multi-generational workforce re-write the deal

2. Technology Advancements
Expansion of *digitization* of the Total Rewards delivery and experience

3. Optimising cost and risk of TR
Analytics and data measurement

4. Segmentation
More tailored Total Rewards with increased choice

5. Consumerism and flexibility
Expansion of worker choice and *voluntary benefits*

6. Transparency
Legislative and social media increase public scrutiny

7. Inclusion and diversity
Total rewards that enable an inclusive culture and diverse workforce

8. Wellbeing
Holistic *physical, financial, social and emotional health*

9. Talent experience
Emphasis on *workplace differentials* that enhance the environment and Talent Value Proposition

10. Good governance
Being *agile and nimble* to adapt to changing, fast-moving business strategies

Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

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Willis Towers Watson 35

Modernizing Total Rewards

Our findings identify five areas critical to meeting employees' Total Rewards expectations and delivering a consumer-grade experience

1. Understand what employees value
2. Consider employee wellbeing a top priority
3. Make effective use of technology
4. Measure cost and impact of programs
5. Prioritize fairness, purpose-driven benefits, and I&D

Source: 2018 Willis Towers Watson Modernizing Total Rewards Survey

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Willis Towers Watson 36

From: Vinyard, Herschel T. - Chief Administrative Officer
Sent: Saturday, June 8, 2019 6:40 AM
To: Rhode, Lynne C. (City of Jacksonville)
Subject: Re: Update - comp memo

Thank you. As soon as I review her work, I plan to visit with the City Ethics Officer to confirm.

On Jun 7, 2019, at 4:20 PM, Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com> wrote:

Herschel,
I just spoke with Kort. She apparently has been tied up all day in meetings and will not be able to get us a revised memo incorporating ethics until Monday. She said once she went through the ethics opinions I gave her and did some additional research last night, she realized it would take her longer than anticipated to provide that section of the memo. I have asked her to consult with Sean Granat (employment supervisor) or someone else at OGC who has expertise specifically in the City Ethics Code and to provide me with an updated draft for discussion on Monday. I will stay on it and keep you posted.
Have a nice weekend.
~ Lynne

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com
<image001.jpg>

EXHIBIT
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mb
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6/17/20 Vinyard

From: Wannemacher, Ryan F. - Chief Financial Officer
To: Vinyard, Herschel T. - Chief Administrative Officer
Subject: Fwd: Performance Unit Plan (PUP) Questions
Date: Friday, August 9, 2019 12:58:55 PM

See below...

Let's chat when you get a chance.

Thanks
Ryan
Get Outlook for iOS

---------- Forwarded message ----------
From: "**Rodda, Jeffrey**" <JRodda@coj.net>
Date: Fri, Aug 9, 2019 at 12:38 PM -0400
Subject: Performance Unit Plan (PUP) Questions
To: "Crawford, Juli E. - Director Financial Planning & Analysis" <crawje@jea.com>, "Orfano, Joseph E. - Treasurer" <orfaje@jea.com>
Cc: "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>, "Peterson, Phillip" <PhillipP@coj.net>, "Billy, Kyle" <KBilly@coj.net>

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Juli,

I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

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6/17/20 Vinyard

What is the purpose of the PUP?

What makes PUPs a legal form of compensation for public employees in Florida?

What form of compensation are they (bonus, regular wages, etc.)?

How will any gains or losses be reported to the IRS?

Is there a limit on how many PUPs an employee can purchase? What is the maximum?

Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?

Can PUPs be granted to an employee at no cost?

Can a PUP be purchased by a Board member?

Is there a ceiling on the redemption value of a PUP?

What is the reason for limiting PUP purchases to payroll deductions only?

Can the PUP purchase payment be deducted pre-tax?

What will JEA do with money paid in by employees to purchase PUPs?

Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?

How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?

Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?

What is the assumed likelihood that PUPs will be paid in 2022?

Has any modeling been done to examine what the value might be at redemption?

What is the maximum cost to JEA?

If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?

What other local government entities/municipal utilities use PUPs?

What is the JEA Group?

What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor
Office of the Council Auditor
117 West Duval Street
Suite 200
Jacksonville, Florida 32202
Office: 904-255-5477
Direct: 904-255-5487
Fax: 904-255-5478
E-Mail: jrodda@coj.net

From:	Wannemacher, Ryan F. - Chief Financial Officer
To:	Rhode, Lynne C. (City of Jacksonville); Vinyard, Herschel T. - Chief Administrative Officer; Zahn, Aaron F. - Managing Director/CEO; Dykes, Melissa H. - President/COO
Subject:	FW: Performance Unit Plan (PUP) Questions
Date:	Wednesday, August 14, 2019 5:19:35 PM
Attachments:	scan_rhodlc_2019-08-14-13-24-00.pdf scan_rhodlc_2019-08-14-13-21-11.pdf

FYI...

From: Wannemacher, Ryan F. - Chief Financial Officer
Sent: Wednesday, August 14, 2019 5:19 PM
To: 'Rodda, Jeffrey' <JRodda@coj.net>; Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>
Subject: RE: Performance Unit Plan (PUP) Questions

Jeff,

Attached are the latest drafts of the plan documents and award agreement that was approved by the board. This will answer many of these questions.

As we are still working on a number of other pressing items, can we circle up in a few weeks on any additional questions you may have after reviewing these documents?

I appreciate it.

Thank you,
Ryan

From: Rodda, Jeffrey <JRodda@coj.net>
Sent: Friday, August 9, 2019 12:38 PM
To: Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>
Subject: Performance Unit Plan (PUP) Questions

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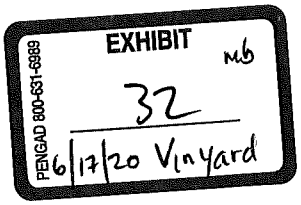
Hi Juli,



I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
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21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor
Office of the Council Auditor
117 West Duval Street

Suite 200
Jacksonville, Florida 32202
Office: 904-255-5477
Direct: 904-255-5487
Fax: 904-255-5478
E-Mail: jrodda@coj.net

From:	Vinyard, Herschel T. - Chief Administrative Officer
To:	KHyde@foley.com
Subject:	FW: PUP Meeting
Date:	Thursday, October 31, 2019 3:38:50 PM
Attachments:	Additional Questions and Inital Concerns on the PUP.docx

---

Herschel T. Vinyard Jr.
Chief Administrative Officer
Direct: (904) 665-8303
Mobile: (904) 504-0510

From: Reber, Heather <HReber@coj.net>
Sent: Thursday, October 31, 2019 3:13 PM
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Hall, Sherry L. <hallsl2@jea.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Cc: Billy, Kyle <KBilly@coj.net>; Taylor, Kim <KTAYLOR@coj.net>; Peterson, Phillip <PhillipP@coj.net>; Rodda, Jeffrey <JRodda@coj.net>; Parks, Brian <BParks@coj.net>
Subject: PUP Meeting

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,
Heather Reber, C.P.A.
Council Auditor's Office
P: 255-5486

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Council Auditor's Office
Questions and Concerns on the Performance Unit Plan

Additional Questions:

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of $808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the $10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
    a. Will the "In-kind" contributions be included in any of the redemption price schedule calculations?
    b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
    c. What will happen to forfeited Performance Units?
    d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

Council Auditor's Office
Questions and Concerns on the Performance Unit Plan

Concerns:

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.

FOLEY
FOLEY & LARDNER LLP

ATTORNEYS AT LAW
ONE INDEPENDENT DRIVE, SUITE 1300
JACKSONVILLE, FL 32202-5017
904.359.2000
904.359.8700
WWW.FOLEY.COM

khyde@foley.com
904.359.8786

MEMORANDUM

TO: Lawsikia Hodges, Esq.
Jason Gabriel, Esq.

CC: Lynne Rhode, Esq.

FROM: Kevin E. Hyde

DATE: October 21, 2019

RE: JEA Performance Unit Plan

This memorandum addresses the Long Term Performance Unit Plan (the "PUP" or the "Plan") approved by the JEA Board on July 23, 2019 and laws relating to its implementation.

Description of the PUP

The PUP[1] allows eligible employees to defer compensation to purchase a specified number of performance units from JEA and redeem them in later years for a cash payment equal to the redemption price. Any eligible employee may decide to participate or decline.

Eligible employees include all full-time JEA employees (including full-time attorneys from the Office of the General Counsel dedicated exclusively to JEA, appointed employees, and represented employees) actively employed with JEA for at least three months prior to the performance units purchase date. The eligibility of employees to participate in the program depends solely on their employment status and execution of and compliance with a performance plan participation agreement (Exhibit 2). To participate, the employee must agree to comply with the following covenants: (i) devote his/her best efforts to faithfully discharge his/her duties on behalf of the JEA and not take any action that would be contrary to the best interests of the JEA

[1] Attached as Exhibit 1 is the JEA Long-Term Performance Unit Plan, the plan document. Exhibit 2 is the Long-Term Performance Unit Agreement, which an individual employee will sign.

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and (ii) not disclose confidential JEA information except as required by law or to perform employment duties. A breach of these covenants would result in the forfeiture of unvested units except for a return of the aggregate purchase price for such units. The agreements regarding the Plan will be subject to sections 409A and 457(f) of the Internal Revenue Code and will be governed by the laws of Florida and subject to arbitration in Duval County.

A pool of units will be allocated[2] amongst employees based on his/her position level and the most recent annual performance review. The units will be available for purchase at $10.00 per unit in the first months of the calendar year following the calendar year in which JEA's annual financial audit statement is completed. Unpurchased units will return to the pool. Eligible employees will pay the purchase price of the unit by electing to defer a portion of his/her salary (equal to the aggregate purchase price for the performance units) into an FDIC-insured savings account. At redemption, the employee will receive a cash payment in the amount of the redemption price that will include the purchase price paid per unit. JEA's Chief Financial Officer will calculate the redemption price, and it will be certified by the Plan Administrator (the JEA Compensation Committee chair) no later than 30 days following the completion of JEA's annual financial audit statement.

The calculation of the redemption price is dependent on JEA's current year value, which is defined as the sum of JEA's net position per JEA's annual audited financial statement, the aggregate consideration paid, distributed, credited, or otherwise provided to the City of Jacksonville during the 12-month period prior to the end of the performance period, and the aggregate consideration paid, distributed, credited, or otherwise provided to JEA's customers during the 12-month period prior to the end of the performance period. Depending on the increase or decrease of JEA's current year value, the redemption price for the units will increase or decrease. Payments made regarding the units will be paid less applicable withholding taxes.[3]

The employee must be actively employed on the vesting date for the units to vest. If an employee is involuntarily terminated (without cause or due to death or disability) prior to the vesting date, then the employee will receive a payment for the units at the same time as the amounts would have been paid had the employee not been terminated. If the employee's termination of employment is voluntary, then the employee forfeits the units. If an employee is retirement-eligible and retires prior to the vesting date, the units will vest on the normal vesting date.

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[2] The allocation of performance units available to each employee for purchase will be directed by the JEA Compensation Committee Chair, who is the Administrator of the Plan.

[3] As a part of the JEA's Board's exploration of alternative scenarios to address the utility's fiscal challenges, JEA is also considering selling the utility. If that occurs, the performance period ends, the amount owed to the employee will become the obligations of the acquirer to be paid post-closing, and the PUP will be extinguished.

Questions Related to PUP

Since inception, a number of questions have been asked about the PUP. These questions are addressed below.

1. Does JEA have the authority to issue the PUP?

Article 21 of the City of Jacksonville Charter (the "Charter") provides plenary power to JEA to "manage, operate and promote the utilities system." (Charter at s. 21.04(a)). JEA may "enter into contracts with any person or entity, public or private, deemed necessary or desirable by JEA in connection with carrying out its powers and duties." (Charter at s. 21.04(e)) (Emphasis added). JEA may also "do all acts and deeds necessary, convenient or desirable, incidental to the exercise and performance of the powers and duties granted to JEA in this article." (Charter at s. 21.04(t)).

JEA's powers relating to employees is stated in Section 21.08 of the Charter:

> All employees of the utilities system shall be employees of JEA and shall be subject to articles 16 and 17 unless otherwise provided by the council, which shall be and continue to be the legislative body as provided in section 447.203(10), Florida Statutes. JEA shall be fully responsible for the administration and operation of all utility services as set out in this article and in order to meet its administrative and operational responsibilities, JEA shall have **full and independent** authority to hire, transfer, promote, discipline, terminate and evaluate employees engaged to provide any and all of the utilities services for which it is responsible and accordingly, consistent with the provisions of article 17, JEA may establish employment policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment, and enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment and take such other employment related action as needed to assure effective and efficient administration and operation of the utilities system. In order to effectively implement the foregoing, JEA shall perform all functions with regard to its own employees that are performed by the City department or division which oversees city employees in regard to personnel matters....(emphasis added).

Except for deferred compensation,[4] the Charter does not specifically state that JEA may establish terms of compensation. But compensation is an integral part of employment and by implication is included within the phrase "other terms and conditions of employment." JEA's "full and independent authority" over its employees is essentially meaningless if JEA cannot set the terms of compensation.

---

[4] Section 21.09(j).

The PUP is a form of deferred and long-term incentive compensation which is well within JEA's right to establish absent explicit and contrary authority. This inherent power is evident by Section 21.05 of the Charter:

> The powers of JEA shall be construed liberally in favor of JEA. No listing of powers included in this article is intended to be exclusive or restrictive and the specific mention of, or failure to mention, particular powers in this article shall not be construed as limiting in any way the general powers of JEA as stated in Section 21.04. It is the intent of this article to grant to JEA full power and right to exercise all authority necessary for the effective operation and conduct of JEA. It is further intended that JEA should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which JEA is created. The fact that this article specifically states that JEA possesses a certain power does not mean that JEA must exercise such power unless this article specifically so requires. JEA's power to levy special assessments shall not be deemed to be the power to levy taxes.

The issue, then, is whether the PUP lends to the effective operation and conduct of JEA. The PUP and the individual Long-Term Performance Unit Agreement each contain the following recital stating the PUP's purpose:

> JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework established by the Board in June 2019 that motivates Employees to drive the customer, community and environmental value of JEA.

The PUP further specifies its purpose in Section 1 (a) and (b):

> (a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.
>
> (b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

Based on the plenary power granted to JEA, and the PUP's stated purposes, we conclude JEA has the authority to implement the PUP.

2. May JEA establish who is eligible to purchase a PUP?

All JEA employees are eligible to participate in the PUP. "Employee" means:

> "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any (i) full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date and (ii) full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date. (JEA Long-Term Performance Unit Plan at Section 2(k). (PUP at Section 2(k)).

The Charter provides the General Counsel may "employ, supervise and terminate assistant counsels to assist with the efficient provisions of legal services for the City's independent agencies." (Charter at s. 7.01)). "The general counsel shall appoint assistant counsels and fix their compensation subject to the approval of the mayor." (Charter at s. 7.07)). Nothing in these provisions prohibit an assistant counsel assigned to JEA from participating in the PUP, provided that the General Counsel has authorized it.

3. Does the PUP Violate Article 21.09 of the Charter?

Article 21.09 of the Jacksonville City Charter contains the following provision related to the award of contracts by JEA:

Section 21.09. - Awards of contracts.

(a) JEA shall not be subject to the provisions of Chapter 126, Ordinance Code of the City of Jacksonville, as the same may be amended from time to time, however, JEA in entering into any contracts relating to the construction, reconstruction, repair, operation or maintenance of the utilities system or the purchase of supplies, equipment, machinery and materials for the utilities system or the contracting or otherwise purchasing for any advisory, professional or any other services may establish such rules, regulations or procedures as it may deem desirable or necessary in connection therewith. In the absence of such specific authority, rules, regulations or procedures, JEA shall follow the provisions of Chapter 126 of the Ordinance Code of the City of Jacksonville, as the same may be amended from time to time. JEA shall have the right to reject any and all bids, in whole or in part, in the best interests of JEA. Nothing in this chapter shall be construed to limit the power of JEA to construct, repair, or improve the utilities system, or any part thereof, or any addition, betterment or extension thereto, directly by the officers, agents, and employees of JEA, or otherwise by contract. JEA is authorized to implement and to take all actions necessary to administer a purchasing and procurement program directed to Minority Business Enterprises including, but not limited to, prime contractors, subcontractors, consultants,

subconsultants, and suppliers. Any such Minority Business Enterprise program shall be implemented by JEA to remedy discrimination or the present effects of past discrimination, if any, suffered by Minority Business Enterprises in the business community in the area served by JEA. For purposes of this chapter, the term "Minority Business Enterprise" shall be defined by JEA and shall include, at a minimum, those business entities that are legitimately owned, operated and controlled by persons who have been shown to have been discriminated against or who suffer from the present effects of past discriminations, if any, in the business community in the area served by JEA. Such program shall be used to redress and remedy discrimination or the present effects of past discrimination, if any, as may be determined by JEA, and which are shown to have been suffered by Minority Business Enterprises, in the business community in the area served by JEA.

(b) No member of JEA or officer or employee thereof shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with JEA for any matter, cause or thing whatsoever in which such member shall have a financial interest or by reason whereof any liability or indebtedness shall in any way be created against JEA. If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against JEA.

Section 21.09 relates to procurement, not employee compensation. Section 21.09(a) clearly relates to those contracts where a competitive procurement process must be used. ("JEA shall follow the provisions of Charter 126...."). This type of process is not used in employee matters.[5] When read together, sections 21 (a) and (b) contemplate and relate to an award of contracts to vendors or suppliers to JEA rather than to employment or compensation agreements. This is evident by a number of factors.

First, the PUP is not awarded to employees or subject to any procurement process. The PUP is a voluntary benefit program in which an employee may or may not participate. To participate, the employee must purchase the PUP on the same terms as any other participant. JEA is not selecting or awarding the right to participate in the PUP. The Plan Administrator or designee determines the number of PUPs an individual may purchase.

Second, if Section 21.09(b) precluded the PUP (as some form of impermissible contract between employees and JEA), it would also preclude other forms of contractual indebtedness such as (a) individual employment agreements providing for compensation except for services previously performed; (b) pension obligation to JEA employees, namely Unfunded Actual Award Liability; and (c) deferred compensation. Each of these agreements give JEA employees a "financial interest" in JEA and a potential indebtedness of JEA. Allowing these items, but

[5] Section 21.08 (JEA may "enter into negotiations with employee organization.")

prohibiting the PUP would be inconsistent with Charter provisions (previously discussed) allowing JEA to establish terms and conditions of employment.

Third, the PUP requires an employee to invest deferred compensation into the PUP. An indebtedness is only created above the original investment if the Net Position Value is correspondingly increased.

4. Do some PUP participants have an advantage over others in deciding whether to participate?

The PUP is available only to a defined group of individuals – JEA employees and certain attorneys assigned to JEA. Thus, the PUP is not open to the "public." Some have questioned whether certain individuals within the eligible group will have an impermissible advantage over others due to position held or access to information. The answer is "no."

Because the PUP involves only transactions between JEA, on the one hand, and employees and attorneys of JEA, all of whom are "insiders," on the other, the PUP raises no insider trading concerns. Insider trading under the securities laws requires a transaction with an "outsider" who is disadvantaged in a transaction with an insider due to lack of information, and no such outsiders are involved in the PUP.

Apart from insider trading concerns, it is important for securities law purposes that all of the PUP participants be provided with all material financial information about JEA and all material information about how the PUP payments will be calculated when they make their Deferral Elections, so that they are able to make an informed investment election. We understand that this requirement will be addressed as follows:

- Each participant will receive a copy of the PUP document itself, which outlines the conditions of an employee's participation. Except for the precise number of PUPs made available to a particular individual, the terms are the same for all employees.

- Schedule A provides employees information as to how the PUP value is calculated. The "Value Change Percentage", as discussed in Schedule A, determines the increase or decrease of the Redemption Price. That determination is based on JEA's audited financial statements and the aggregate consideration paid, distributed, credited or otherwise provided to the City and to JEA customers during the "Performance Period," all of which are public records.

- JEA intends to provide employees extensive information, including risk factors and hypothetical projections, during the enrollment period to assist employees with deciding whether to purchase one or more PUP(s). Each employee will receive the same information.

- A representative of JEA's HR department will be available to answer questions from employees and employees will be strongly encouraged to obtain their own financial and legal counsel to advise on the Plan should they chose to do so.

There is also a concern over potential inequities among individual participants if some employees have access to information that others do not. So long as all material information relating to the PUP value calculation is disclosed to all participants, they have sufficient information to make a fully informed decision concerning their Deferral Election, and the fact that some participants have access to additional information does not impact the fairness of the other participants' Deferral Elections. To the extent there is concern that some participants may gain access to additional material information relating to the PUP value calculation, , JEA may avoid such concerns over inequity by (a) requiring those participants to elect to decide whether to participate in the PUP prior to receiving that material information or (b) excluding those participants from the PUP.

The PUP mitigates any remaining risk from these concerns by limiting the amounts that may be invested and allowing only future deferred compensation to be invested, (thus preventing an employee from investing (or jeopardizing) additional personal monies or obtaining money from any other source to purchase the PUP).

5. Does the PUP comply with the Florida Code of Ethics for Public Officers and Employees?

JEA employees eligible for the PUP are covered by F.S. 112.311, the Florida Code of Ethics for Public Officers and Employees. See F.S. 112.312(2) defining "agency" to include a "municipal government entity of this state." The prohibitions discussed below relate to employees of covered agencies.

It is important to evaluate the purpose of the PUP in reviewing the applicable ethics laws. The PUP clearly states its purpose:

> The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (PUP at Section 1a).

Nothing in the stated purpose or the actuality of the PUP creates a conflict between the participating employee and JEA or the customers JEA serves. Indeed, participating employees only stand to benefit if the value of JEA increases.

The Florida Code of Ethics for Public Officers and Employees makes it clear that the applicable laws are designed to prevent conflicts between the personal interests of employees and the public. The law also states that governmental agencies (e.g. JEA) may take measures to retain

employees and that the code of ethics should not be a barrier from doing so. F.S. 112.311 specifies this intent:

> 1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.
>
> (2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.
>
> (4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.
>
> (5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part. (Emphasis added)

Nothing in the PUP is prohibited by the legislative intent expressed in F.S. 112.311. Indeed, the PUP promotes the legislative intent of recruiting and retaining governmental employees. Contrary to creating a conflict of interest, the PUP aligns the interest of employees and JEA, creating long-term value for JEA and its customers.

Additionally, there is very limited appellate case law interpreting F.S. 112.311.[6] But, certain cases and Attorney General Opinions provide further guidance, though not arising from potential compensation vehicles such as the PUP. The opinions underscore the intent behind the statute and the ills the statute is designed to prevent.

First, a conflict must be substantial to be prohibited. AGO 1973-215 ("the personal investment in an enterprise that is prohibited by the act is one that will create a 'substantial conflict' between his private interest and the public interest"). See also AGO 1980-71 ("Thus, we do not believe that the Code of Ethics should be interpreted to prohibit the most remote possibilities of conflicts of interest, but rather to prohibit those relationship which are in substantial conflict with the proper discharge of duties in the public interest.")

Second, the Code of Ethics is designed to prevent individuals from acting against the interest of their agency or the public. "A primary objective of the Code of Ethics is that governmental officials avoid recurring situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public." *Zerweck v. State,* 409 So.2d 57, 60 (Fla. 4th DCA 1982). Contrary to acting against the interest of JEA, the PUP is designed to encourage employees to personally invest in JEA and work to increase its value. Only if this occurs does the PUP gain value and the employee stand to benefit. Thus, the interests of JEA employees and JEA itself are strictly aligned.

Likewise, the PUP does not violate the more specific provisions of Chapter 112. Specifically:

a. The PUP is not a Prohibited Gift

To participate in the PUP the employee must do a "Deferral Election." A "Deferral Election" means:

> "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year. (PUP at Section 2(h)). (Emphasis added)

An employee who purchases a PUP is not receiving a "gift" as defined in F.S. 112. F.S. 112.311(b)1 states that a "gift" does not include "salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization." The participating employee is deferring a part

[6] The statute was enacted in 1974. Legislative history is only available in the state library. We have not yet been able to access that legislative history.

of his or her salary to purchase the PUP. As such, the restrictions of F.S. 112.313(2) prohibiting a public officer from soliciting or accepting a gift do not apply.[7]

b. The PUP is not Unauthorized Compensation.

Florida Statute 112.313(4) prohibits a public officer from accepting unauthorized compensation if the public officer knew or reasonably should have known that "it was given to influence a vote or action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity." This section does not apply to the PUP. First, nothing is "given" to the participating employee. The PUP is a form of deferred compensation which has been duly authorized and adopted by the JEA Board. Employees choose how much, if any, of their earned compensation to defer for the purchase of allotted Plan units. Moreover, the PUP is offered to employees generally and not any individual specifically. Participation is purely voluntary. Thus, the PUP cannot be said to influence any individual or particular action. If anything, the PUP is designed to promote retention across all levels of JEA employees and increased or improved performance.

c. The PUP Does Not Confer a Special Benefit to a Particular Employee.

All JEA employees, as well as defined representatives of the Office of General Counsel, are eligible to purchase a PUP. This class is similar to JEA employees who are eligible to participate in the JEA deferred compensation plan, i.e. it is a benefit incidental to their employment. It is not a special privilege, benefit or exemption solely for a particular individual or one which a particular individual can secure for himself. Thus, the PUP is not prohibited by F.S. 112.313(6) (prohibits a public employee from using an official position to secure a special privilege, benefit or exemption for himself.)

d. A Participating Employee Does Not Misuse a Public Position

Section. 112.313(6) prohibits misuse of public position. That statute provides:

> No public officer, employee of an agency, or local government attorney shall *corruptly* use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit or exemption for himself, herself, or others. The section shall not be construed to conflict with s. 104.31. (Emphasis added)

---

[7] This conclusion is further strengthened by the definition of gift within F.S. 112.312(12)(a). A gift "for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days..."

The PUP is available to all employees who may decide whether or not to participate and is incidental to their employment (e.g. a form of deferred compensation). No individual is able to secure something not available to other JEA employees. It is also important to note that the PUP was developed at the instruction of the JEA Board, authorized by it, and will be administered under Board auspices and the redemption price certified by the Board. Further, an independent auditor will certify all values and financial results that will substantiate the value of the PUP. No individual can affect or create a benefit which is not approved or authorized by the Board. And, no JEA Board member can participate in the PUP. Thus, there is complete independence of participants from the creation and authorization of the PUP and certification of values related to the PUP.

To establish a violation of s. 112.313(6), the following elements must be proven by clear and convincing evidence:

> "(a) the employee used or attempted to use his official position; (2) to secure a special privilege, benefit or exemption for himself or another and (3) acted corruptly in doing so, that is, with wrongful intent and for the purpose of benefiting himself or another person from some act or omission, which is inconsistent with the proper performance of his public duties. Corruptly is statutorily defined as being done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from act or omission of a public servant which is inconsistent with the proper performance of his or her duties. To satisfy this statutory element, proof must be adduced that Siplin [the Respondent/Appellant] acted with reasonable notice that [his or her] conduct was inconsistent with the proper performance of his or her public duties and would be a violation of the law of the code of ethics. *Siplin v. Commission on Ethics, 59 So.3d 150, 151-152 (Fla. App. 5th Dist. 2011) (internal citations omitted).*

Employees eligible to participate in the PUP are not receiving compensation inconsistent with the proper performance of their duties. Indeed, the PUP is based on the employee properly performing their duties and incentivizing them to do so. Moreover, all eligible participants are properly advised of the conditions of eligibility to participate in the PUP and its terms. The JEA Board has approved the PUP and the employee does not have notice that the PUP is inconsistent with performing his or her duties. Consequently, the PUP, and those who participate in it, do not violate s. 112.313(6).

6. Must the PUP Be Registered under the Securities Laws?

The PUP is exempt from registration under the securities laws. As described above, the PUP is an opportunity for JEA employees to defer compensation, purchase units within the PUP, and realize gain, if any, if the enterprise value of JEA increases. The PUP is designed to allow employees to personally invest in the enterprise growth of JEA in the next three years (i.e. encourage employees to have "skin in the game" with respect to improving the health of the utility).

JEA's performance will be measured on the change in JEA's net position during the performance period.

A security may be considered any situation where individuals invest money in a common enterprise with the expectation to earn a profit solely through the efforts of someone other than themselves. Employees must remain employed to receive benefits under the PUP. The employees' continued effort is required. Moreover, since the performance units are being issued and sold by JEA, then the performance units are exempt from registration under both the federal and state securities laws. The units are exempt from registration since they are being issued by a public instrumentality of a state. Section 3(a)(2) of the Securities Act of 1933 and Section 517.051(1) of the Florida Statutes provide this exemption.

As long as the total subscription for the PUP does not exceed $1,000,000,[8] the municipal securities disclosures required for offerings of $1,000,000 or more as provided by Rule 15c2-12 of the Securities Exchange Act of 1934 will not be applicable.

7. Is the PUP a Deferred Compensation Plan Allowed by Florida Law?

Florida law and the JEA Charter allow employees of a governmental unit to participate in a deferred compensation plan.

The relevant Florida statute, F.S. 112.215, states in part:

> In accordance with a plan of deferred compensation which has been approved as herein provided, the state or any state agency, county, municipality, other political subdivision, or constitutional county officer may, by <u>contract</u> or a collective bargaining agreement, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of such approved plan and in such proportions as may be designated or directed under that plan, place such deferred compensation in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, <u>or such other investment products</u> as may have been approved for the purposes of carrying out the objectives of such plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities. (F.S. 112.215(3)) (Emphasis added)

The statute further provides the basis for establishing the plan and criteria for approving the various accounts and investment accounts or vehicles. (F.S. 112.215(5-6)).

[8] As written, the PUP is scheduled to have 100,000 units at $10.00 per unit.

Article 21.07(j) of the JEA Charter specifically provides that "JEA shall have the option to establish an employee deferred compensation program separate from the city's employee deferred compensation program." Under this authority, the JEA 457 Deferred Compensation Plan was established in 2002 for the purpose of providing employees of JEA and employees of the (now former) St. Johns River Power Park System with a voluntary method deferring taxation on compensation until death, retirement or certain other events. See memo dated July 6, 2018 from Aaron Zahn to JEA Board and as approved by JEA Board on July 30, 2018.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. If JEA desires to treat the PUP as a deferred compensation plan pursuant to §112.215, the JEA Board must approve the PUP (it has); JEA must seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5) and (6)(b)); and that the proceeds to the employees from the PUP, if any, will not be included in the employee's taxable income until proceeds are actually received (F.S. 112.215(6)(a)). Finally, the PUP does not impose any liability on JEA, "except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred." (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, "[t]his Plan is intended to constitute an 'unfunded' program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder." Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period (Section 2(t) of the JEA Long-Term Performance Unit Plan).

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC- insured account such as those currently used for other existing JEA deferred compensation plans.

8. Is JEA Pledging Credit to Participating Employees?

Article 7, Section 10 of the Florida Constitution prohibits JEA from becoming a "joint owner with, or stockholder of, or giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person." As indicated above, JEA is not giving or using its taxing power or credit to help any JEA employee who purchases a PUP with deferred compensation. The Florida Supreme Court has described the pledging of credit as follows:

> As used in Article VII, section 10, "credit" means "the imposition of some new financial liability upon the State or a political subdivision which in effect results in the creation of a State or political subdivision for the benefits of private enterprises. This Court has explained that the lending of public credit means:

> [T]he assumption by the public body of some degree of direct or indirect obligation to pay a debt of the third party. Where there is no direct or indirect undertaking by the public body to pay the obligation from public funds, and no public property is placed in jeopardy by a default of the third party, there is no lending of public credit.
>
> Under this definition, we conclude that the COP's in this case do not contemplate a pledge of the District's credit, and that only a public purpose, and not a paramount public purpose, need be shown. *Miccouskee Tribe v. South Florida Water Management District,* 48 So.3d 811, 823 (Fla. 2010) (internal citations omitted).

Further, as previously stated, any amount owed to employees under the PUP will become the obligation of the acquirer to be paid post-closing.

As earlier explained, a participating employee only realizes a gain on the deferred compensation used to purchase the PUP if the Threshold Value Target set forth on the Redemption Price Schedule is attained during the applicable Performance Period, i.e. there is an increase in value of JEA itself. No public property is placed in jeopardy by default of the participating employee or any other third party.

Given that no credit is being pledged, Article VII, Section 10 requires only that a public purpose be met. The PUP's stated public purpose is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida; (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. (Section 1(a) of the JEA Long-Term Performance Unit Plan)."

The Florida Attorney General has opined that "if the expenditure primarily or substantially serves a public purpose, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, section 10." AGO 2005-02. The AGO further stated that the determination of whether the expenditure of funds fulfills a public purpose is one that the legislative body, in this case the JEA Board, must make. *Id.* As noted above, the PUP specifies the public purpose, and the JEA Board has approved the PUP.

9. Is the PUP permissible under Florida Laws related to "Extra Compensation?"

The PUP gives employees the choice of purchasing units that can increase in value if the value of JEA increases and decrease in value if the value of JEA decreases. The Plan is voluntary and requires employees that wish to participate to buy-in by deferring their personal compensation to purchase the units and to execute an agreement pertaining to the Plan. As developed below, the Plan does not therefore constitute "extra compensation" under section 215.425, Florida Statutes.

Section 215.425 provides that "no extra compensation shall be made to any [public employee] after the service has been rendered or the contract made." The intent behind this provision is that public employees should not receive gratuities for services that were already rendered. AGO 2005-07 ("The purpose of such a provision is to prevent payments in the nature of gratuities for past service, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service.").

We have reviewed the applicable legislative history of section 215.425 and have not identified anything suggesting that plans such as the PUP are, or are intended to be, prohibited by the statute. The provision applies principally in instances where public employees were to receive retroactive compensation for work already performed. *See* AGO 92-49 (holding that the Police Pension Board of Trustees could not pay a cost of living allowance to a retired police officer already receiving pension benefits for prior services); *see also* AGO 91-51 (holding that severance payments in lieu of notice violated the provision because the employee renders no service after termination and the payments were compensation for work already performed).

JEA's PUP plainly does not constitute "extra compensation" because the redemption payments are not compensation for the services that the employees render as part of their employment with JEA. Rather, the PUP allows all eligible employees to participate through a voluntary payment in enterprise creation at the risk of not receiving a return on the investment made to purchase the performance units. The PUP also does not serve to provide gratuities to the employees for their past service that they have been previously paid for and does not serve as a bonus program or incentive program to reward employees. Indeed, to participate in the Plan, JEA employees must opt-in at their sole discretion and expend their personal funds to purchase the units. The number of performance units available for purchase by each employee is directed by the Plan Administrator and is based on the employee's position level and annual performance review. The redemption payments for the units depend solely on the change in value of JEA. Thus, section 215.425 does not apply to the Plan, and the Plan does not constitute "extra compensation."

CONCLUSION

We appreciate the opportunity to review the PUP. Please call if there are any questions.

GC-#1332643 (.pdf)

From: "Stewart, Kerri - VP & Chief Customer Officer" <stewk@jea.com>
Subject: RE: 11-29-19-Myth v Fact PUP v1
Sent: Fri, 29 Nov 2019 15:24:46 -0600
To: "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>

Thank you! k

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Friday, November 29, 2019 4:20 PM
To: Stewart, Kerri - VP & Chief Customer Officer <stewk@jea.com>
Subject: Re: 11-29-19-Myth v Fact PUP v1

The fact phrase "and Continuously informed by the City's legal team"-Sounds awkward.

The JEA compensation committee bullet- did Towers Watson recommend this concept?

In "July 2019" bullet, "counsel" is spelled consul.

The Fact scrapped plan bullet- can we put a period after "Employees" and end the statement?

The second Scrapped Plan bullet- can we say "all JEA employees"?

Can we state "The now withdrawn plan was meant to to combine common concepts from private sector..."?

Thank you again.

Herschel
On Nov 29, 2019, at 3:00 PM, Stewart, Kerri - VP & Chief Customer Officer <stewk@jea.com> wrote:

Please review. Ryan, I added some of your factual points about the Council Auditor's calculations. Please check to make sure I captured correctly. Herschel, I addressed the changes we discussed; please check to see that I captured correctly.

I took a stab at a Myth/Fact about the Board. It is at the bottom of the document. I welcome input on the necessity of it and if yes, wordsmithing.

Finally, I'd like for us to have a letter/memo authored by Ryan to the Board refuting the Council Auditor's characterization of the PUP. I think it should come out next week in the lead up to the board meeting. It could even be a memo for the board package. Thoughts? k
<11-29-19-Myth v Fact PUP v1.docx>

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No Exhibit 36 Marked at the Interview

From: Hall, Sherry L.
To: Vinyard, Herschel T. - Chief Administrative Officer
Subject: FW: Salem/Diamond Public Meeting Notes
Date: Tuesday, December 10, 2019 4:42:59 PM

From: Matt Brockelman <brockelman@thesoutherngroup.com>
Sent: Tuesday, December 10, 2019 4:42 PM
To: Hall, Sherry L. <hallsl2@jea.com>
Subject: Fwd: Salem/Diamond Public Meeting Notes

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Notes are below

Matt Brockelman
The Southern Group
T: (904) 425-8765
C: (904) 451-6549

Begin forwarded message:

> **From:** Carlo Fassi <fassi@thesoutherngroup.com>
> **Date:** December 10, 2019 at 4:37:24 PM EST
> **To:** Matt Brockelman <brockelman@thesoutherngroup.com>, Deno Hicks <hicks@thesoutherngroup.com>
> **Subject: Salem/Diamond Public Meeting Notes**

- CMs will be asked to submit all questions to Peggy by COB Friday. Those questions will be fielded by Salem/Diamond on Monday
- Monday's tentative agenda:
  - Introduction by JEA witnesses (10 minutes)
  - Origination of PUP
  - Context: are similar incentive plans done at other private or municipal utilities?
  - Role of OGC, Ethics, Council Auditor, AG, etc
  - Expansion of PUP from JEA employees to non-employees
  - Lead-up to July JEA Board meeting: how were board

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6/17/20 Vinyard

members briefed?
    - Connecting PUP to recapitalization
    - Decision to end PUP
    - Closing statements

- All public record request documents are requested to be submitted by tomorrow. Hard copies and flash drives for each CM, plus Jason Gabriel.
- Witnesses will not be placed under oath

Members present: Salem, Diamond, Cumber, Dennis, Newby, Becton, White, DeFoor, Ferraro, Boylan, Carlucci, Bowman

Staff present: Kyle Billie, Jason Gabriel, Jordan Elsbury

Media present: Matt Mendenhall

From:	Vinyard, Herschel T. - Chief Administrative Officer
To:	Stewart, Kerri - VP & Chief Customer Officer
Bcc:	Vinyard, Herschel T. - Chief Administrative Officer
Subject:	Fwd: Kevin E Hyde sent you "Executive Summary of PUP document"
Date:	Wednesday, December 11, 2019 6:22:07 AM
Attachments:	Executive Summary of PUP document.docx ATT00001.htm

For discussion.

Begin forwarded message:

From: "KHyde@foley.com" <KHyde@foley.com>
Date: December 10, 2019 at 7:22:28 PM EST
To: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>, "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>
Subject: Kevin E Hyde sent you "Executive Summary of PUP document"

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Please see attached for review and comment.

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Executive Summary

The Performance Unit Plan ("PUP") is the product of discussions begun with the JEA Board Compensation Committee on January 15, 2019. The Compensation Committee desired to utilize "employee incentives [that] drive value and teamwork".[1] JEA reviewed available options over the course of the following months. In June, 2019, the JEA Compensation Committee authorized JEA to "start the process of finalizing a long term compensation framework."[2] Also, in June, 2019, the OGC affirmed the authority of the JEA Board to create or establish a long-term employee incentive plan.[3] On July 22, 2019 (prior to the JEA Board meeting on the 23rd), OGC confirmed its review of Resolution 2019-10 (which authorizes the PUP) and the authority of the JEA Board to consider, approve or deny the resolution.[4] The JEA Board approved Resolution 2019-10 on July 23, 2019, which resolution "APPROVED LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION.[5]

Based on JEA Board approval, JEA leadership team worked extensively with OGC, specialized outside counsel retained by OGC (Pillsbury and Foley & Lardner) and the Council Auditor in developing and reviewing the PUP. JEA's CFO provided draft PUP plan documents to the Office of Council Auditor as early as August 9, 2019 who, in turn, asked a series of questions.[6] Council Auditor again met personally with JEA senior representatives on October 31, 2019.[7]

In August, September and October JEA continued to work with specialized counsel retained by OGC and JEA employee services representatives to review and refine the PUP Plan and to prepare an Employee Brochure to explain the PUP and the option to participate or decline. [8]

Simultaneous with the above, JEA, OGC and specialized counsel retained by OGC continued their legal review and analysis. This review began in July, 2019 and continued consistently until the decision to discontinue consideration of PUP in November, 2019. The review included additional legal research, the development of legal memoranda[9] addressing questions raised by the OGC, and meetings between outside counsel, JEA representatives and OGC in September, October and November, 2019. Some, but not all of the issues included compliance with state laws related to compensation, various Florida ethics laws, whether the PUP could allow JEA employees to benefit from growth in the net position value of JEA and what involvement, if any, by City Council was required.

In addition to the above review, and though not required to do so, on October 1, 2019, JEA sought an advisory opinion from the Florida Attorney General.[10] The request stated, "while it appears

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[1] Minutes of Compensation Committee dated January 15, 2019 (Tab CC Mins 1/15/19).
[2] Minutes of Compensation Committee dated June 18, 2019 (Tab CC Mins 6/18/19).
[3] Memorandum to Lynne Rhode dated June 17, 2019 (Tab P&C OGC Memo 6/17/19).
[4] Memorandum to File from Lawsikia Hodges, Lynne Rhode and Jason Gabriel dated July 22, 2019 (Tab P&C OGC Memo 7/22/19).
[5] JEA Board Minutes of July 23, 2019 (BOD Mins 7/23/19).
[6] Email from Jeffrey Rodda to Juli Crawford et. Al. dated August 9, 2019 (Tab "E-mails").
[7] Email from Heather Reber to Ryan Wannamker et. Al. dated October 31, 2019 (Tab "Emails")
[8] See Tab "Emails," Tab LT PU Agreement, Tab Employee Brochure and Tab P&C Pills Memo 11/4/19..
[9] See Tab Foley 9/25/19.
[10] Tab "AG Request."

clear based on our research that the PUP is permissible under Florida law, given the potential significance of the Plan to both JEA and its approximately 2000 employees, we seek guidance from your Office to confirm that the PUP is lawful." Further, JEA had prepared an inquiry to the Florida Ethics Commission which it intended to send after a determination from the Florida Attorney General.[11]

Based on further consultation with OGC, JEA decided to suspend consideration and implementation of the PUP.[12] In accordance with Resolution 2019-863, JEA senior leadership has requested the JEA Board at its December 17, 2019 to rescind any further consideration or implementation of the PUP.

In deciding there were outstanding legal issues preventing adoption of the PUP as then written, the OGC did not find that the JEA Board acted outside of its authority to propose the PUP. Specifically, the OGC confirmed this in an email to JEA Board Chair April Green:[13]

> Per our conversation earlier this morning, it has come to my attention that a certain implication has been made that JEA did something legally wrong with regard to the preliminary adoption of the Performance Unit Plan (PUP) at the July 23, 2019 meeting. I write to address this unfortunate suggestion.
>
> Following the Board meeting, JEA gave OGC requisite time research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. In preliminarily approving the PUP, the JEA Board did not act outside of their legal authority.
>
> OGC ultimately concluded that the PUP had outstanding legal issues and JEA ultimately concluded that they would no longer pursue the plan. At the next JEA Board meeting, the Board will have the opportunity to vote and formally withdraw the plan. I anticipate the Board will take appropriate action at that time.

---

[11] Tab "Draft EE Request."
[12] Tab "PUP Ltr. To OGC 11/12/19", Tab "OGC Memo 11/12/19" and Tab "PUP Ltr. To JEA 11/12/19."
[13] Tab "OGC Email 12/6/19".

From: KHyde@foley.com <KHyde@foley.com>
Sent: Monday, December 23, 2019 10:52 AM EST
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: IRS Ruling
Attachment(s): "Internal Revenue Bulletin_ 2019-03 _ Internal Revenue Service.pdf"

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Please see comment below from Bob Bernstein as to length of time it takes to receive a private letter ruling.

-Kevin E. Hyde

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From: Bernstein, Robert S. <RBernstein@foley.com>
Sent: Monday, December 23, 2019 10:02 AM
To: Hyde, Kevin E. <KHyde@foley.com>; Russell Jr, W. Bradley <wbrussell@foley.com>
Subject: RE: JEA Question

Two issues. First, the only way to get the IRS' views on something like this is to request a private letter ruling. It often takes 4 months to get a private letter ruling, although I have seen the requests drag on much longer. Second, the IRS will not rule on every aspect of deferred compensation plans. Specifically, in their annual listing of areas that they will not rule upon, they list rulings under Section 409A as a no-rule area. See attached IRS Notice (highlighted text). For deferred compensation to be non-taxable until paid (as opposed to taxable when deferred), you must comply with a host of rules, including the rules of Section 409A (which address various procedural aspects of deferred compensation plans). Hence, while the IRS may rule on some aspects of the plan, you are unlikely to obtain a comprehensive ruling that addresses every applicable federal income tax issue.

I think that the best that JEA could do is get an opinion of counsel on the issue if they wanted all the issues analyzed and addressed.

Regards, Bob

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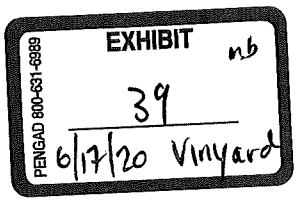

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CONTAINED IN THIS EMAIL ARE SUBJECT TO THE TERMS AND CONDITIONS IN THE GOVERNING FOLEY & LARDNER CLIENT ENGAGEMENT LETTER. THANK YOU.

From: Hyde, Kevin E. <KHyde@foley.com>
Sent: Monday, December 23, 2019 9:28 AM
To: Bernstein, Robert S. <RBernstein@foley.com>; Russell Jr, W. Bradley <wbrussell@foley.com>
Subject: JEA Question

Bob, Brad:

During the course of discussing the JEA Performance Unit Plan (PUP) we reviewed whether the Plan could be treated as deferred compensation under Florida law. See provision of our memo below. One of the requirements is that there be a determination that the plan proceeds would not be immediately taxable. See highlighted provision. Presumably JEA would get this from the IRS. Generally, how long would it take to get such a determination. I can also send you the whole PUP memo if that helps. Thanks.

The PUP is not a traditional deferred compensation plan such as the one currently in place with JEA. However, the PUP is akin to and fits with the deferred compensation plan allowed by F.S. 112.215. If JEA desires to treat the PUP as a deferred compensation plan pursuant to §112.215, the JEA Board must approve the PUP (it has); as required JEA will seek a determination that the compensation deferred by employees to purchase the PUP is not currently taxable (F.S. 112.215(5) and (6)(b)); and that the proceeds to the employees from the PUP, if any, will not be included in the employee's taxable income until proceeds are actually received (F.S. 112.215(6)(a)). Finally, the PUP does not impose any liability on JEA, "except to show that the payments have been [or will be] remitted for the purposes for which the compensation has been deferred." (F.S. 112.215(9)). Specifically, Section 9(c) of the JEA Long-Term Performance Unit Plan states, "[t]his Plan is intended to constitute an 'unfunded' program, and no amount shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder." Further, a JEA Employee stands to gain nothing if the Threshold Value Target is not attained during the applicable Performance Period (Section 2(t) of the JEA Long-Term Performance Unit Plan).

In addition to the requirements under F.S. 112.215, the Administrator of the PUP should consult F.S. 112.21 to determine the applicability of requirements of custodial accounts in which the deferred compensation used to purchase performance units will be held. It is our understanding that JEA intends to hold the deferred compensation in an interest-bearing FDIC- insured account such as those currently used for other existing JEA deferred compensation plans.

-Kevin E. Hyde

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SECTION 1. PURPOSE AND NATURE OF CHANGES

.01 The purpose of this revenue procedure is to update Rev. Proc. 2018–3, 2018–1 I.R.B. 130, by providing a revised list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) relating to issues on which the Internal Revenue Service (the "Service") will not issue letter rulings or determination letters. For a list of areas under the jurisdiction of the Associate Chief Counsel (International) relating to international issues on which the Service will not issue letter rulings or determination letters, see Rev. Proc. 2019–7, this Bulletin. For a list of areas under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division relating to issues, exempt organizations, plans, or plan amendments on which the Service will and will not issue letter rulings or determination letters, see Rev. Proc. 2019–4 and Rev. Proc. 2019–5, this Bulletin.

.02 Changes.

(1) Section 3.01(7), regarding § 61, has been added.

(2) Section 3.01(31), regarding § 162, has been added.

(3) Section 3.01(33), regarding §§ 165, 381, and 1502, has been clarified and paragraph (ii) has been added.

(4) Section 3.01(85), regarding § 643(f), has been added.

(5) Section 3.01(125), regarding § 6050P, has been added.

(6) Section 4.01(46), regarding § 1031(f), has been modified.

(7) Old sections 5.01(15) and 5.01(16), regarding § 6050P, have been moved to sections 3.01(126) and 3.01(127).

(8) References to Associate Chief Counsel (Tax Exempt and Government Entities) (TEGE) have been changed to Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (EEE) throughout the revenue procedure to reflect the Office's name change.

SECTION 2. BACKGROUND, SCOPE OF APPLICATION, AND NO-RULE ISSUES PART OF INTEGRATED TRANSACTION

.01 Background.

Whenever appropriate in the interest of sound tax administration, it is the policy of the Service to answer inquiries of individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. In employee plans matters described in section 5.15 of Rev. Proc. 2019–1, this Bulletin, the Associate Chief Counsel (EEE) may issue letter rulings after the filing of returns or reports that are required by the revenue laws.

There are, however, certain areas in which, because of the inherently factual nature of the problems involved, or for other reasons, the Service will not issue rulings or determination letters. These areas are set forth in four sections of this revenue procedure. Section 3 reflects those areas in which rulings or determination letters will not be issued. Section 4 sets forth those areas in which rulings or determination letters will not ordinarily be issued. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. Section 5 sets forth those areas in which the Service is temporarily not issuing rulings or determination letters because those matters are under study. Finally, section 6 of this revenue procedure lists specific areas in which the Service will not ordinarily issue rulings because the Service has provided automatic approval procedures for these matters.

See Rev. Proc. 2019–1, this Bulletin, particularly section 6 captioned "Under What Circumstances Does The Service Not Issue Letter Rulings Or Determination Letters?" for general instructions and other situations in which the Service will not or ordinarily will not issue letter rulings or determination letters.

With respect to the items listed, revenue rulings or revenue procedures may be published in the Internal Revenue Bulletin from time to time to provide general guidelines regarding the position of the Service.

Additions or deletions to this revenue procedure as well as restatements of items listed will be made by modification of this revenue procedure. Changes will be published as they occur throughout the year and will be incorporated annually in a new revenue procedure published as the third revenue procedure of the year. These lists should not be considered all-inclusive because the Service may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration (including due to resource constraints) or on other grounds whenever warranted by the facts or circumstances of a particular case. Decisions not to rule on individual cases (as contrasted with those that present significant pattern issues) are not reported in this revenue procedure and will not be added to subsequent revisions.

If the Service determines that it is not in the interest of sound tax administration to issue a letter ruling or determination letter due to resource constraints, it will adopt a consistent approach with respect to taxpayers that request a ruling on the same issue. The Service will also consider adding the issue to the no rule list at the first opportunity. See section 6.02 of Rev. Proc. 2019–1, this Bulletin.

.02 Scope of Application.

This revenue procedure does not preclude the submission of requests for technical advice to the National Office from other offices of the Service.

.03 No-Rule Issues Part of Integrated Transaction.

If it is impossible for the Service to determine the tax consequences of an integrated transaction without knowing the resolution of an issue on which the Service will not issue rulings or determination letters under this revenue procedure involving a part of the transaction or a related transaction, the taxpayer must state in the request to the best of the taxpayer's knowledge and belief the tax consequences of the no-rule issue. The Service's ruling or determination letter will state that the Service did not consider, and no opinion is expressed upon, that issue. In appropriate cases the Service may decline to issue rulings or determination letters on such integrated transactions due to the relevance of the no-rule issue, despite the taxpayer's representation. See also section 4.02(2) of this revenue procedure.

SECTION 3. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED

.01 Specific Questions and Problems.

(1) Section 42.—Low-Income Housing Credit.—Whether under § 42(j)(4)(E) a casualty loss has been restored by reconstruction or replacement within a reasonable period of time. The Service may issue a determination letter in this case. See section 12 of Rev. Proc. 2019–1, this Bulletin.

(2) Section 45.—Electricity Produced from Certain Renewable Resources, Etc.—The allocation by a partnership of the § 45 credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.

(3) Section 45.—Electricity Produced from Certain Renewable Resources, Etc.—Whether the taxpayer meets the requirements of § 45 or Notice 2010–54, 2010–40 I.R.B. 403, for refined coal.

(4) Sections 45 and 48.—Electricity Produced from Certain Renewable Resources, Etc.; Energy Credit.—The application of the beginning of construction requirement under § 45(d) and § 48(a)(5).

(5) Section 47.—Rehabilitation Credit.—The allocation by a partnership of the § 47 rehabilitation credit, the validity of the partnership, or whether any taxpayer is a valid partner in the partnership.

(6) Section 48.—See section 3.01(4), above.

(7) Section 61.—Gross Income Defined.—Whether an amount is not included in a taxpayer's gross income under section 61 because the taxpayer receives the amount subject to an unconditional obligation to repay the amount.

(8) Section 61.—Gross Income Defined.—Whether amounts voluntarily deferred by a taxpayer under a deferred-compensation plan maintained by an organization described in § 501 (other than an eligible plan maintained by an eligible employer pursuant to the provisions of § 457(b)) are currently includible in the taxpayer's gross income.

(9) Section 61.—Gross Income Defined.—Whether a split-dollar life insurance arrangement is "materially modified" within the meaning of § 1.61–22(j)(2) of the Income Tax Regulations. (Also §§ 83, 301, 1401, 2501, 3121, 3231, 3306, 3401, and 7872.)

(10) Sections 61, 451, and 1001.—Gross Income Defined; General Rule for Taxable Year of Inclusion; Determination of Amount of and Recognition of Gain or Loss.—Whether, under authorization by an appropriate state agency to recover certain costs pursuant to state specified cost recovery legislations, any investor-owned utility company realizes income upon: (i) the creation of an intangible property right; (ii) the transfer of that intangible property right; or (iii) the securitization of the intangible property right.

(11) Section 79.—Group-Term Life Insurance Purchased for Employees.—Whether a group insurance plan for 10 or more employees qualifies as group-term insurance, if the amount of insurance is not computed under a formula that would meet the requirements of § 1.79–1(c)(2)(ii) of the Income Tax Regulations had the group consisted of fewer than 10 employees.

(12) Section 83.—Property Transferred in Connection with Performance of Services.—Whether a restriction constitutes a substantial risk of forfeiture, if the employee is a controlling shareholder. Also, whether a transfer has occurred, if the amount paid for the property involves a nonrecourse obligation.

(13) Section 83.—Property Transferred in Connection with Performance of Services.—Which corporation is entitled to the deduction under § 83(h) in cases in which a corporation undergoes a corporate division, if the facts are not similar to those described in Rev. Rul. 2002–1, 2002–1 C.B. 268.

(14) Section 101.—Certain Death Benefits.—Whether there has been a transfer for value for purposes of § 101(a) in situations involving a grantor and a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(15) Sections 101, 761, and 7701.—Certain Death Benefits; Terms Defined; Definitions.—Whether, in connection with the transfer of a life insurance policy to an unincorporated organization, (i) the organization will be treated as a partnership under §§ 761 and 7701, or (ii) the transfer of the life insurance policy to the organization will be exempt from the transfer for value rules of § 101, when substantially all of the organization's assets consist or will consist of life insurance policies on the lives of the members.

(16) Section 102.—Gifts and Inheritances.—Whether a transfer is a gift within the meaning of § 102(a).

(17) Section 105(h).—Amount Paid to Highly Compensated Individuals Under a Discriminatory Self-Insured Medical Expense Reimbursement Plan.—Whether a self-insured medical reimbursement plan satisfies the requirements of § 105(h) for a plan year.

(18) Section 107.—Rental Value of Parsonages.—Whether amounts distributed to a retired minister from a pension or annuity plan should be excludible from the minister's gross income as a parsonage allowance under § 107.

(19) Section 107.—Rental Value of Parsonages.—Whether an individual is a "minister of the gospel" for Federal tax purposes. (Also §§ 1402(a)(8), (c)(4), and (e), 3121(b)(8)(A), and 3401(a)(9).)

(20) Section 115.—Income of States, Municipalities, Etc.—The results of transactions pursuant to a plan or arrangement created by state statute a primary objective of which is to enable participants to pay for the costs of a post-secondary education for themselves or a designated beneficiary, including: (i) whether the plan or arrangement, itself, is an entity separate from a state and, if so, how the plan or arrangement is treated for Federal tax purposes; and (ii) whether any contract under the plan or arrangement is a debt instrument and, if so, how interest or original issue discount attributable to the contract is treated for Federal tax purposes. (Also §§ 61, 163, 1275, 2501, and 7701.)

(21) Section 115.—Income of States, Municipalities, Etc.—Whether the income of membership organizations established by states exclusively to reimburse members for losses arising from workmen's compensation claims is excluded from gross income under § 115.

(22) Section 115.—Income of States, Municipalities, Etc.—Whether some, but not all, income of an entity is from the exercise of an essential government function in order to be excluded from gross income under § 115.

(23) Section 115.—Income of States, Municipalities, Etc.—Whether income accruing to a trust, or other entity, relating to or associated with a qualified retirement plan described in § 401(a) is excluded from gross income under § 115.

(24) Section 117.—Qualified Scholarships.—Whether amounts paid to research fellows and research associates are scholarships or fellowships excluded from wages for FICA tax purposes.

(25) Section 117.—Qualified Scholarships.—Whether an employer-related scholarship or fellowship grant is excludible from the employee's gross income, if there is no intermediary private foundation distributing the grants, as described in Rev. Proc. 76–47, 1976–2 C.B. 670.

(26) Section 118.—Contributions to the Capital of a Corporation.—Whether a transfer of an intertie as defined in section III. B. 2. of Notice 2016–36, 2016–25 I.R.B. 1029, meets all of the requirements under the safe harbor provided by Notice 2016–36.

(27) Section 119.—Meals or Lodging Furnished for the Convenience of the Employer.—Whether the value of meals or lodging is excludible from gross income by an employee who is a controlling shareholder of the employer.

(28) Section 121.—Exclusion of Gain from Sale of Principal Residence.—Whether property qualifies as the taxpayer's principal residence.

(29) Section 125.—Cafeteria Plans.—Whether amounts used to provide group-term life insurance under § 79, accident and health benefits under §§ 105 and 106, and dependent care assistance programs under § 129 are includible in the gross income of participants and considered "wages" for purposes of §§ 3401, 3121, and 3306 when the benefits are offered through a cafeteria plan.

(30) Section 162.—Trade or Business Expenses.—Whether compensation is reasonable in amount.

(31) Section 162.—Trade or Business Expenses.—Whether a taxpayer is engaged in a trade or business. This area does not include a request for a ruling that relies on a representation from a taxpayer that the taxpayer is or is not engaged in a trade or business, or a request for a ruling that relies on factual information provided by the taxpayer evidencing the active conduct of a trade or business (for example, a request that relies on the taxpayer's active conduct of a trade or business as evidenced by financial statements provided by the taxpayer).

(32) Section 163.—Interest.—The income tax consequences of transactions involving "shared appreciation mortgage" (SAM) loans in which a taxpayer, borrowing money to purchase real property, pays a fixed rate of interest on the mortgage loan below the prevailing market rate and will also pay the lender a percentage of the appreciation in value of the real property upon termination of the mortgage. This applies to all SAM arrangements in which the loan proceeds are used for commercial or business activities, or to finance a personal residence, if the facts are not similar to those described in Rev. Rul. 83–51, 1983–1 C.B. 48. (Also §§ 61, 451, 461, 856, 1001, and 7701.)

(33) Sections 165, 381, and 1502.—Losses; Carryovers in Certain Corporate Acquisitions; Regulations.—In determining whether a loss for worthless securities is subject to § 165(g)(3), (i) whether the source of any gross receipts may be determined by reference to the source of gross receipts of a counter party to an intercompany transaction, as defined in § 1.1502–13(b)(1) (e.g., an intercompany distribution to which § 1.1502–13(f)(2) applies), other than an intercompany transaction to which § 381(a) applies, and (ii) in an intercompany transaction to which § 381(a) applies, whether the acquiring corporation takes into account historic gross receipts of the distributor or transferor corporation, if the intercompany transaction is part of a plan to claim a deduction for worthless securities under § 165(g)(3).

(34) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a charitable contribution deduction under § 170 is allowed for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 170(c).

(35) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who advances funds to a charitable organization and receives therefor a promissory note may deduct as contributions, in one taxable year or in each of several years, amounts forgiven by the taxpayer in each of several years by endorsement on the note.

(36) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether an organization is or continues to be described in § 170(b)(1)(A) (other than clause (v)) or § 170(c)(2) – (5), including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's status as an organization described in those sections. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 170(b)(1)(A) or 170(c) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on public charity status under § 170.

(37) Section 181.—Treatment of Certain Qualified Film and Television Productions.—The determination under § 1.181–1(a)(1) and (2) as to who is the owner of a qualified film or television production.

(38) Section 199.—Income Attributable to Domestic Production Activities.—The determination under § 1.199–3(f)(1) as to who is the taxpayer that has the benefits and burdens of ownership under Federal income tax principles of any qualifying production property (as defined in § 1.199–3(j)(1)), qualified film (as defined in § 1.199–3(k)), or utilities (as defined in § 1.199–3(l)) during the period in which a qualifying activity under § 199 occurs.

(39) Section 213.—Medical, Dental, Etc., Expenses.—Whether a capital expenditure for an item that is ordinarily used for personal, living, or family purposes, such as a swimming pool, has as its primary purpose the medical care of the taxpayer or the taxpayer's spouse or dependent, or is related directly to such medical care.

(40) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—Whether a unit constitutes an "apartment in a building" under § 216(b)(1)(B).

(41) Section 264.—Certain Amounts Paid in Connection with Insurance Contracts.—Whether § 264(d)(1) applies.

(42) Section 264(c)(1).—Contracts Treated as Single Premium Contracts.—Whether "substantially all" the premiums of a contract of insurance are paid within a period of 4 years from the date on which the contract is purchased. Also, whether an amount deposited is in payment of a "substantial number" of future premiums on such a contract.

(43) Sections 267, 304, 331, 332, 351, and 1502.—Losses, Expenses, and Interest with Respect to Transactions Between Related Taxpayers; Redemption Through Use of Related Corporations; Gain or Loss to Shareholders in Corporate Liquidations; Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Regulations.—The treatment of transactions in which stock of a corporation is transferred with a plan or intention that the corporation be liquidated in a transaction intended to qualify under § 331.

(44) Section 269.—Acquisitions Made to Evade or Avoid Income Tax.—Whether an acquisition is within the meaning of § 269.

(45) Section 274.—Disallowance of Certain Entertainment, Etc., Expenses.—Whether a taxpayer who is traveling away from home on business may, in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for meal expenses that differs from the amount authorized by the revenue procedure providing optional rules for substantiating the amount of travel expenses for the period in which the expense was paid or incurred.

(46) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation consists entirely or partly of its notes payable, and the shareholder's stock is held in escrow or as security for payment of the notes with the possibility that the stock may or will be returned to the shareholder in the future, upon the happening of specific defaults by the corporation.

(47) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies when the consideration given in redemption by a corporation in exchange for a shareholder's stock consists entirely or partly of the corporation's promise to pay an amount based on, or contingent on, future earnings of the corporation, when the promise to pay is contingent on working capital being maintained at a certain level, or any other similar contingency.

(48) Section 302.—Distributions in Redemption of Stock.—Whether § 302(b) applies to a redemption of stock, if, after the redemption, the distributing corporation uses property that is owned by the shareholder from whom the stock is redeemed and the payments by the corporation for the use of the property are dependent upon the corporation's future earnings or are subordinate to the claims of the corporation's general creditors. Payments for the use of property will not be considered to be dependent upon future earnings merely because they are based on a fixed percentage of receipts or sales.

(49) Section 302.—Distributions in Redemption of Stock.—Whether the acquisition or disposition of stock described in § 302(c)(2)(B) has, or does not have, as one of its principal purposes the avoidance of Federal income taxes within the meaning of that section, unless the facts and circumstances are materially identical to those set forth in Rev. Rul. 85–19, 1985–1 C.B. 94; Rev. Rul. 79–67, 1979–1 C.B. 128; Rev. Rul. 77–293, 1977–2 C.B. 91; Rev. Rul. 57–387, 1957–2 C.B. 225; Rev. Rul. 56–584, 1956–2 C.B. 179; or Rev. Rul. 56–556, 1956–2 C.B. 177.

(50) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—The amount of working capital attributable to a business or portion of a business terminated that may be distributed in partial liquidation.

(51) Section 304.—See section 3.01(43), above.

(52) Section 312.—Effect on Earnings and Profits.—The determination of the amount of earnings and profits of a corporation.

(53) Sections 331, 453, and 1239.—Gain or Loss to Shareholders in Corporate Liquidations; Installment Method; Gain from Sale of Depreciable Property Between Certain Related Taxpayers.—The tax effects of a transaction in which there is a transfer of property by a corporation to a partnership or other noncorporate entity (or the transfer of stock to such entity followed by a liquidation of the corporation) when more than a nominal amount of the stock of such corporation and the capital or beneficial interests in the purchasing entity (that is, more than 20 percent in value) is owned by the same persons, and the consideration to be received by the selling corporation or the selling shareholders includes an installment obligation of the purchasing entity.

(54) Section 331.—See section 3.01(43), above.

(55) Sections 332, 351, 368, and 1036.—Complete Liquidations of Subsidiaries; Transfer to Corporation Controlled by Transferor; Definitions Relating to Corporate Reorganizations; Stock for Stock of Same Corporation.—Whether a transaction qualifies under § 332, 351, or 1036 for nonrecognition treatment or whether it constitutes a corporate reorganization within the meaning of § 368, except a transaction intended to qualify under §§ 368(a)(1)(D) and 355, and whether various tax consequences (such as nonrecognition and basis) result from the application of that section. The Service will instead rule only on significant issues presented in a transaction described in § 332, 351, 368, or 1036. Additionally, the Service will rule on one or more significant issues under the Code sections that address the tax consequences (such as nonrecognition and basis) that result from the qualification of a transaction under § 332, 351, 368, or 1036. See section 6.03(2) of Rev. Proc. 2019–1, this Bulletin.

SIGNIFICANT ISSUE: A significant issue is a germane and specific issue of law, provided that a ruling on the issue would not be a comfort ruling, as defined in section 6.11 of Rev. Proc. 2019–1, or the conclusion in such a ruling otherwise would not be essentially free from doubt. An issue is germane if resolution of the issue is necessary to determine an element of the tax treatment of the transaction. An

issue is specific if it is the narrowest articulation of the germane issue. A change of circumstances arising after a transaction ordinarily does not present a significant issue with respect to the transaction.

OBTAINING A LETTER RULING: To obtain a letter ruling on a significant issue presented in a transaction, the taxpayer in its letter ruling request must comply with all the requirements set forth in section 6.03(2) of Rev. Proc. 2019–1, as well as Rev. Proc. 2019–1, in general.

(56) Section 332.—See section 3.01(43), above.

(57) Section 351.—See sections 3.01(43) and (55), above.

(58) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). Notwithstanding the preceding sentence, the Service: (i) will issue a letter ruling with respect to a significant issue under § 1.355–2(b) pertaining to the corporate business purpose requirement, provided that the issue is a legal issue and is not inherently factual in nature, (ii) will issue a letter ruling with respect to a significant issue under § 355(a)(1)(B) and § 1.355–2(d) pertaining to device, provided that the issue is a legal issue and is not inherently factual in nature, and (iii) may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(59) Section 358.—Basis to Distributees.—The acceptability of an estimation procedure or the acceptability of a specific sampling procedure to determine the basis of stock acquired by an acquiring corporation in a reorganization described in § 368(a)(1)(B).

(60) Section 368.—See section 3.01(55), above.

(61) Section 381.—See section 3.01(33), above.

(62) Section 403(b).—Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—Whether the form of a plan satisfies the requirements of § 403(b) as provided in Rev. Proc. 2019–4, this Bulletin.

(63) Section 409A.—Inclusion in Gross Income of Deferred Compensation Under Nonqualified Deferred Compensation Plans.—The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 1.409A–1(a); whether a plan is described in § 1.409A–1(a)(3)(iv) or (v); whether a plan is a *bona fide* vacation leave, sick leave, or compensatory time plan described in § 1.409A–1(a)(5); and whether a plan provides for the deferral of compensation under § 1.409A–1(b).

(64) Section 411(d)(3).—Termination or Partial Termination; Discontinuance of Contributions.—Whether there has been a partial termination of an employee plan. The Service may issue a determination letter involving the partial termination of an employee plan. See Rev. Proc. 2019–4, this Bulletin.

(65) Section 414(d).—Governmental Plan.—Whether a plan is a governmental plan under § 414(d).

(66) Section 419(e).—Welfare Benefit Fund.—Whether a captive insurance arrangement through which an employer provides health insurance to current or retired employees is a welfare benefit fund.

(67) Section 424.—Definitions and Special Rules.—Whether the substitution of a new Incentive Stock Option (ISO) for an old ISO, or the assumption of an old ISO, by an employer by reason of a corporate transaction constitutes a modification which results in the issuance of a new option by reason of failing to satisfy the spread test requirement of § 424(a)(1) or the ratio test requirement of § 1.425–1(a)(4).

The Service will continue to rule on the issue of whether the new ISO or the assumption of the old ISO gives the employee additional benefits not present under the old option within the meaning of § 424(a)(2).

(68) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified unfunded deferred-compensation arrangement with respect to a controlling shareholder-employee eligible to participate in the arrangement.

(69) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of nonqualified unfunded deferred-compensation arrangements in which the arrangements fail to meet the requirements of Rev. Proc. 92–65, 1992–2 C.B. 428, and Rev. Proc. 71–19, 1971–1 C.B. 698.

(70) Sections 451 and 457.—General Rule for Taxable Year of Inclusion; Nonqualified Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.—The tax consequences to unidentified independent contractors in nonqualified unfunded deferred compensation plans. This applies to plans established under § 451 by employers in the private sector and to plans of state and local governments and tax-exempt organizations under § 457. However, a ruling with respect to a specific independent contractor's participation in such a plan may be issued.

(71) Section 451.—See section 3.01(10), above.

(72) Section 453.—See section 3.01(53), above.

(73) Section 457.—See section 3.01(70), above.

(74) Section 457A.—Nonqualified Deferred Compensation from Certain Tax Indifferent Parties.—The income tax consequences of establishing, operating, or participating in a nonqualified deferred compensation plan within the meaning of § 457A(d)(3).

(75) Section 501.—Exemption from Tax on Corporations, Certain Trusts, Etc.—Whether an organization is or continues to be exempt from taxation under § 501(a) as an organization described in §§ 501(c) or 501(d), including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's exempt status. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 501(c) or 501(d) that are not otherwise described in this revenue procedure. For example, although the Associate Chief Counsel (EEE) would not rule on whether a change in a § 501(c)(3) organization's activities would jeopardize the organization's exempt status, the Associate Chief Counsel (EEE) would (subject to the limitations described in this revenue procedure) rule on whether such new activities would further an exempt purpose described in § 501(c)(3). See Rev. Proc. 2019–5, this Bulletin, for the procedures for issuing determination letters on tax-exempt status under § 501.

(76) Sections 501, 511, 512, 513, and 514.—Exemption from Tax on Corporations, Certain Trusts, Etc.; Imposition of Tax on Unrelated Business Income of Charitable, Etc., Organizations; Unrelated Business Taxable Income; Unrelated Trade or Business; Unrelated Debt-Financed Income.—Whether a joint venture between a tax-exempt organization and a for-profit organization affects an organization's exempt status, furthers an exempt purpose, or results in unrelated business income.

(77) Sections 507, 664, 4941, and 4945.—Termination of Private Foundation Status; Charitable Remainder Trusts; Taxes on Self-Dealing; Taxes on Taxable Expenditures.—Issues pertaining to the tax consequences of the termination of a charitable remainder trust (as defined in § 664) before the end of the trust term as defined in the trust's governing instrument in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets.

(78) Section 509.—Private Foundation Defined.—Whether an organization is or continues to be described in § 509(a) including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's status as a public charity described in § 509(a)(1) – (4). The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to § 509(a) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on public charity status under § 509.

(79) Sections 511, 512, 513, and 514.—Imposition of Tax on Unrelated Business Income of Charitable, Etc., Organizations; Unrelated Business Taxable Income; Unrelated Trade or Business; Unrelated Debt-Financed Income.—Whether unrelated business income tax issues arise when charitable lead trust assets are invested with charitable organizations.

(80) Sections 511, 512, 513, and 514.—See section 3.01(76), above.

(81) Section 529.—Qualified Tuition Programs.—Whether a state-run tuition program qualifies under § 529.

(82) Sections 542, 543, and 544.—Definition of Personal Holding Company; Personal Holding Company Income; Rules for Determining Stock Ownership.—Whether the application of § 544(a) causes a corporation to meet the stock ownership requirements under § 542(a)(2), § 543(a)(4), § 543(a)(6), or § 543(a)(7).

(83) Section 641.—Imposition of Tax.—Whether the period of administration or settlement of an estate or a trust (other than a trust described in § 664) is reasonable or unduly prolonged.

(84) Section 642(c).—Deduction for Amounts Paid or Permanently Set Aside for a Charitable Purpose. —Allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes when there is a possibility that the corpus of the trust or estate may be invaded.

(85) Section 643(f).—Treatment of multiple trusts.—Whether two or more trusts shall be treated as one trust for purposes of subchapter J of chapter 1.

(86) Section 664.—Charitable Remainder Trusts.—Whether the settlement of a charitable remainder trust upon the termination of the noncharitable interest is made within a reasonable period of time.

(87) Section 664.—See section 3.01(77), above.

(88) Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a trust when (i) substantially all of the trust corpus consists or will consist of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, and (iv) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(89) Section 704(b).—Determination of Distributive Share.—Whether the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or an item thereof) has substantial economic effect or is in accordance with the partner's interest in the partnership.

(90) Section 761.—Terms Defined.—Matters relating to the validity of a partnership or whether a person is a partner in a partnership.

(91) Section 761.—See section 3.01(15), above.

(92) Section 856.—Definition of Real Estate Investment Trust.—Whether a corporation whose stock is "paired" with or "stapled" to stock of another corporation will qualify as a real estate investment trust under § 856, if the activities of the corporations are integrated.

(93) Section 1001.—Determination of Amount of and Recognition of Gain or Loss.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or other disposition by the beneficiaries of their interests in the trust.

(94) Section 1001.—See section 3.01(10), above.

(95) Section 1033.—Involuntary Conversions.—Whether the replacement or proposed replacement of compulsorily or involuntarily converted property does or does not qualify under § 1033(a), if the taxpayer has already filed a Federal tax return for the first taxable year in which any of the gain was realized from the converted property. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2019–1, this Bulletin.

(96) Section 1036.—See section 3.01(55), above.

(97) Section 1221.—Capital Asset Defined.—Whether specialty stock allocated to an investment account by a registered specialist on a national securities exchange is a capital asset.

(98) Section 1221.—Capital Asset Defined.—Whether the termination of a charitable remainder trust before the end of the trust term as defined in the trust's governing instrument, in a transaction in which the trust beneficiaries receive their actuarial shares of the value of the trust assets, is treated as a sale or exchange of a capital asset by the beneficiaries.

(99) Section 1239.—See section 3.01(53), above.

(100) Section 1361.—S Corporation Defined.—Whether a state law limited partnership electing under § 301.7701–3 to be classified as an association taxable as a corporation has more than one class of stock for purposes of § 1361(b)(1)(D). The Service will treat any request for a ruling on whether a state law limited partnership is eligible to elect S corporation status as a request for a ruling on whether the partnership complies with § 1361(b)(1)(D).

(101) Section 1502.—Regulations.—If a member of an affiliated group fails to file Form 1122 or fails to join in the making of a consolidated return due to a mistake of law or fact, or inadvertence, whether such member will be treated as if it had filed a Form 1122. The Service may issue a determination letter in this case. See section 12.01 of Rev. Proc. 2019–1, this Bulletin. But see also section 6.07 of this revenue procedure.

(102) Section 1502.—See sections 3.01(33) and (43), above.

(103) Section 1551.—Disallowance of the Benefits of the Graduated Corporate Rates and Accumulated Earnings Credit.—Whether a transfer is within § 1551.

(104) Section 2031.—Definition of Gross Estate.—Actuarial factors for valuing interests in the prospective gross estate of a living person.

(105) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a charitable contribution deduction under § 2055 is allowed for the transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2055(a).

(106) Section 2512.—Valuation of Gifts.—Actuarial factors for valuing prospective or hypothetical gifts of a donor.

(107) Section 2522.—Charitable and Similar Gifts.—Whether a charitable contribution deduction under § 2522 is allowable for a transfer of an interest in a limited partnership or a limited liability company taxed as a partnership to an organization described in § 2522(a).

(108) Section 2601.—Tax Imposed.—Whether a trust exempt from generation-skipping transfer (GST) tax under § 26.2601–1(b)(1), (2), or (3) of the Generation-Skipping Transfer Tax Regulations will retain its GST exempt status when there is a modification of a trust, change in the administration of a trust, or a distribution from a trust in a factual scenario that is similar to a factual scenario set forth in one or more of the examples contained in § 26.2601–1(b)(4)(i)(E).

(109) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining prospective employment status, whether an individual will be an employee or an independent contractor. A ruling with regard to prior employment status may be issued.

(110) Sections 3121, 3306, and 3401.—Definitions.—Who is the employer of an "employee-owner" as defined in § 269A(b)(2).

(111) Sections 3121, 3306, and 3401.—Definitions.—For purposes of determining employment classification pursuant to the filing of Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, whether a worker is a *bona fide* partner and, therefore, not an employee of the business.

(112) Section 4052(f)(1).—Certain Repairs and Modifications Not Treated as Manufacture.—Whether a chassis repaired or modified using a "glider kit" is treated as manufactured or produced if the cost of the repairs or modifications does not exceed 75 percent of the retail price of a comparable new chassis.

(113) Section 4191.—Medical Devices.—Whether a device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) intended for humans is not a "taxable medical device" within the meaning of § 4191(b)(1) due to the application of the exemption provided in § 4191(b)(2) for eyeglasses, contact lenses, hearing aids, and any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.

(114) Section 4216(b).—Constructive Sale Price.—Whether a particular methodology for determining the tax base is allowable under the constructive sale price rules.

(115) Sections 4375, 4376, and 4377.—Health Insurance; Self-Insured Health Plans; Definitions and Special Rules.—Whether an arrangement is a specified health insurance policy or an applicable self-insured health plan that is subject to the fee applicable to such arrangements.

(116) Sections 4940 and 4942.—Excise Tax Based on Investment Income; Taxes on Failure to Distribute Income.—Whether an organization is or continues to be an "operating foundation" described in § 4942(j)(3) or an "exempt operating foundation" described in § 4940(d)(2), including, for example, whether changes in an organization's activities or operations will affect or jeopardize the organization's status as an operating foundation or exempt operating foundation. The Associate Chief Counsel (EEE) will rule, however, on specific legal questions related to §§ 4940(d)(2) or 4942(j)(3) that are not otherwise described in this revenue procedure. See Rev. Proc. 2019–5, this Bulletin, for the procedures for obtaining determination letters on foundation status under §§ 4940 and 4942.

(117) Section 4941.—Taxes on Self-Dealing.—Whether transactions during the administration of an estate or trust meet the requirements of the exception to § 4941 set forth in § 53.4941(d)–1(b)(3) of the Private Foundation Excise Tax Regulations, in cases in which a disqualified person issues a promissory note in exchange for property of an estate or trust.

(118) Section 4941.—See section 3.01(77), above.

(119) Section 4942.—See section 3.01(116), above.

(120) Section 4945.—See section 3.01(77), above.

(121) Section 4958.—Taxes on Excess Benefit Transactions.—Whether a compensation or property transaction satisfies the rebuttable presumption that the transaction is not an excess benefit transaction as described in § 53.4958–6 of the Excess Benefit Transactions Excise Tax Regulations.

(122) Section 4975(d).—Exemptions.—Whether the renewal, extension, or refinancing of an exempt loan satisfies the requirements of § 4975(d)(3). Also, whether the pre-payment of employee stock ownership plan (ESOP) loans satisfies the requirements of § 4975(d)(3) other than with respect to plan termination.

(123) Section 4980B.—Failure to Satisfy Continuation Coverage Requirements of Group Health Plans. —Whether an action is "gross misconduct" within the meaning of § 4980B(f)(3)(B). (See section 3.05 of Rev. Proc. 87–28, 1987–1 C.B. 770, 771.)

(124) Section 4980H.—Shared Responsibility for Employers Regarding Health Coverage.—Whether an employer is required to make an assessable payment under § 4980H(a) or (b).

(125) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Requests for a ruling that the creditor is not required to report a discharge that include as grounds for the request a dispute regarding the underlying liability.

(126) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts reduced pursuant to the terms of a debt instrument are reportable under § 6050P and the regulations.

(127) Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities.—Whether amounts discharged in a nonlending transaction are reportable under § 6050P and the regulations.

(128) Section 6166.—Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business.—Requests involving § 6166 if there is no decedent.

(129) Section 6901.—Transferred Assets.—Whether a taxpayer is liable for tax as a transferee.

(130) Section 7216.—Disclosure or Use of Information by Preparers of Returns.—Whether a criminal penalty is applicable for any disclosure or use of information by preparers of returns.

(131) Section 7701.—Definitions.—The classification of an instrument that has certain voting and liquidation rights in an issuing corporation but whose dividend rights are determined by reference to the earnings of a segregated portion of the issuing corporation's assets, including assets held by a subsidiary.

(132) Section 7701.—Definitions.—The classification for Federal tax purposes of a fideicomiso or other land trust created under local law, applying the principles of Rev. Rul. 2013–14, 2013–26 I.R.B. 1267, or Rev. Rul. 92–105, 1992–2 C.B. 204.

(133) Section 7701.—See section 3.01(15), above.

(134) Section 7704.—Certain Publicly Traded Partnerships Treated as Corporations.—Whether interests in a partnership that are not traded on an established securities market (within the meaning of § 7704(b) and § 1.7704–1(b) of the Procedure and Administration Regulations) are readily tradable on a secondary market or the substantial equivalent thereof under § 1.7704–1(c)(1). This specifically includes, but is not limited to, whether an investment fund or portfolio supporting variable contract arrangements of life insurance companies is a publicly traded partnership.

(135) Section 9815.—Additional Market Reforms.—Whether an insured group health plan satisfies the requirements of § 2716 of the Public Health Service Act, Prohibition on Discrimination in Favor of Highly Compensated Individuals, as incorporated into the Code by § 9815.

.02 General Areas.

(1) Whether the economic substance doctrine is relevant to any transaction or whether any transaction complies with the requirements of § 7701(o).

(2) The results of transactions that lack a *bona fide* business purpose or have as their principal purpose the reduction of Federal taxes.

(3) A matter upon which a court decision adverse to the Government has been handed down and the question of following the decision or litigating further has not yet been resolved.

(4) A matter involving alternate plans of proposed transactions or involving hypothetical situations.

(5) Whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist.

(6) A matter involving the regulations governing practice before the Service under 31 CFR Part 10 (reprinted as Treasury Department Circular No. 230).

(7) Whether a proposed transaction would subject the taxpayer to a criminal penalty.

(8) Whether a completed transaction can be rescinded for Federal income tax purposes.

(9) The income tax (including unrelated business income tax) or excise tax consequences of the contribution of stock options to, or their subsequent exercise from, plans described in Part 1 of Subchapter D of Chapter 1 of Subtitle A of the Code.

(10) Questions that the Service determines, in its discretion, should not be answered in the general interests of sound tax administration, including due to resource constraints.

(11) Any frivolous issue, as that term is defined in section 6.10 of Rev. Proc. 2019–1, this Bulletin.

(12) A request that does not comply with the provisions of Rev. Proc. 2019–1, this Bulletin.

SECTION 4. AREAS IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT ORDINARILY BE ISSUED

.01 Specific Questions and Problems.

(1) Sections 38, 39, 46, and 48.—General Business Credit; Carryback and Carryforward of Unused Credits; Amount of Credit; Energy Credit.—Application of these sections if the formal ownership of property is in a party other than the taxpayer, except when title is held merely as security.

(2) Section 61.—Gross Income Defined.—Determination as to who is the true owner of property in cases involving the sale of securities, or participation interests therein, if the purchaser has the contractual right to cause the securities, or participation interests therein, to be purchased by either the seller or a third party.

(3) Sections 61 and 163.—Gross Income Defined; Interest.—Determinations as to who is the true owner of property or the true borrower of money in cases in which the formal ownership of the property, or the liability for the indebtedness, is in another party.

(4) Section 62(c).—Certain Arrangements Not Treated as Reimbursement Arrangements.—Whether amounts related to a salary reduction and paid under a purported reimbursement or other expense allowance arrangement will be treated as paid under an "accountable plan" in accordance with § 1.62–2(c)(2).

(5) Sections 83 and 451.—Property Transferred in Connection with Performance of Services; General Rule for Taxable Year of Inclusion.—When compensation is realized by a person who, in connection with the performance of services, is granted a nonstatutory option without a readily ascertainable fair market value to purchase stock at a price that is less than the fair market value of the stock on the date the option is granted.

(6) Sections 101 and 7702.—Certain Death Benefits; Life Insurance Contract Defined.—Whether amounts received under an arrangement with an entity that is not regulated as an insurance company may be treated as received under a "life insurance contract" within the meaning of §§ 101(a) and 7702.

(7) Section 103.—Interest on State and Local Bonds.—Whether the interest on state or local bonds will be excludible from gross income under § 103(a), if the proceeds of issues of bonds (other than advance refunding issues) are placed in escrow or otherwise not expended for a governmental purpose for an extended period of time even though the proceeds are invested at a yield that will not exceed the yield on the state or local bonds prior to their expenditure.

(8) Section 103.—Interest on State and Local Bonds.—Whether a state or local governmental obligation that does not meet the criteria of section 5 of Rev. Proc. 89–5, 1989–1 C.B. 774, is an "arbitrage bond" within the meaning of former § 103(c)(2) solely by reason of the investment of the bond proceeds in acquired nonpurpose obligations at a materially higher yield more than 3 years after issuance of the bonds or 5 years after issuance of the bonds in the case of construction issues described in former § 1.103–13(a)(2)(ii)(E) or § 1.148–2(e)(2)(ii).

(9) Section 141.—Private Activity Bond; Qualified Bond.—Whether state or local bonds will meet the "private business use test" and the "private security or payment test" under § 141(b)(1) and (2) in situations in which the proceeds are used to finance certain output facilities and, pursuant to a contract to take, or take or pay for, a nongovernmental person purchases 30 percent or more of the actual output of the facility but 10 percent or less of the available output of the facility as defined in § 1.141–7(b)(1). In similar situations, the Service will not ordinarily issue rulings or determination letters concerning questions arising under paragraphs (3), (4), and (5) of § 141(b).

(10) Sections 142 and 144(a).—Exempt Facility Bond; Qualified Small Issue Bond.—Whether an issue of private activity bonds meets the requirements of § 142 or § 144(a), if the sum of—

(i) the portion of the proceeds used to finance a facility in which an owner (or related person) or a lessee (or a related person) is a user of the facility both after the bonds are issued and at any time before the bonds were issued, and

(ii) the portion used to pay issuance costs and nonqualified costs equals more than 5 percent of the net proceeds, as defined in § 150(a)(3).

(11) Section 148.—Arbitrage.—Whether amounts received as proceeds from the sale of municipal bond financed property and pledged to the payment of debt service or pledged as collateral for the municipal bond issue are sinking fund proceeds within the meaning of former § 1.103–13(g) (issued under former § 103(c)) or replaced proceeds described in § 148(a)(2) (or former § 103(c)(2)(B)).

(12) Sections 162 and 262.—Trade or Business Expenses; Personal, Living, and Family Expenses.—Whether expenses are nondeductible commuting expenses, except for situations governed by Rev. Rul. 99–7, 1999–1 C.B. 361.

(13) Section 162(m).—Certain Excessive Employee Remuneration.—Whether the deduction limit under § 162(m) applies to compensation attributable to services performed for a related partnership.

(14) Section 163.—See section 4.01(3), above.

(15) Section 165.—Losses.—Whether stock in a corporation has been abandoned.

(16) Section 167.—Depreciation.

(i) Useful lives of assets.

(ii) Depreciation rates.

(iii) Salvage value of assets.

(17) Sections 167 and 168.—Depreciation; Accelerated Cost Recovery System.—Application of those sections in which the formal ownership of property is in a party other than the taxpayer except when title is held merely as security.

(18) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable contribution deduction under § 170(f)(2)(A).

(19) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under § 170(f)(2)(A).

(20) Section 170.—Charitable, Etc., Contributions and Gifts.—Whether a taxpayer who transfers property to a charitable organization and thereafter leases back all or a portion of the transferred property may deduct the fair market value of the property transferred and leased back as a charitable

contribution.

(21) Section 216.—Deduction of Taxes, Interest, and Business Depreciation by Cooperative Housing Corporation Tenant-Stockholder.—If a cooperative housing corporation (CHC), as defined in § 216(b)(1), transfers an interest in real property to a corporation (not a CHC) in exchange for stock or securities of the transferee corporation, which engages in commercial activity with respect to the real property interest transferred, whether (i) the income of the transferee corporation derived from the commercial activity and (ii) any cash or property (attributable to the real property interest transferred) distributed by the transferee corporation to the CHC will be considered as gross income of the CHC for the purpose of determining whether 80 percent or more of the gross income of the CHC is derived from tenant-stockholders within the meaning of § 216(b)(1)(D).

(22) Section 262.—See section 4.01(12), above.

(23) Section 265(a)(2).—Interest.—Whether indebtedness is incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by Subtitle A.

(24) Section 302.—Distributions in Redemption of Stock.—The tax effect of the redemption of stock for notes, when the payments on the notes are to be made over a period in excess of 15 years from the date of issuance of such notes.

(25) Section 302(b)(4) and (e).—Redemption from Noncorporate Shareholder in Partial Liquidation; Partial Liquidation Defined.—Whether a distribution will qualify as a distribution in partial liquidation under § 302(b)(4) and (e)(1)(A), unless it results in a 20 percent or greater reduction in (i) gross revenue, (ii) net fair market value of assets, and (iii) employees. (Partial liquidations that qualify as § 302(e)(2) business terminations are not subject to this provision.)

(26) Section 306.—Dispositions of Certain Stock.—Whether the distribution, disposition, or redemption of "section 306 stock" in a closely held corporation is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes within the meaning of § 306(b)(4).

(27) Sections 331 and 346(a).—Gain or Loss to Shareholders in Corporate Liquidations; Complete Liquidation.—The tax effect of the liquidation of a corporation by a series of distributions, when the distributions in liquidation are to be made over a period in excess of 3 years from the adoption of the plan of liquidation.

(28) Section 351.—Transfer to Corporation Controlled by Transferor.—Whether § 351 applies to the transfer of an interest in real property by a cooperative housing corporation (as described in § 216(b)(1)) to a corporation in exchange for stock or securities of the transferee corporation, if the transferee engages in commercial activity with respect to the real property interest transferred.

(29) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the active business requirement of § 355(b) is met when, within the 5-year period described in § 355(b)(2)(B), a distributing corporation acquired control of a controlled corporation as a result of the distributing corporation transferring cash or other liquid or inactive assets to the controlled corporation in a transaction in which gain or loss was not recognized as a result of the transfer meeting the requirements of § 351(a) or § 368(a)(1)(D).

(30) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than five percent of the fair market value of the total gross assets of such corporation.

For purposes of determining the fair market value of the total gross assets of such corporation and of the gross assets of such trade(s) or business(es), (i) all members of a separate affiliated group, within the meaning of § 355(b)(3)(B), are treated as one corporation; and (ii) if the distributing corporation or

the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), such corporation is treated as owning its ratable share of the gross assets of the partnership.

This section 4.01(30) does not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this section 4.01(30) or section 5.01(3) of this revenue procedure.

(31) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue under § 355(e) other than whether a distribution and an acquisition are part of a plan (i.e., any non-plan issue). Notwithstanding the preceding sentence, the Service generally will rule on a non-plan issue or issues (e.g., whether a corporation constitutes a predecessor of distributing) if an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

(32) Section 441(i).—Taxable Year of Personal Service Corporations.—Whether the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services within the meaning of § 1.441–3(c)(1)(iii).

(33) Section 448(d)(2)(A).—Limitation on Use of Cash Method of Accounting; Qualified Personal Service Corporation.—Whether 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services within the meaning of § 1.448–1T(e)(4)(i).

(34) Section 451.—General Rule for Taxable Year of Inclusion.—The tax consequences of a nonqualified deferred compensation arrangement using a grantor trust if the trust fails to meet the requirements of Rev. Proc. 92–64, 1992–2 C.B. 422.

(35) Section 451.—General Rule for Taxable Year of Inclusion.—The income tax consequences as a result of being a beneficiary of a trust that an Indian tribe (as defined in 25 U.S.C. § 2703(5)) establishes to receive and invest *per capita* payments for its members under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701 through 2721).

(36) Section 451.—See section 4.01(5), above.

(37) Section 584.—Common Trust Funds.—Whether a common trust fund plan meets the requirements of § 584. (For § 584 plan drafting guidance, see Rev. Proc. 92–51, 1992–1 C.B. 988.)

(38) Section 642.—Special Rules for Credits and Deductions.—Whether a pooled income fund satisfies the requirements described in § 642(c)(5).

(39) Section 664.—Charitable Remainder Trusts.—Whether a charitable remainder trust that provides for annuity or unitrust payments for one or two measuring lives or for annuity or unitrust payments for a term of years satisfies the requirements described in § 664.

(40) Section 664.—Charitable Remainder Trusts.—Whether a trust that will calculate the unitrust amount under § 664(d)(3) qualifies as a § 664 charitable remainder trust when a grantor, a trustee, a beneficiary, or a person related or subordinate to a grantor, a trustee, or a beneficiary can control the timing of the trust's receipt of trust income from a partnership or a deferred annuity contract to take advantage of the difference between trust income under § 643(b) and income for Federal income tax purposes for the benefit of the unitrust recipient.

(41) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—In a nonqualified, unfunded deferred compensation arrangement described in Rev. Proc. 92–64, 1992–2 C.B. 422, the tax consequences of the use of a trust, other than the model trust described in that revenue procedure.

(42) Sections 671 to 679.—Grantors and Others Treated as Substantial Owners.—Whether an Indian tribe (as defined in 25 U.S.C. § 2703(5)) that establishes a trust to receive and invest *per capita* payments for its members under the Indian Gaming Regulatory Act (25 U.S.C. §§ 2701–2721) is the grantor and owner of the trust.

(43) Section 678.—Person Other than Grantor Treated as Substantial Owner.— Whether a person will be treated as the owner of any portion of a trust over which that person has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner of the trust under § 671 if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, if the trust purchases the property from that person with a note and the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(44) Section 851.—Definition of Regulated Investment Company.—Any issue relating to the treatment of a corporation as a regulated investment company under § 851 and related provisions that requires a determination whether a financial instrument or position is a security as defined in the Investment Company Act of 1940.

(45) Section 856.—Definition of Real Estate Investment Trust.—Whether an outdoor advertising display constitutes real property for purposes of § 856. However, if the real estate investment trust has made an election under § 1.1033(g)–1(b), the Service may rule on whether an asset that is not within the scope of the election, but is related to the outdoor advertising display, constitutes real property for purposes of § 856.

(46) Section 1031(f).—Special Rules for Exchanges Between Related Persons.—Except in the case of (i) a transaction involving an exchange of undivided interests in different properties that results in each taxpayer holding either the entire interest in a single property or a larger undivided interest in any of the properties or (ii) a disposition of property in a nonrecognition transaction in which the taxpayer or the related party receives no cash or other property that results in gain recognition, whether an exchange described in § 1031(f) involving related parties, or a subsequent disposition of property involved in the exchange, has as one of its principal purposes the avoidance of Federal income tax, or is part of a transaction (or series of transactions) structured to avoid the purposes of § 1031(f).

(47) Section 1362.—Election; Revocation; Termination.—All situations in which the Service has provided an automatic approval procedure or administrative procedure for an S corporation to obtain relief for late S corporation, qualified subchapter S subsidiary, qualified subchapter S trust, or electing small business trust elections. See Rev. Proc. 2013–30, 2013–36 I.R.B. 173. (For instructions on how to seek this relief, see the preceding revenue procedure.)

(48) Section 1502.—Regulations.—Whether a parent cooperative housing corporation (as defined in § 216(b)(1)) will be permitted to file a consolidated income tax return with its transferee subsidiary, if the transferee engages in commercial activity with respect to the real property interest transferred to it by the parent.

(49) Sections 2035, 2036, 2037, 2038, and 2042.—Adjustments for Certain Gifts Made Within Three Years of Decedent's Death; Transfers with Retained Life Estate; Transfers Taking Effect at Death; Revocable Transfers; Proceeds of Life Insurance.—Whether trust assets are includible in a trust beneficiary's gross estate under § 2035, 2036, 2037, 2038, or 2042 if the beneficiary sells property (including insurance policies) to the trust or dies within 3 years of selling such property to the trust, and (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(50) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2055(e)(2)(A).

(51) Section 2055.—Transfers for Public, Charitable, and Religious Uses.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2055(e)(2)(A).

(52) Section 2501.—Imposition of Tax.—Whether the sale of property (including insurance policies) to a trust by a trust beneficiary will be treated as a gift for purposes of § 2501 if (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(53) Section 2503.—Taxable Gifts.—Whether the transfer of property to a trust will be a gift of a present interest in property when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(54) Section 2514.—Powers of Appointment.—If the beneficiaries of a trust permit a power of withdrawal to lapse, whether § 2514(e) will be applicable to each beneficiary in regard to the power when (i) the trust corpus consists or will consist substantially of insurance policies on the life of the grantor or the grantor's spouse, (ii) the trustee or any other person has a power to apply the trust's income or corpus to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse, (iii) the trustee or any other person has a power to use the trust's assets to make loans to the grantor's estate or to purchase assets from the grantor's estate, (iv) the trust beneficiaries have the power to withdraw, on demand, any additional transfers made to the trust, and (v) there is a right or power in any person that would cause the grantor to be treated as the owner of all or a portion of the trust under §§ 673 to 677.

(55) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a pooled income fund described in § 642(c)(5) qualifies for a charitable deduction under § 2522(c)(2)(A).

(56) Section 2522.—Charitable and Similar Gifts.—Whether a transfer to a charitable remainder trust described in § 664 that provides for annuity or unitrust payments for one or two measuring lives or a term of years qualifies for a charitable deduction under § 2522(c)(2)(A).

(57) Section 2601.—Tax Imposed.—Whether a trust that is exempt from the application of the generation-skipping transfer tax because it was irrevocable on September 25, 1985, will lose its exempt status if the situs of the trust is changed from the United States to a situs outside of the United States.

(58) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether annuity interests are qualified annuity interests under § 2702 if the amount of the annuity payable annually is more than 50 percent of the initial net fair market value of the property transferred to the trust, or if the value of the remainder interest is less than 10 percent of the initial net fair market value of the property transferred to the trust. For purposes of the 10 percent test, the value of the remainder interest is the present value determined under § 7520 of the right to receive the trust corpus at the expiration of the term of the trust. The possibility that the grantor may die prior to the expiration of the specified term is not taken into account, nor is the value of any reversion retained by the grantor or the grantor's estate.

(59) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702–5(c) to be a qualified personal residence trust.

(60) Section 2702.—Special Valuation Rules in Case of Transfers of Interests in Trusts.—Whether the sale of property (including insurance policies) to a trust by a trust beneficiary is subject to § 2702 if (i) the beneficiary has a power to withdraw the trust property (or had such power prior to a release or modification, but retains other powers which would cause that person to be the owner if the person were the grantor), other than a power which would constitute a general power of appointment within the meaning of § 2041, (ii) the trust purchases the property with a note, and (iii) the value of the assets with which the trust was funded by the grantor is nominal compared to the value of the property purchased.

(61) Section 3121.—Definitions.—Determinations as to which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee.

(62) Section 7702.—See section 4.01(6), above.

.02 General Areas.

(1) Any matter in which the determination requested is primarily one of fact, e.g., market value of property, or whether an interest in a corporation is to be treated as stock or indebtedness. Although it is generally inappropriate for the Service to issue a letter ruling on whether an interest in a corporation is stock or indebtedness, there may be instances in which the Service may issue a letter ruling. For example, the Service may issue a letter ruling with respect to an instrument issued by a domestic corporation if (i) the taxpayer believes that the facts strongly support the classification of the instrument as stock and (ii) the taxpayer can demonstrate that there are unique and compelling reasons to justify the issuance of a letter ruling. Before preparing the letter ruling request, the taxpayer should call the Office of Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Service will consider issuing a letter ruling for a particular factual situation. To determine which Associate office has jurisdiction over a particular issue see section 3 of Rev. Proc. 2019–1, this Bulletin. For a list of telephone numbers for the different Associate offices, see section 10.07 of Rev. Proc. 2019–1.

(2) Situations in which the requested ruling deals with only part of an integrated transaction. Generally, a letter ruling will not be issued on only part of an integrated transaction. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, the taxpayer should call the Office of Associate Chief Counsel having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether a letter ruling will be issued on part of the transaction. To determine which Associate office has jurisdiction over a particular issue, see section 3 of Rev. Proc. 2019–1, this Bulletin. For a list of telephone numbers for the different Associate offices, see section 10.07 of Rev. Proc. 2019–1.

Notwithstanding the previous paragraph, in connection with transactions described in § 332, 351, 355, or 1036 and reorganizations within the meaning of § 368, the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction if and to the extent that the transaction presents a significant issue (within the meaning of section 3.01(55)). See section 6.03(2) of Rev. Proc. 2019–1.

(3) Situations in which two or more items or sub-methods of accounting are interrelated. If two or more items or sub-methods of accounting are interrelated, ordinarily a letter ruling will not be issued on a change in accounting method involving only one of the items or sub-methods.

(4) The tax effect of any transaction to be consummated at some indefinite future time.

(5) Any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business.

(6) The tax effect of a transaction if any part of the transaction is involved in litigation among the parties affected by the transaction, except for transactions involving bankruptcy reorganizations.

(7) (a) Situations in which the taxpayer or a related party is domiciled or organized in a foreign jurisdiction with which the United States does not have an effective mechanism for obtaining tax information with respect to civil tax examinations and criminal tax investigations, which would preclude the Service from obtaining information located in such jurisdiction that is relevant to the analysis or examination of the tax issues involved in the ruling request.

(b) The provisions of subsection (a) above do not apply if the taxpayer or affected related party (i) consents to the disclosure of all relevant information requested by the Service in processing the ruling request or in the course of an examination in order to verify the accuracy of the representations made and to otherwise analyze or examine the tax issues involved in the ruling request, and (ii) waives all claims to protection of bank or commercial secrecy laws in the foreign jurisdiction with respect to the information requested by the Service. In the event the taxpayer's or related party's consent to disclose relevant information or to waive protection of bank or commercial secrecy is determined by the Service to be ineffective or of no force and effect, then the Service may retroactively rescind any ruling rendered in reliance on such consent.

(8) A matter involving the Federal tax consequences of any proposed Federal, state, local, municipal, or foreign legislation. The Service may provide general information in response to an inquiry. However, the Office of Associate Chief Counsel (EEE) may issue letter rulings regarding the effect of proposed state, local, or municipal legislation upon an eligible deferred compensation plan under § 457(b) provided that the letter ruling request relating to the plan complies with the other requirements of Rev. Proc. 2019–1, this Bulletin.

(9) Except with respect to a Covered Transaction within the meaning of section 2.03(1)(a) of Rev. Proc. 2017–52, 2017–41 I.R.B. 283, a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, except with respect to issues under §§ 332, 351, 368, and 1036 and the tax consequences resulting from the application of such Code sections (see generally section 6.03(2) of Rev. Proc. 2019–1, this Bulletin), an Associate office may in its discretion issue a Comfort Ruling if the Associate office is otherwise ruling on another issue arising in the same transaction.

(10) Whether an amount received (in periodic payments or as a lump sum) in connection with a legal action or a settlement of a legal action is properly allocated (including an allocation of all payments to one category) to recovery of capital, compensatory damages, punitive damages, dividends, interest, back pay, etc., for Federal tax purposes.

(11) The treatment or effects of hook equity, including as a result of its issuance, ownership, or redemption. This section 4.02(11) ordinarily will not apply if (i) an interest's status as hook equity is only transitory, such as in a triangular reorganization, or (ii) the treatment of the hook equity is not relevant to the treatment of the overall transaction and issue presented. For this purpose, "hook equity" means an ownership interest in a business entity (such as stock in a corporation) that is held by another business entity in which at least 50 percent of the interests (by vote or value) in such latter entity are held directly or indirectly by the former entity. However, if an entity directly or indirectly owns all of the equity interests in another entity, the equity interests in the latter entity are not hook equity.

(12) Whether a tax-qualified plan satisfies the requirements for qualification under §§ 401 through 420 and § 4975(e)(7). These matters are generally handled through the Employee Plans Determinations program as provided in Rev. Proc. 2019–4, this Bulletin, Rev. Proc. 2016–37, 2016–29 I.R.B. 136, and Rev. Proc. 2015–36, 2015–27 I.R.B. 20. Notwithstanding the preceding sentence, the Office of Associate Chief Counsel (EEE) may issue a ruling if (i) the taxpayer has demonstrated to the satisfaction of the Office of Associate Chief Counsel (EEE) that the qualification issue involved is unique and requires immediate guidance, (ii) as a practical matter, it is not likely that such issue will be addressed through the determination letter process, and (iii) the Office determines that it is in the interest of good tax administration to provide guidance to the taxpayer with respect to such qualification issue.

(13) Any issue that is being considered by the Pension Benefit Guaranty Corporation (PBGC) or the Department of Labor (DOL), and involves the same taxpayer, will be issued at the discretion of the Office of Associate Chief Counsel (EEE).

SECTION 5. AREAS UNDER STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, A REVENUE PROCEDURE, REGULATIONS, OR OTHERWISE

.01 Specific Questions and Problems.

(1) Sections 302 and 304.—Distributions in Redemption of Stock; Redemptions Through Use of Related Corporations.—Treatment of basis in a § 302/304 redemption.

(2) Sections 351, 358, and 362.—Transfer to Corporation Controlled by Transferor; Basis to Distributees; Basis to Corporations.—The issues described as being under study in Rev. Rul. 2006–2, 2006–1 C.B. 261.

(3) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, all of the following conditions exist: (i) the fair market value of the gross investment assets of the distributing corporation or the controlled corporation is two-thirds or more of the fair market value of its total gross assets; (ii) the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than 10 percent of the fair market value of its gross investment assets; and (iii) the ratio of the fair market value of the gross investment assets to the fair market value of the gross assets other than the gross investment assets of the distributing corporation or the controlled corporation is three times or more of such ratio for the other corporation (i.e., the controlled corporation or the distributing corporation, respectively).

For purposes of determining the fair market value of the distributing corporation's and the controlled corporation's gross investment assets, gross assets other than gross investment assets, gross assets of the trade or business, and total gross assets, all members of such corporation's separate affiliated group, within the meaning of § 355(b)(3)(B), are treated as one corporation. If the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), then for purposes of determining the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b), such corporation is treated as owning its ratable share of the gross assets of the partnership.

For purposes of this section 5.01(3), "investment assets" has the meaning given such term by § 355(g)(2)(B), except as follows: (i) in the case of stock or securities in a corporation any stock of which is traded on (or subject to the rules of) an established financial market within the meaning of § 1.1092(d)–1(b) (publicly traded stock), § 355(g)(2)(B)(iv) is applied by substituting "50-percent" for "20-percent;" (ii) except as provided in clause (iv) of this sentence, an interest in a publicly traded partnership (as defined in § 7704(b), regardless of whether such partnership is treated as a corporation pursuant to § 7704(a)) is treated in the same manner as publicly traded stock; (iii) except as provided in clause (iv) of this sentence, an interest in a partnership that is not a publicly traded partnership is treated in the same manner as stock which is not publicly traded stock; and (iv) in the case of an interest in a partnership (other than a publicly traded partnership treated as a corporation pursuant to § 7704(a)), the active trade or business of which is taken into account by the distributing corporation or the controlled corporation for purposes of § 355(b), or would be taken into account without regard to the five-year requirement of § 355(b)(2)(B), clauses (ii) and (iii) of this sentence do not apply.

The Service also will not rule on any issue relating to the qualification, under § 355 and related provisions, of a distribution if, as part of a plan or series of related transactions, investment assets are disposed of, or property, including property qualifying as an active trade or business within the meaning of § 355(b), is acquired with a principal purpose of avoiding this section 5.01(3). This section 5.01(3) does not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this section 5.01(3) or in section 4.01(30) of this revenue procedure.

(4) Section 358.—See section 5.01(2), above.

(5) Section 362.—See section 5.01(2), above.

(6) Section 613A.—Limitations on Percentage Depletion in Case of Oil and Gas Wells.—Whether the sale of oil or gas, or any product derived from oil or gas, is a bulk sale for purposes of § 613A(d)(2).

(7) Sections 661 and 662.—Deduction for Estates and Trusts Accumulating Income or Distributing Corpus; Inclusion of Amounts in Gross Income of Beneficiaries of Estates and Trusts Accumulating Income or Distributing Corpus.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is a distribution for which a deduction is allowable under § 661 or which requires an amount to be included in the gross income of any person under § 662.

(8) Section 1014.—Basis of Property Acquired from a Decedent.—Whether the assets in a grantor trust receive a § 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

(9) Section 2036.—Transfers with Retained Life Estate.—Whether the corpus of a trust will be included in a grantor's estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor's family.

(10) Section 2038.—Revocable Transfers.—Whether the corpus of a trust will be included in a grantor's estate when the trustee of the trust is a private trust company owned partially or entirely by members of the grantor's family.

(11) Section 2041.—Powers of Appointment.—Whether the corpus of a trust will be included in an individual's estate when the trustee of the trust is a private trust company owned partially or entirely by members of the individual's family.

(12) Section 2501.—Imposition of Tax.—Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is a gift under § 2501.

(13) Sections 2601 and 2663.—Tax Imposed; Regulations.—Whether the distribution of property by a trustee from an irrevocable generation-skipping transfer tax (GST) exempt trust to another irrevocable trust (sometimes referred to as a "decanting") resulting in a change in beneficial interests is the loss of GST exempt status or constitutes a taxable termination or taxable distribution under § 2612.

(14) Sections 4966 and 4967.—Taxes on Taxable Distributions; Taxes on Prohibited Benefits.—Issues involving interpretation of §§ 4966 and 4967 regarding distributions from donor advised funds.

(15) Section 6109.l—Identifying Numbers.l—The proper assignment or retention of an employer identification number (EIN) in the case of a reorganization within the meaning of § 368(a)(1)(F) if the transferor corporation becomes disregarded as an entity separate from its owner under § 301.7701–3.

.02 General Areas.

None at this time.

SECTION 6. AREAS COVERED BY AUTOMATIC APPROVAL PROCEDURES IN WHICH RULINGS WILL NOT ORDINARILY BE ISSUED

.01 Section 338.—Certain Stock Purchases Treated as Asset Acquisitions.—All requests for an extension of time under § 301.9100–3 within which to make an election under § 338(g) or (h)(10) where the Service has provided an administrative procedure to seek such an extension. See Rev. Proc. 2003–33, 2003–1 C.B. 803 (extension automatically granted to certain persons required to file Form 8023 to make a valid § 338 election that have not filed Form 8023 by its due date).

.02 Section 442.—Change of Annual Accounting Period.—All requests for a change in annual accounting period where the Service has provided an automatic change procedure for obtaining such a change in annual accounting period. See Rev. Proc. 2002–39, 2002–1 C.B. 1046 (general procedures for prior approval), as clarified and modified by Notice 2002–72, 2002–2 C.B. 843, and modified by Rev. Proc. 2003–34, 2003–1 C.B. 856, and Rev. Proc. 2018–17, 2018–9 I.R.B. 384; Rev. Proc. 2006–45, 2006–2 C.B. 851 (certain corporations), as clarified and modified by Rev. Proc. 2007–64, 2007–2 C.B. 818, and modified by Rev. Proc. 2018–17, 2018–9 I.R.B. 384; Rev. Proc. 2006–46, 2006–2 C.B. 859 (partnership, S corporation, personal service corporation, or trust); and Rev. Proc. 2003–62, 2003–2 C.B. 299 (individual seeking a calendar year).

.03 Section 446.—General Rule for Methods of Accounting.—Except as otherwise specifically provided in applicable procedures published in the Internal Revenue Bulletin, all requests for a change in method of accounting where the Service has provided an automatic change request procedure for obtaining such a change in method of accounting. See the automatic change request procedures listed in section 9.22 of Rev. Proc. 2019–1, this Bulletin.

.04 Section 461.—General Rule for Taxable Year of Deduction.—All requests for making or revoking an election under § 461 where the Service has provided an administrative procedure for making or revoking such an election under § 461. See Rev. Proc. 92–29, 1992–1 C.B. 748 (dealing with the use of an alternative method for including in basis the estimated cost of certain common improvements in a real estate development).

.05 Section 704(c).—Contributed Property.—Requests from Qualified Master Feeder Structures, as described in section 4.02 of Rev. Proc. 2001–36, 2001–1 C.B. 1326, for permission to aggregate built-in gains and losses from contributed qualified financial assets for purposes of making § 704(c) and reverse § 704(c) allocations.

.06 Section 1362.—Election; Revocation; Termination.—All situations in which an S corporation qualifies for automatic late S corporation relief under Rev. Proc. 2013–30, 2013–36 I.R.B. 173.

.07 Sections 1502, 1504, and 1552.—Regulations; Definitions; Earnings and Profits.—All requests for waivers or consents on consolidated return issues where the Service has provided an administrative procedure for obtaining such waivers or consents on consolidated return issues. See Rev. Proc. 2014–24, 2014–13 I.R.B. 879 (certain subsidiary members treated as if they filed a Form 1122 even though they failed to do so); Rev. Proc. 2002–32, 2002–1 C.B. 959, as modified by Rev. Proc. 2006–21, 2006–1 C.B. 1050 (certain corporations seeking reconsolidation within the 5-year period specified in § 1504(a)(3)(A)); Rev. Proc. 90–39, 1990–2 C.B. 365, as modified by Rev. Proc. 2006–21, and as clarified by Rev. Proc. 90–39A, 1990–2 C.B. 367 (certain affiliated groups of corporations seeking, for earnings and profits determinations, to make an election or a change in their method of allocating the group's consolidated Federal income tax liability); and Rev. Proc. 89–56, 1989–2 C.B. 643, as modified by Rev. Proc. 2006–21 (certain affiliated groups of corporations seeking to file a consolidated return in which member(s) of the group use a 52–53 week taxable year).

.08 Section 2010(c)(5)(A).—Election Required.—All requests filed before the second anniversary of the decedent's date of death for an extension of time under § 301.9100–3 to make an election under § 2010(c)(5)(A), where the Service has provided an administrative procedure to seek such an extension.

See Rev. Proc. 2017–34, 2017–26 I.R.B. 1282 (procedure providing for an extension of time to certain taxpayers to make a "portability" election under § 2010(c)(5)(A)).

.09 Section 7701.—Definitions.—All requests for an extension of time under § 301.9100–3 within which to make an entity classification election under § 301.7701–3 where the Service has provided an administrative procedure to seek such an extension. See Rev. Proc. 2009–41, 2009–39 I.R.B. 439 (extension automatically granted to certain persons required to file Form 8832 to make a valid entity classification election that have not filed Form 8832 by its due date).

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2018–3, 2018–1 I.R.B. 130, is superseded.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 2, 2019.

SECTION 9. PAPERWORK REDUCTION ACT

and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 2.03 and 3.01(55).

This information is required to evaluate whether the request for a letter ruling or determination letter is not covered by the provisions of this revenue procedure. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden of this revenue procedure, and Rev. Proc. 2019–1, this Bulletin is 316,020 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 200 hours, depending on individual circumstances, with an estimated average burden of 80 hours. The estimated number of respondents and/or recordkeepers is 3,956.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jean Broderick of the Office of Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Ms. Broderick at (202) 317–6848 (not a toll-free call), or phone the Associate office contacts listed in section 10.07 of Rev. Proc. 2019–1, this Bulletin. See section 3 of Rev. Proc. 2019–1 to determine which Associate office has jurisdiction over a particular issue.

Rev. Proc. 2019–4

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Friday, April 19, 2019 10:45 AM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: Timeline

Would end of next week work?

-----Original Message-----
From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Friday, April 19, 2019 10:28 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: Timeline

Following up on the projected timeline for the x/check memo.

Thx.

PENGAD 800-631-6989
EXHIBIT
mb
40
6/17/20 Vinyard

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Sunday, April 28, 2019 6:01 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: CONFIDENTIAL DRAFT Memo for discussion
Attachment(s): "Memo NOTES.docx"

Good evening Herschel,
I hope you had a nice weekend! Please find attached a draft memorandum for your review related to JEA's powers under its governing documents. I've done my best to get a substantially complete document drafted over the last few days, but it is still a work in progress. It is intended to be for discussion purposes and is not yet ready for circulation. As I mentioned on Friday, I have sent the draft to Lawsikia Hodges for her required review, and she may have requested changes. Please let me know when you have had a chance to read the document and we can discuss.
Best regards,
Lynne

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

Building Community

PENGAD 800-631-6989
EXHIBIT
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mb
6/17/20 Vinyard

PRIVILEGED AND CONFIDENTIAL

DRAFT – FOR DISCUSSION PURPOSES ONLY

Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, FL 32202
(904) 630-1700

MEMORANDUM

TO: Herschel Vinyard, Esq., Chief Administrative Officer

FROM: Lynne C. Rhode, Vice President and Chief Legal Officer

SUBJECT: **Constraints on JEA Initiatives**

DATE: <AUTODATE>

BACKGROUND

In her article entitled, *Incentive Regulation, New Business Models, and the Transformation of the Electric Power Industry*, author Inara Scott writes:

> The electric utility sector is in the midst of paradigmatic change. Market forces include decreased load growth, technological advances in distributed energy resources, pressures for decarbonization, and demands for increased efficiency and new utility services. Meanwhile, as the utility monopoly is undermined and profits slow, financial analysts signal increasing risk to potential utility investors.

5 Mich. J. Envtl. & Admin. L. 319, 319 (2016). The twentieth century goals for electric utility regulation of reasonable rates, adequate service, and financial stability are still essential but no longer sufficient. *See Id.* at 326. "Today's utilities report increasing pressure to provide new services to customers and engage with them on a different level. . . the utility of today must become an expert in information management, data sharing, cyber security, and privacy . . . [and] are increasingly asked to accommodate

distributed generation sources, including residential solar, commercial solar and wind, and cogeneration." *Id.* at 336.

JEA is no exception.[1] Current projections of flat sales paired with escalating costs and demands will create a growing cash gap in the near, medium, and long terms. The JEA Senior Leadership Team members have been working with their teams to develop cost-saving and revenue-enhancing initiatives, including energy, water and wastewater, IT, customer, corporate, and cross-cutting initiatives to include in the development of a new JEA strategic plan. As a public entity, existing and operating strictly for a public purpose, JEA faces significant constraints on such initiatives that non-municipal utilities do not. Nonetheless, if JEA is to succeed in proactively addressing its very real and immediate challenges in a way that allows it to maintain its status as a top-notch, customer-focused industry leader and natural resources steward, JEA leadership must act in creative and innovative ways.

QUESTION PRESENTED

You have asked me to examine the parameters of constraints imposed by JEA's governing documents on JEA initiatives within the following six potential opportunity arenas: (1) selling more of the same products/ acquiring new customers; (2) investing in research and development and intellectual property; (3) selling additional new products; (4) selling equity to retire debt; (5) reducing JEA's contribution to the City of Jacksonville; and (6) selling JEA assets.

This memorandum will first discuss the general powers of JEA found in its governing documents and limitations on those powers, including pertinent general powers and limitations found in the Charter of the City of Jacksonville (the "City Charter"). Underlying this analysis is the fundamental principal that all actions

[1] As noted in the Special Committee on the Future of JEA Final Report of June 2018, "Given the trends in electric and water sales, JEA has given some thought to expanding into other lines of business to produce additional revenues, including pole attachment revenues, wireless colocation leasing revenue, dark fiber leasing, natural gas sales, solar panel leasing, fuel cells and microturbines . . . Other utilities around the country, facing the same challenges of declining sales, have diversified into energy marketing, liquefied natural gas (LNG) processing and sales, renewable energy development (wind and solar), distributed general (i.e. combined heat and power generators, fuel cells, batteries), and telecommunications (fiber optics, tower leasing, internet services)." Report, p. 14 (June 27, 2018).

undertaken by JEA must be for a public purpose, and the memorandum is intended to be read with that principal always in mind. It then analyzes the impact of such powers and limitations on the six potential opportunity areas outlined above. This memorandum is not intended to be and should not be construed to provide advice on any specific action or initiative, nor does it purport to be an in-depth look at the universe of laws, regulations, policies, and procedures that would need to be carefully considered before any specific project could be designed, initiated, or undertaken. Rather, it is intended to help provide you with tools to begin thinking about what initiatives within potential opportunity arenas are viable under current Constitutional, State law, and City Charter constraints.

SHORT ANSWER

ANALYSIS

JEA

JEA (then known as the Jacksonville Electric Authority) was established in 1968 to own and manage the electric utility which had been owned by the City of Jacksonville ("the City") since 1895. In 1997, the City Council amended the City Charter to authorize JEA to own and operate additional utility functions and, effective on June 1, 1997, the City transferred to JEA the City's combined water and sewer utilities system. JACKSONVILLE, FL., ORD. 97-229-E. In 2001, JEA expanded its water and sewer territory[2] with the approval of City Council. JEA is today the eighth largest municipal utility in the country and the largest in Florida, owning and operating an electric system with five generating plants and transmission and distribution facilities that include over

[2] The JEA water and sewer system consists of facilities for the provision of potable water, facilities for the collection and treatment of wastewater, and facilities for the treatment and distribution of reclaimed water. The water and sewer system provides water and sewer service within the urban and suburban areas of the City, other than certain excluded areas. The water and sewer system's service territory extends into St. Johns County and Nassau County and also serves a number of customers in Clay County.

745 circuit miles of transmission lines and more than 6,760 miles of distribution lines. It also purchases energy from several solar sites located across the service territory. It serves approximately 466,000 electric, 271,000 sewer, 348,000 water, and 11,000 reclaimed water customers in Duval County and elsewhere.

JEA provides utility services to certain surrounding communities under interlocal and franchise agreements. The electric system provides service to the Town of Orange Park (Franchise Fee Agreement effective September 1, 1969), Town of Baldwin (Assignment and Assumption of Franchise Agreement (FPL) dated January 1, 2000), Atlantic Beach (Franchise Agreement), and a portion of St. John's County (Territorial Agreement (FPL) dated December 14, 1998). The water/wastewater system provides service to parts of Nassau (Interlocal Agreement dated December 17, 2001) and St. John's Counties (Interlocal Agreement dated July 1, 1999).

JEA is an economic development partner of the City, furthering the objective of State lawmakers to help drive economic growth in Florida municipalities.[3] It has two program riders (incentive programs) for large corporate users of electric power – an economic development rider and an economic stimulus rider.[4] Special Committee on the Future of JEA Final Report, p. 9 (June 27, 2018).

The governing body of JEA is comprised of seven board members, appointed by the mayor and subject to confirmation by the City Council, for a term of four years. Members of the JEA Board are subject to the provisions of F.S. § 286.012 relating to voting and §§ 112.311 – 3175 relating to financial disclosure and conflicts of interest, among other requirements. Broadly speaking, the JEA Board has the authority to adopt

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[3] *See* Florida Statute § 166.021(8)(a): "The Legislature finds and declares that this state faces increasing competition from other states and other countries for the location and retention of private enterprises within its borders. Furthermore, the Legislature finds that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state."

[4] Such program riders currently are utilized by companies such as Sysco International Food Group Inc., Dresser Equipment Group Inc., and Hans Mill Corporation. Special Committee on the Future of JEA Final Report, p. 9 (June 27, 2018).

bylaws and make rules and regulations relating to JEA not inconsistent with Article 21 of the City Charter or general law. City Charter § 21.03.

Florida Statutes

Florida Statutes, Title XII (Municipalities), Chapter 166 (Municipalities) is the primary body of state laws governing municipal authority. Part I concerns general provisions; Part II governs municipal borrowing; Part III governs municipal finance and taxation; and Part IV governs eminent domain.[5] Florida Statue § 166.021 spells out the general powers of Florida municipalities, including Jacksonville, under State law:

> As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. . . . 'Municipal purpose' means any activity or power which may be exercised by the state or its political subdivisions. . . . The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.

The City of Jacksonville is a consolidated government model. It is a Florida body politic and corporate comprised of "Duval County, the municipal government of the City of Jacksonville, the Duval County Air Improvement Authority, the east Duval County Mosquito Control District, the northeast Duval County Mosquito Control District, and all boards, bodies, and officers thereof" that "were and are consolidated [by special law] into a single body politic and corporate pursuant to the power granted by former s. 9 of

[5] It is important to note that certain other provisions of general state law additionally impose requirements and restrictions on municipalities, utilities, and other entities. For example, F.S. §166.045 dictates the procedures required when a municipality seeks to purchase any real property for a municipal purpose. A comprehensive review of general state laws impacting the City of Jacksonville and JEA is outside the scope of this memorandum.

Article VIII of the Constitution of 1885, as amended, of the State of Florida."[6] JACKSONVILLE, FL., ORD. 2010-616-E, § 1.101. It has jurisdiction as a chartered county government and extends territorially throughout Duval County and has jurisdiction as a municipality throughout Duval County except in the Cities of Jacksonville Beach, Atlantic Beach, and Neptune Beach and the Town of Baldwin. *Id.*

City Charter

I. Introduction

The primary body of law of the consolidated government is codified (Laws of Fla., Ch. 78-536, § 1; Laws of Fla., Ch. 92-341) and found in the Code of Ordinances, Part A, Charter and Related Laws of the City of Jacksonville. Constitution Article VIII, Section 6(e) adopts home rule powers and confirms that the City Charter governs over the provisions of the 1885 Florida Constitution. *See also Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 77 (Fla. 1984), *State ex rel. Johnson v. Vizzini*, 227 So. 2d 205 (Fla. 1969), *City of Orlando v. Evans*, 182 So. 264, 267 (Fla. 1938) (where a special act, such as a city charter, conflicts with state general law, the special act will prevail). Moreover, under Section 3.02 of the City Charter, the powers of the consolidated government "shall be construed liberally in favor of consolidated government," consistent with its home rule powers under the Florida Constitution and general laws of Florida. Thus, if a State statute or Constitutional provision conflicts with the City Charter, the power given to the consolidated government in the City Charter will control.

II. Amendment

The City Charter, including any Article therein, may be amended following procedures outlined in Florida Statutes Chapter 166:

> The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part

[6] The Florida Constitution states that consolidation "may be proposed only by special law." Art. VIII, §3, Fla. Const.

> describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

F.S. § 166.031(1). State law further provides, "A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law." F.S. § 166.031(3). Article 3 of the City Charter goes further than this general law and allows the City Council to "repeal or amend any provision of this charter . . . by ordinance, to the same extent as could be done by the Legislature of the State of Florida." City Charter § 3.01.[7]

III. Powers

City Charter Section 4.02 creates separate executive and legislative branches and emphasizes the importance of separation of powers. The City Charter vests the mayor, as chief executive and administrative officer, with the executive power of the consolidated government, including the power and duty to administer, supervise, and control all departments and divisions created by the City Charter and by the City Council. City Charter § 6.04. Article 6 gives the mayor power to veto any ordinance or resolution adopted by City Council. *Id.* at § 6.05.

The City Charter vests all legislative powers of the consolidated government (with certain exceptions of powers retained by urban service districts) in the City Council. Such powers and duties include budgetary review of and monetary appropriations for

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[7] The Constitution Revision Commission (CRC), created in 1968, could also conceivably change the City Charter through amendment to the Florida Constitution. The CRC, a group of 37 commissioners who examine the relevance and applicability of the Constitution to current and future needs, adopts its own rules of procedure and examines change to constitutional provisions (except those related to taxation or the state budgetary process). The CRC holds two sets of public hearings, typically throughout the state, to garner ideas from the public and then to gain feedback on the revision proposals. After the proposals have been approved by the CRC, they are placed directly on a general election ballot, where a 60 percent vote statewide is required for the proposal to pass and the constitution to be amended. The City Charter could also conceivably be changed through the legislative J-bill process, where the Legislature would enact a special law amending the Charter.

independent agencies (§ 5.07), investigation and examination of accounting and financial systems and management (including audit of fiscal operations) of independent agencies (§ 5.10), and investigation of the affairs and conduct of the consolidated government (§ 5.09). The City Council may enact a (non-emergency) ordinance by majority vote. *See* F.S. § 166.041(4).

IV. Independent Agencies

Jacksonville's independent agencies were established by acts of the Legislature and are named in Section 18.07 of the City Charter as follows: the Duval County School Board; the Jacksonville Port Authority; the JEA; the Jacksonville Transportation Authority; the Downtown Development Authority; and the Jacksonville Police and Fire Pension Board of Trustees.

Independent agencies have a special relationship with the consolidated government. Certain provisions of the City Charter proscribe certain structural, governance, budgetary, financial, and other rules applicable to the independent agencies (where not otherwise in conflict with more specific agency-specific rules). For example, Section 16.06 of the City Charter requires independent agencies to request authorization from the City Council for the issuance of ad valorem bonds; section 7.104 requires independent agencies to compensate the consolidated government for all services provided; and section 20.01 provides that the Code of Ethics applies to independent agencies where so provided by special laws applicable to such independent agencies.

However, as the Office of General Counsel has opined, independent agencies, including the JEA, are designed to be free from state and municipal intervention where not otherwise governed by the City Charter or other law:

> The independent agencies are organized as separate governmental units for the purpose of exercising power and authority over subjects committed to their jurisdiction. If the Legislature had sought to make them subordinate agencies under the legislative control of the [City] Council they could have easily done so. However, by creating the independent agencies as separate independent governmental units with their own governing bodies a clear legislative intent was shown to prevent domination by the Legislative branch of the City of Jacksonville. *See Tumulty v.Jersey City*, 155 A. 2d 148 (New Jersey 1959). If the legislature had wanted independent agencies under

> the control of the city they could have easily made them departments of the city rather than independent agencies.. . .The [City] Council may exercise direct legislative power over independent agencies where the Charter or the special acts which created the independent agencies grant to the Council such power and authority. Examples of direct legislative power are the adoption of budgets and approval of ad valorem bonds. The Council does not have the authority to exercise direct legislative power over independent agencies in areas not provided in the Charter or the Special Acts. . . . The Council has indirect legislative power over independent agencies in certain other areas as provided in the Charter and Special Acts applicable to the independent agencies. Examples of indirect legislative power are legislative authority over the central services department and civil service employees.

General Counsel Opinion 69-274 (concerning the extent to which City Council can exercise control over independent agencies).

Article 21 of the City Charter (JEA)

I. Introduction

Article 21 of the City Charter creates the JEA, defining its responsibilities, authority, and power.[8] The JEA was created for the purpose of "acquiring, constructing, operating, financing, and otherwise having *plenary authority* with respect to electric, water, sewer, natural gas and such other utility systems as may be under its control now or in the future." City Charter § 21.01 (emphasis added). Such utility systems may be owned, operated, or managed by JEA separately or in such combined or consolidated manner as JEA may determine. *Id.*

II. Powers

Generally speaking, JEA is authorized to "own, manage and operate a utilities system within and without the City of Jacksonville." City Charter § 21.01. Consistent with this authority, Section 21.04(a) (with emphasis added) gives JEA express and

[8] As a municipal utility, JEA generally is exempt from federal and state utility-specific regulatory laws applicable to non-municipal, investor-owned utilities. Certain Federal Energy Regulatory Commission (FERC) and Florida Public Service Commission (PSC) rules, however, do apply to JEA and are an additional consideration that must be reviewed in the context of any specific project but are outside the scope of this memorandum.

fundamental power to "construct, own, acquire, establish, improve, extend, enlarge, reconstruct, reequip, maintain, repair, finance, manage, operate and promote the *utilities system*." "Utilities systems" means:

> [T]he electric utility system and the water and sewer utility system now operated by JEA which shall include . . . any 'system' or 'project' authorized pursuant to the provisions of Chapter 80-513 [Laws of Florida] . . . and any natural gas utility system to be operated in the future by JEA together with any other additional utility systems as may be hereafter designated as part of the utilities systems . . .

City Charter § 21.02. "[S]ystem or project" is defined by Section 1 of Chapter 80-513 as "electric generating plants and transmission lines and interconnections and substations for the generation, transmission and exchanging of electric power and energy both within and without the boundaries of the consolidated City of Jacksonville and in any and all counties adjacent thereto." Fundamentally, therefore, the JEA's authority stems from its very broad power over its current and future utilities systems, as strictly defined.

The universe of what JEA can do, however, is not fully encapsulated in Subsection (a). Many of JEA's other broad and specific powers within the umbrella of Section 21.04(a) are further outlined elsewhere in Section 21.04 of the Charter. Certain other Article 21 sections additionally are pertinent to the incident discussion. Discussed below are those Article 21 provisions most relevant[9] to an analysis of the parameters by which JEA initiatives falling within the six opportunity areas being considered are constrained: JEA's broad powers; debt; provision of services; contracts generally; projects (including joint undertakings); acquisition and sale of property; payments to the City (assessments); and employment.

a. BROAD POWERS

The City Charter largely reserves to JEA powers not otherwise expressly retained or restrained and gives the utility significant latitude to operate within a defined

[9] For example, subsections (e) through (i) of Section 21.04 authorize and proscribe a variety of powers and limitations concerning JEA's authority over rates, suit, comprehensive planning, and financing; while it is very important to consider all of these provisions in any initiative development, they do not necessarily bracket our opportunity arenas so will not be analyzed in detail by this memorandum.

core business space. The express purpose of Article 21 is "to repose in JEA all powers with respect to electric, water, sewer, natural gas and such other utilities which are now, in the future could be, or could have been but for this article, exercised by the City of Jacksonville." City Charter § 21.01. Consistent with the plenary nature of this purpose, Article 21 vests JEA with extensive and broadly defined power *incident to* its core Section 21.04(a) power: "To transfer, sell, finance, lease *or otherwise provide services* or *products*, or by-products, developed or used by JEA *incident to* the exercise of the powers conferred by [Article 21] . . . provided, however, that JEA will not enter into any activity pursuant to this section . . . without first providing written notice . . . to the council auditor no less than 30 days before commencement of such activity. . . ". City Charter § 21.04(p) (with emphasis added).

Additionally, Article 21 makes clear that "[t]he powers of JEA shall be construed *liberally* in favor of JEA. . . . It is the intent of this article to grant to JEA full power and right to exercise all authority necessary for the effective operation and conduct of JEA. It is further intended that JEA should have all *implied powers necessary or incidental* to carrying out the expressed powers and the expressed purposes for which JEA is created." City Charter § 21.05 (emphasis added). *See also* General Counsel Opinion 92-1 (opining on the ability of Council to restrict Port Authority control over travel expense reimbursement, "Council budgetary powers must be exercised with such restraint so as not to thwart the purposes for which the Authority was created and not to interfere unreasonably with the day-to-day operations of the Authority.").

Thus, broadly speaking, both by design and construction, where not otherwise restricted, JEA enjoys both direct and incidental plenary powers over its core current and future utilities business.

b. DEBT

Financing is extremely important in the context of most initiatives, wherever those initiatives fall within the various opportunity areas. Generally speaking, under existing Article 21 provisions, even where JEA has the authority to undertake an initiative, JEA's power to incur debt to fund such undertakings is controlled by the City Council. Subsection (i) of Section 21.04 governs JEA's issuance and retirement of revenue

bonds and certificates for the purpose of financing or refinancing the utilities systems of JEA. It prohibits general obligation bonds. *Id.* Bonds and certificates may be issued by JEA Board resolution but are subject to the approval of City Council of the *aggregate* principal amount. *Id.* Section 21.04(j) further subjects JEA borrowing other than by bond issuance or revenue certificates for purposes for which bonds or revenue certificates could be issued to the same Article 21 procedure, including City Council approval, to which bond and revenue certificate issuance are subject.

c. PROVISION OF SERVICES

JEA has broad latitude to provide traditional utility services (and to further and maintain such provision) to any person anywhere under existing Article 21 language. Section 21.04(c) allows JEA to furnish any "utility services" to any public or private person or entity within or without Jacksonville and construct and maintain electric lines, pipelines, water and sewer mains, natural gas lines and related facilities for that purpose in and along all public highways and streets within or without Jacksonville. Subsection (d) authorizes JEA to sell "utility services" and provide transmission "or other services of any kind" to anyone, anywhere, directly or indirectly or jointly through other entities engaged in such activities. While "utility services" is not defined in Article 21, it is defined elsewhere in State law as "electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas." F.S. § 203.012 (pertaining to Gross Receipts Taxes).

d. CONTRACTS

Consistent with its broad Article 21 powers, and as otherwise restricted by constraints on debt and sale of assets, JEA generally has the authority to enter into contracts related to its utilities systems or services without City Council approval (unless otherwise triggered).

Section 21.09 gives JEA strong and independent authority over entering into contracts "relating to the construction, reconstruction, repair, operation or maintenance of the utilities system or the purchase of supplies, equipment, machinery and materials

for the utilities system or the contracting or otherwise purchasing for any advisory, professional or any other services. . . ." *See also* JEA Procurement Code (February 1, 1996, as amended); JEA Operational Procedures (amended June 2017). This Section further provides, "[n]othing in this chapter shall be construed to limit the power of JEA to construct, repair, or improve the utilities system, or any part thereof, or any addition, betterment or extension thereto, directly by the officers, agents, and employees of JEA, or otherwise by contract."

Section 21.04(l) more specifically allows JEA to enter into contracts that JEA in its discretion deems *necessary or desirable* "for the prudent management of JEA funds, debts, or fuels . . . including, without limitation, . . . contracts for the future delivery or price management of power, energy, . . . or other related commodities."

JEA additionally has express authority to enter into any contracts, leases, or other agreements *with other governmental bodies* for "the purpose of carrying out any of the provisions, powers or purposes of this article." City Charter § 21.04(u). It is prohibited, however, from appropriating any funds for payments, contributions, or transfer to any entity other than those whose *primary purpose* directly involves any utility or related matters. *Id.*

e. PROJECTS

Article 21 contemplates JEA engaging in joint projects with other entities, including private and public utilities, for the generation and transmission of electric power. Such power projects, as discussed below, require City Council approval and are constrained in duration and by restrictions on the transfer of JEA assets. Article 21 additionally, and importantly, provides JEA with broad power (again, as not otherwise constrained by debt, sale of assets, or other universal restrictions) to jointly or separately engage in projects related to the promotion or implementation of conservation, efficiency, power conditioning, and load management; such projects generally do not trigger the need for City Council approval.

Section 21.04(n) allows JEA to enter into joint project agreements for the purpose of implementing a "project". "Project" for the purpose of subsection (n) is

defined at F.S. § 361.11(1) as "a joint electric power supply project . . . for the joint generation or transmission of electrical energy, or both . . ."

Subsection (o) allows JEA to enter into agreements with other public or private electric utilities to implement joint electric power projects in accordance with Chapter 80-513, Laws of Florida, as amended, which requires a two-thirds vote of City Council to approve the agreements and generally limits agreement terms to 40 years. Section 1 of Chapter 80-513 authorizes JEA to "acquire, build, construct, erect, extend, enlarge, lease, improve, furnish, equip, own and operate" "projects," which are defined as "electric generating plants and transmission lines and interconnections and substations for the generation, transmission and exchanging of electric power and energy both within and without the boundaries of the consolidated City of Jacksonville and in any and all counties adjacent thereto."

Subsection (r) of Section 21.04 additionally allows JEA to "jointly or separately plan, finance, operate, use, share costs of, sponsor, publicize or *otherwise participate in* projects, systems, programs or measures to *promote or implement* electric and natural gas energy, electrotechnologies, water, wastewater and natural gas *conservation and efficiency, power conditioning and load management*, including, but not limited to, energy, water and wastewater conservation, energy efficiency and conditioning or load reducing or load shaping modifications to the maintenance and operating procedures and facilities of a building or facility or in the installation therein; energy, water and wastewater conserving and energy efficiency modifications to windows and doors, pipes, pumps and motors; caulking and weatherstripping; insulation; automatic energy control systems; load management systems; hot water systems; replacements or modifications of lighting fixtures; and energy recovery and recycling systems; and research and development relating thereto within or without the state." (emphasis added).

If any project involves the transfer of ten percent or more of JEA assets, they require approval of the City Council (*see* City Charter § 21.04(p)); any debt associated with such agreements additionally requires City Council action (*see* City Charter § 21.04(i) and (j)).

f. ACQUISITION AND SALE OF PROPERTY

Operating within its constraints on incurring debt, JEA generally may acquire property for use of its utilities systems. It also may sell up to ten percent of its assets (property or functions) without City Council approval in accordance with City Charter Section 21.04(p).

Section 21.04, subsections (a) and (b), vests in JEA the authority to acquire for use of the utilities system any real or personal property.

Section 21.04(p) (with emphasis added) allows JEA to sell, transfer, lease, or otherwise provide services and products listed in subsection (p) and other services and products not listed by providing *written notice* of the activity to the City Council Auditor at least 30 days before undertaking the sale, transfer, lease or other activity. It also, however, limits JEA's ability to "transfer any function or operation which comprises more than ten percent of the total of the utilities system by sale, lease, or otherwise to any other utility, public or private [sic] without approval of the council." JACKSONVILLE, FL., ORD. 2018-142-E further requires a referendum approval of any ordinance that approves the sale of more than ten percent of JEA. The Office of General Counsel has opined that ten percent refers to the assets of JEA (Opinion dated February 20, 2018) but does not include the sale of assets that are antiquated, outdated, no longer needed, or no longer used in the ordinary course of business (Opinion dated December 21, 2018).

g. PAYMENTS TO THE CITY (ASSESSMENT)

JEA's payments to the City are required by City Charter. As further detailed below, the City Charter does, however, contain a relief avenue under certain circumstances.

JEA is required by Article 21 to pay the City a combined assessment for the electric and water and sewer systems following a proscribed calculation, which has been amended from time to time and may be reconsidered by Council for amendment every fifth year. City Charter § 21.07(c) and (d). JEA may utilize any of its revenues, regardless of source, to satisfy its annual assessment obligations. City Charter § 21.07(f). In addition to the assessment, JEA must pay to the City a franchise fee (City

Charter § 21.07(l)) and the City Council has the right to appropriate annually a portion of the available revenues of each utility system other than the electric, water, and sewer systems (e.g. natural gas systems). City Charter § 21.07(e).

Subsection (d) of City Charter Section 21.07 expressly directs City Council, "If either federal or state laws are enacted or regulatory actions are taken that adversely impact JEA's financial position for the electric utility system or the water and sewer utility system, the council shall promptly consider enacting such changes to this section 21.07 as may be negotiated by JEA and the council to mitigate such adverse impact."

h. EMPLOYMENT

City Charter language pertaining to JEA's authority within the employment arena is reflective of JEA's status as an independent agency and need to develop and implement its own employment policies and practices.

Article 21 says that JEA is not required to utilize city personnel, motorpool, purchasing, communication, or information services but *may* utilize such services on a cost-accounted basis by mutual agreement with the City. City Charter § 24.07(h). It is required to utilize city legal service on a cost-accounted basis "except in those cases when the chief legal officer of the city determines that the city legal staff cannot or should not provide legal services in the required legal area." City Charter § 21.07(h).

JEA has "*full* and *independent* authority to hire, transfer, promote, discipline, terminate and evaluate employees engaged to provide any and all of the utilities services for which it is responsible". City Charter § 21.08 (emphasis added).

Section 21.08 further provides, "*consistent with* the provisions of article 17 [(Civil Service)], JEA may establish employment policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment". *Id.* It additionally may "enter into negotiations with employee organizations with respect to wages, hours and terms and conditions of employment". *Id.* Finally, JEA expressly may "take such other employment related action *as needed* to assure effective and efficient administration and operation of the utilities system." *Id.* (emphasis added).

Section 21.08 further provides, "[i]n order to effectively implement the foregoing, JEA shall perform *all functions with regard to its own employees* that *prior to the*

effective date of the consolidation and expansion of its utility function, *were performed* by the Personnel Division of the Department of Administration and Finance of the city." City Charter § 21.08 (emphasis added).

III. Amendment

Section 21.11 of the City Charter grants the City Council the authority, in accordance with the procedures outlined at that Section, to amend or repeal any portion of Article 21 of the City Charter by a two-thirds vote of the membership. That power, however, is qualified by Section 3.01, which both grants and restricts the power of City Council generally to amend the City Charter. In particular, the Council may by ordinance repeal or amend any provision of the Charter; however, "[a]ny change in this chapter [sic] made by ordinance which affects . . . the distribution of powers among elected officers [or] matters prescribed by the charter relating to appointive boards . . . cannot become effective without approval by referendum of the electors . . . ". *Id.*

Opportunity Areas

> There is a great deal of interest right now in 'the utility of the future,' but to reach a new paradigm, we cannot ignore the utility of the present, which is facing financial concerns due to low growth and new competition, is undercapitalized in the areas of distribution and transmission infrastructure, and is seeking to offer new services [and products] to customers. We will not be able to accomplish significant new goals for decarbonization and distributed generation without addressing the regulatory incentives [and disincentives] that have been driving the system for over a century.

Scott at 370. JEA management will look at changes to the status quo within traditional action areas, including cutting costs, increasing prices (i.e. raising rates), and reducing investment in capital expenditures. But that will not be enough. JEA has identified six other opportunity areas, some utilized by other utilities within the same challenging and changing landscape, where innovative initiatives may help the company to address its cash gap while maintaining its high performance standards. They are: (1) selling more of the same products/ acquiring new customers; (2) investing in research and development and intellectual property; (3) selling additional new products; (4) selling

equity to retire debt; (5) reducing JEA's contribution to the City of Jacksonville; and (6) selling JEA assets. This portion of the memorandum looks at the opportunity areas and analyzes how the governing constraints and freedoms discussed *supra* impact each.

I. Sell more product/ acquire new customers

JEA is in the business of selling electricity, water, wastewater services, and reclaimed water. In order to sell more of these traditional utility products, JEA must either acquire new facilities or partner with other entities providing these products in order to expand its productivity and customer base. Whether it can do so depends upon its general powers and specific powers to acquire property, provide utility services, engage in projects that expand its provision of services, and incur debt. Generally speaking, as analyzed below, it does have the authority to sell more product but needs City Council approval to finance the expansion necessary to do so.

a. Acquisition of additional utilities facilities

Acquisition can be complete or partial (joint ownership) and must be considered in the context of financing such projects.

i) Complete

Section 21.04(a) clearly contemplates a broad authority for JEA to "acquire," "finance," and "enlarge" its utilities system. Subsection (b) allows JEA to acquire for use of the utilities system real and personal property. JEA may, therefore, acquire 100% interest in real or personal property[10] for use in expanding its utilities system (as defined).

ii) Partial

Article VII, Section 10, of the Florida Constitution generally prohibits a Florida public entity from, among other things, becoming a joint owner with or lending or using its credit to aid any private entity. Article VII, Section 10(d) provides a limited exception to this prohibition by allowing a public entity to be a joint owner of, or give, lend, or use its taxing power or credit for the joint ownership, construction, and operation of electrical

[10] F.S. § 166.045 and other state laws, as well as procurement rules, may dictate municipal purchase procedures for property.

generation or transmission facilities with any private entity. Article 21, consistent with Article VII of the Constitution, allows JEA to become a joint owner of an electrical generation or transmission facility through joint electric power projects (§ 21.04(o)) or joint project agreements (§ 21.04(n)). Joint electric power projects generally require City Council approval and are restricted to a 40 year duration. City Charter § 21.04(o).

iii) Financing

Any acquisition, complete or partial, that involves the issuance of debt (bonds, revenue certificates, or other borrowing mechanism) requires City Council approval of the aggregate principal amount. City Charter §§ 21.04(i) and (j). Furthermore, any acquisition arrangement that potentially involves the transfer of JEA assets would need to be analyzed in the context of Article 21 Section 21.04(p) restrictions and procedure.

b. EXPANSION OF UTILITY SERVICES

Section 21.04(c) of the City Charter allows JEA to furnish "utility services" to anyone anywhere and to construct and maintain infrastructure in public highways and streets in order to do so. While Article 21 does not define "utility services," the term is defined elsewhere in state law as "electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas. F.S. § 203.012 (Gross Receipts Taxes, Definitions). Subsection (d) of Section 21.04 further allows JEA to sell utility services to anyone directly or jointly through other entities engaged in such utilities services.

Thus, JEA may expand and its utility services (as defined), including its infrastructure within public roadways. If such expansion involves incurrence of new debt, transfer of assets, or partnership or joint ownership arrangements with third parties, City Council approval may be required.

c. PROJECTS

Projects that expand JEA's ability to provide more of its traditional utility services to more customers will further a goal of selling more product. JEA generally may

partner to provide expanded electrical generation or transmission services through joint electric power projects (§ 21.04(o)) or joint project agreements (§ 21.04(n)). Joint electric power projects generally require City Council approval and are restricted to a 40 year duration. City Charter § 21.04(o).

Subsection (r) of Section 21.04 provides JEA with the latitude to jointly or separately engage in projects related to the promotion or implementation of conservation, efficiency, power conditioning, and load management. Generally speaking, these types of projects would not promote the sale of more traditional product; there may be instances, however, where JEA management sees an opportunity to sell more traditional product while falling within the subsection (r) ambit. Subsection (r) projects generally (unless by debt, transfer or otherwise) do not require City Council approval.

d. DEBT

As discussed *supra*, any initiative to sell more product that requires the incurrence of new debt requires City Council approval of the aggregate amount in accordance with City Charter § 21.04(i) and (j). More general City oversight related to its budgetary and audit functions with respect to independent agencies likewise may come into play.

II. Investing in research and development and intellectual property

The nature and structure of JEA as a municipal entity greatly constrains its ability to expand into the space of investing in research and development ("R&D") and intellectual property ("IP"). Florida public records laws are extremely broad and eliminate most opportunity for confidential development of new IP or other inventions. Furthermore, it is very difficult for JEA to source capital for R&D initiatives; the use of customer money or debt instruments to finance high risk initiatives such as R&D generally is restrained by fiduciary considerations.

Nevertheless, there are examples of municipal utilities (e.g. the Sacramento Municipal Utility District) that have used grants and other financing involving third party consultants and partners to broach the traditionally private R&D space. Subsection (r)

of City Charter Section 21.04, discussed *supra*, may provide an avenue for JEA to explore projects independently or jointly that involve innovation within electric and natural gas energy, electrotechnologies, water, wastewater and natural gas conservation and efficiency, power conditioning and load management. It expressly contemplates JEA engaging in R&D related to such projects. *Id.*

City Charter Section 21.09 likewise provides a possible route for initiatives involving R&D and the development of IP. It gives JEA authority to enter into contracts "relating to the construction, reconstruction, repair, operation or maintenance of the utilities system" and emphasizes JEA's power to "improve the utilities system, or any part thereof, or any addition, betterment or extension thereto" directly or by contract.

Article 21 Sections 21.04(r) and 21.09 projects generally would not trigger City Council approval but would, of course, still be subject to public records laws and restraints on financing, funding of non-utility entities, and asset transfer discussed herein.

III. Sell new products and services

JEA may, under City Charter Section 21.04(p) (emphasis added), "transfer, *sell*, finance, lease or otherwise provide services or products, or by-products, developed or used by JEA *incident to the exercise of the powers conferred by [Article 21]*" to other electric utilities both within and without the state or to any wholesale or retail customers of JEA, including "*but not limited to*" the following services and products:

> [E]nergy performance contracting, water, sewer and natural gas (and any other utility service hereafter provided by JEA) contracting, power marketing services, the testing and maintenance of customer-owned facilities such as transformers, capacitors, lighting, HVAC systems, water cooling and heating systems, energy management systems, etc.; the temporary leasing of JEA facilities such as oil storage tanks; the supply of steam or other thermal energy; the provision of specially conditioned power on the premises of customers and the provision of services or products to build, transfer, lease, finance, operate or sell cogeneration facilities, small power production facilities, specially conditioned power, energy conservation, energy efficiency and dispersed generation . . . [and the] financing, testing, maintenance and operation of customer owned facilities used in water, wastewater and natural gas functions. . .

It may do so under terms and conditions set by resolution of the JEA Board, *Id.*, and only after providing at least 30 days written notice to the City Council Auditor of such activities. *Id.* Unless such sales involve more than ten percent of JEA assets or otherwise involve debt, joint ownership, or the funding of non-utility industry entities, they generally would not need City Council approval.

JEA does have latitude to explore the sale of new products and services not expressly listed in Section 21.04(p) as well. JEA's Article 21 powers include:

- "[F]ull power and right to exercise *all authority necessary* for the effective operation and conduct of JEA . . . [and] all *implied* powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which JEA is created." City Charter § 21.05 (emphasis added).
- Section 21.04(r) authority to "publicize or *otherwise participate in* projects, systems, programs or *measures to* promote or implement electric and natural gas energy, electrotechnologies, water, wastewater and natural gas conservation and efficiency, power conditioning and load management."

Initiatives that are undertaken in accordance with the procedures of Section 21.04(p) could encompass any of the listed subsection (p) products and services types as well as other types of new products and services that either (1) fall under the ambit of Section 21.04(r) authority or (2) are consistent with or implied or incidental to the types of products and services covered by Section 21.04(p). While each initiative involving new products or services should be analyzed carefully on a case-by-case basis, existing governing documents do give JEA significant flexibility to explore innovation within this space.

IV. Sell equity to retire debt

JEA faces a structural barrier to retiring debt through mechanisms involving equity for the simple reason that JEA, as a publicly owned municipal utility, has no equity. It is worth noting, however, that the City Charter does expressly allow JEA to enter into any contracts it deems necessary or desirable for prudent management of JEA funds, debts, or fuels. City Charter § 21.04(l). Such contracts include interest rate swaps; option contracts; futures contracts; contracts for the future delivery or price

management of power, energy, natural gas or other related commodities; hedging contracts; other risk management techniques; securities lending agreements; and forward purchase contracts. *Id.*

V. Reduce JEA's annual assessment paid to the City

JEA is required by Article 21 to pay the City a combined assessment for the electric and water and sewer systems following a proscribed calculation. City Charter § 21.07(c). In addition, JEA must pay to the City a franchise fee. City Charter § 21.07(l). While this financial obligation is a City Charter requirement and the Charter contemplates revisiting the assessment amount only every five years (*Id.* at (d)), there is an avenue for relief built into Article 21. Subsection (d) of Section 21.07 expressly directs City Council, "If either federal or state laws are enacted or regulatory actions are taken that adversely impact JEA's financial position for the electric utility system or the water and sewer utility system, the council shall promptly consider enacting such changes to this section 21.07 as may be negotiated by JEA and the council to mitigate such adverse impact."

Therefore, if JEA identifies certain new laws or regulations[11] having a negative financial impact, it can petition the City Council under Section 21.07 to consider reducing the annual assessment, even if reevaluation is not timely under subsection (d).

VI. Sell JEA assets

JEA may, under City Charter Section 21.04(p) (emphasis added), "transfer, *sell*, finance, lease or otherwise provide services or products, or by-products, developed or used by JEA" to other electric utilities both within and without the state or to any wholesale or retail customers of JEA. It may do so under terms and conditions set by resolution of the JEA Board, *Id.*, and only after providing at least 30 days written notice to the City Council Auditor of such activities. *Id.* JEA's may <u>not</u>, however, "transfer any function or operation which comprises more than *ten percent* of the total of the utilities

[11] For example, the pending "Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice" ballot initiative Amendment, if passed and implemented, arguably will have a significant adverse financial impact on JEA. Another example would be more stringent air or water quality regulations that are costly to JEA.

system by sale, lease, or otherwise to any other utility, public or private [sic] without approval of the council," *Id.* (emphasis added), and a referendum approving such ordinance, JACKSONVILLE, FL., ORD. 2018-142-E. The Office of General Counsel has opined that ten percent refers to the assets of JEA (Opinion dated February 20, 2018) but does not include the sale of assets that are antiquated, outdated, no longer needed, or no longer used in the ordinary course of business (Opinion dated December 21, 2018).

General state law places additional conditions, including undertaking a public interest determination, on the purchase, privatization, or sale of water, sewer, or wastewater reuse utility assets. *See, e.g.*, F.S. §§ 125.3401 (Purchase, sale or privatization of water, sewer, or wastewater reuse utility by county); 180.301 (Purchase, sale or privatization of water, sewer, or wastewater reuse utility by municipality).

Within these City Charter and other State law constraints and procedures, JEA could develop initiatives to sell assets.

VII. Other

While not directly related to a contemplated opportunity arena, I will note a possible additional avenue for JEA to consider in attempting to lower costs and improve performance within the constraints of the governing documents. It may be possible for the JEA to reduce labor costs and reduce impediments to improved labor force performance in two ways: (1) focus on cost reduction during the upcoming September 2019 labor contract renegotiations and (2) reconsider internal JEA policies relating to hiring, promotion, discipline and termination, and other terms and conditions of employment for civil service-eligible employees under JEA's City Charter Section 21.08 powers.

City Charter Section 21.08 contemplates *not* JEA's use of or adherence to Civil Service rules but *rather* independent development of its own policies "consistent with" Civil Service provisions. It furthermore notes that JEA will perform all functions formerly performed by the City in carrying out employment policies. The use of such language, coupled with the plenary powers generally afforded by City Charter Section 21.08, suggests that the drafters of the City Charter envisioned a replacement of Civil Service

rules by consistent (but not identical) independent JEA employment policies and implementation. While an in-depth look at civil service applicability is outside the scope of this memorandum, JEA may wish to consider whether the possibility of such changes may be worth examining in the context of new initiatives.

CONCLUSION

DRAFT – [JEA is a public entity, created an operated for a public purpose, subject to public records and ethics laws, and greatly constrained by its governing documents, most notably City Charter Article 21. Article 21, among other restrictions, defines the traditional utility systems space within which JEA generally may act and dictates certain City Council (and/or referendum) power over JEA debt, certain joint ownership initiatives, asset transfer, and annual assessments.

JEA also, however, enjoys certain freedoms that can create opportunity spaces outside the traditional municipal utilities systems constraints. Florida law generally encourages economic development and partners to further such development. Independent agencies are, by design, intended to have those powers not reserved to the municipalities which, in turn, enjoy those powers not reserved to the state within the special acts creating them. Generally speaking, and consistent with Article 21, JEA's powers are to be construed liberally within the clear constraints of the City Charter. As discussed herein, City Charter Sections 21.04(p), 21.04(r), 21.08, and 21.09, in particular, may offer flexibility within which JEA management can explore possible initiatives.]

From: Romero Aguero, Julio E. (Chief Inno. and Transformation Officer) <romeje@jea.com>
Sent: Tuesday, May 14, 2019 4:42 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Feasibility review for Status Quo 2 initiatives
Attachment(s): "Revenue initiatives.xlsx","image001.jpg","image003.jpg","image005.jpg","image007.jpg","image009.jpg"

Herschel,

Attached is the list of potential revenue generating initiatives that we are planning to include in the final presentation of the status quo 2 plan.

We would appreciate your help to review the feasibility of these initiatives from the point of view of our existing regulations. A very detailed review is likely not possible at this point, because the scope of the initiatives is not fully developed yet. We are looking for a preliminary high level evaluation of the feasibility of implementing the proposed concepts, and your comments regarding potential roadblocks based on our regulations. We would appreciate your feedback by the end of the week or next Monday.

The initiatives are also described in the presentation that we shared with you last week. If needed, Sarah Brody from McKinsey and I can meet with you this Thursday to discuss further and answer questions. Please let me know if there are any questions or comments.

Thanks,

Julio

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EXHIBIT
42
6/17/20 Vinyard

	A	B	C	D	E
1					
2			Initiative	Labor/non-labor	Risks & considerations
3			Outsource HR functions (HR)	L	Trade-offs; increased workload on department
4			Consolidate HR support staff	L	Trade-offs; increased workload on department
5			Audit services reduction	L	No regrets
6			IP Electronic data management	L	No regrets
7			CIP compliance expense reduction	L	Trade-offs; increased cybersecurity risk
8			Reduce security patrol	NL	Difficult; increased security risk across affected areas
9			Reduce downtown security	NL	Trade-offs; increased security risk across affected areas
10			Consolidate legal fees	NL	Trade-offs; increased regulatory risk
11			Non-labor O&M: IT	NL	
12			Outsource call centers (HR)	L	Trade-offs; customer satisfaction
13			Reduce paper bills	NL	Trade-offs; some customers may not have computers
14			Non-labor O&M: customer	NL	
15			Expand electrification (Customer)		No regrets
16			Real estate optimization (Planning)		Trade-offs; less flexibility
17			Outsource material handling functions	L	Trade-offs; labor issues with IBEW
18			Change to an "operating hours" overhaul scheduling strategy	NL	Trade-offs; Risk is proportionate to the amount of hours on the machines. Insu
19			Demand app (Finance)	NL	No regrets
20			Inventory optimization	NL	No regrets
21			Contractor management	NL	Trade-offs; monitoring and additional cost reduction burdens on current contrac
22			Vegetation trim cycle	NL	Trade-offs; reliability metrics worsen, customer satisfaction decrease
23			JEA personnel for transmission work	NL	Trade-offs; may affect pricing for unit contract
24			JEA personnel for capital work	NL	Trade-offs; delayed maintenance work
25			Non-labor O&M: energy	NL	
26			Project Blue Fin (Planning)		Trade-offs; confidential
27			Retail marketplace		No regrets
28			Residential Solar Application Fee (Planning)		Trade-offs; publicity and customer pushback
29			Technology driven improvements (Energy)	L	No regrets
30			Enhance/replace Oracle eam (Energy)	L	No regrets
31			Purple Folder Initiative (HR)	L	Difficult; confidential
32			Mandated O&M reduction (HR)	L	Difficult; could result in lost employee development opportunities and benefits
33			Market-provided services for non-core functions	L	Difficult; major operational change required
34			Corporate hiring review committee (HR)	L	Trade-offs; JEA could potentially lose some soft/non-essential services
35			Vendor Contract Alignment with Capital and O&M Budgetary Performa	NL	No regrets
36			Facilities O&M Other Services and Charges (OSC) reduction	NL	Trade-offs
37			Provide O&M and R&R Services for Private Pump Stations		Trade-offs; assume risk for private pump stations
38			Customer Owned Backflow Preventer Maintenance		No regrets
39			Sewer Lateral Cleaning and Televising		Trade-offs; potential impact to community plumbers
40			Consult out ethics services (Compliance)		No regrets
41			Permitting fee review (Enviro)		Trade-offs; negative feedback maybe received as a result of fee increases
42			Private Water Repairs in Close Proximity to Water Meter		Trade-offs; potential customer or local plumber issues
43			Sewer Clean-Out Installation and Repair		trade-offs; potential impact to community plumbers
44			Cost optimization roadmap	NL	In doc

	F	G	H	I	J	K	L	M
1								
2	Sub-classification (NL)	Category	Capex/O&M/Revenue	Trade-offs (NR/TO/D)	Opportunity, $M	One-time revenue/(cost), $M	Start year	Impact to 2030 ($M)
3		Corporate	O&M	TO	TBD		2021	0.0
4		Corporate	O&M	TO	0.2		2021	0.0
5		Corporate	O&M	NR	0.1		2021	0.0
6		Corporate	O&M	NR	0.1	-0.01	2021	0.0
7		Corporate	O&M	TO	0.1		2021	0.0
8	Compliance	Corporate	O&M	D	0.5		2020	0.0
9	Compliance	Corporate	O&M	TO	0.1		2020	0.0
10	Compliance	Corporate	O&M	TO	0.0		2020	0.0
11		Corporate	O&M	TO			2020	
12		Customer	O&M	TO	TBD		2021	0.0
13	Customer	Customer	O&M	TO	0.2		2020	0.0
14		Customer	O&M	TO			2020	
15		Energy	Revenue	NR	21.1	-29	2021	0.0
16		General	Revenue	TO	15.0	-10	2021	0.0
17	G	Energy	O&M	TO	1.8		2021	0.0
18	Energy	Energy	O&M	TO	3.8		2020	0.0
19	Energy	Energy	O&M	NR	Minimal		2020	0.0
20	Energy	Energy	O&M	NR	0.5		2020	0.0
21	Energy	Energy	O&M	TO	1.0	-0.1	2020	0.0
22	Energy	Energy	O&M	D	0.5		2020	0.0
23	Energy	Energy	O&M	TO	0.3		2020	0.0
24	Energy	Energy	O&M	TO	0.0		2020	0.0
25		Energy	O&M	TO			2020	
26		General	Revenue	D	5.0		2021	0.0
27		Customer	Revenue	NR	4.3	-1.7	2021	0.0
28		Energy	Revenue	TO	0.0		2021	0.0
29	TD	General	O&M	NR	TBD		2021	0.0
30		General	O&M	NR	TBD		2021	0.0
31		General	O&M	D	0.0	-16.9	2021	0.0
32		General	O&M	D	19.2		2021	0.0
33		General	O&M	D	2.0		2021	0.0
34		General	O&M	TO	1.7		2021	0.0
35	Other	General	O&M	NR	X		2020	0.0
36	Supply chain	General	O&M	TO	2.1		2020	0.0
37		Water	Revenue	TO	0.5	-0.265	2021	0.0
38		Water	Revenue	NR	0.2	-0.02	2021	0.0
39		Water	Revenue	TO	0.1		2021	0.0
40		General	Revenue	NR	0.1		2021	0.0
41		General	Revenue	TO	0.1		2021	0.0
42		Water	Revenue	TO	0.1	-0.02	2021	0.0
43		Water	Revenue	TO	0.0		2021	0.0
44		IT	O&M	TO	#N/A	-0.12	2020	0.0

	N
1	
2	Overview
3	Outsource payroll and benefits
4	Consolidate some HR positions (OPI, employee services, safety, training)
5	Potential for consolidation and utilization of software
6	Direct upload or upload by data providers eliminates data errors, and reduces contract administrative costs (sized for Environmental)
7	Reduce use of external cyber vulnerability assessments
8	Reduce number of security patrol personnel
9	Reduce number of downtown security personnel
10	Reduce legal fees associated with guidace on regulatory issues
11	
12	Outsource some call center operations, e.g., start/stop service
13	Reduce paper bills sent out. Initiative underway to implement "opt-out" program for new customers
14	
15	Convert more commercial and industrial customer to electric (e.g., vehicles)
16	Sell/lease surplus properties
17	Outsource material handling functions at Northside Generating. This would include but not limited to, fuel unloading and handling, ash handling and disposal and by-product support
18	Change from a "time frequency" based decision making process for major outage requirements, to an "operating hours" based approach as currently accepted by the OEM's (savings cu
19	App showing demand in different areas. Create customer awareness and engagement.
20	Better materials management and siting in business areas where materials are fast-turn and workforce is distributed and currently has to make extra trips to pick up materials
21	Develop and implement a contractor management program (currently sized based on NGS)
22	Increase cycle by 20% (to 36 months) to decrease costs
23	Utilize JEA personnel to perform transmission maintenance, elimating need for contractor
24	Utilize JEA personnel to perform assembly and vacuum oil processing of new power transformers instead of a contractor; potentially negative impact on preventative maintenance
25	
26	Taking over LDC in Duval county
27	Online marketplace to sell energy-related appliances and services. Use to collect data, create engagement and awareness, and generate modest income.
28	Charge an application/inspection fee to cover the cost of solar PV interconnection reviews and inspections
29	Use technology to drive improvements, additional data analysis for maintenance scheduling, drones may allow reduced costs for inspection process, and tablets should allow enhanced asset mar
30	New software tool to enhance employee satisfaction and productivity (ease of use)
31	Incentivize early retirement; 37% of employees eligible for retirement in 5 years
32	Targeted 10% O&M spend reduction by group. This becomes the target for each group's reductions
33	Outsource non-core functions within supply chain
34	Evaluate hiring of direct roles to reduce indirect hires if there is no long-term need
35	Vendor negotiations or like for like comparison of unit pricing from different vendors, largely on O&M contracts
36	40% reduction in maintenance, landscaping, paintaing, planned rehab work; eliminate PM on generators
37	Operate and provide R&R services to owners of private pump stations
38	Provide backflow installation, testing and repair services. Bringing installation, testing and repair services in-house provides value for the customer with regard to ensuring easy compliance with the regulation a
39	Charge customers to clean out clogs in their sewer laterals. Currently when a customer calls regarding a stoppage, JEA provides a "courtesy" jetting of their pipe to clear the stoppage
40	Provide Ethical compliance services to other independent agencies such as Jacksonville Housing Authority, Jax Port, and DCPS
41	Review all permitting fees; fees are among the lowest within the surrounding area and Florida and have not been changed for several years.
42	Formalize repairs to private pipe and fittings near the meter the process and offer these services to the customer and include charges on the JEA bill.
43	Provide service to customer-owned sewer clean-outs; sewer clean-out is required by code and required to unblock stoppages
44	Broad cost optimization; forecast to cost $120k

	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC
1															
2	Include in SQ2 (1 = yes, 0 = no)	Resulting opportunity	Resulting cost	Cost notes (if not fully summarized in opportunity and revenue columns)	Notes from meeting - additional detail	Notes from meeting - risk									
3	0.0	N/A	N/A												
4	0.0	N/A	N/A												
5	0.0	N/A	N/A												
6	0.0	N/A	N/A	0.1											
7	0.0	N/A	N/A												
8	1.0	0.5	0.0		"Purple folder" example										
9	1.0	0.1	0.0		"Purple folder" example										
10	1.0	0.0	0.0												
11	0.0														
12	0.0	N/A	N/A												
13	1.0	0.2	0.0												
14	0.0		N/A												
15	1.0	21.1	-29.0		Need to follow-up to get sizing: Kerri to provide final report w/ sizing within a few weeks										
16	1.0	15.0	-10.0	-140											
17	1.0	1.8	0.0												
18	1.0	3.8	0.0												
19	0.0	N/A	N/A		Removed b/c there's no financial impact at this stage; doesn't fit with "bare bones" cost reduction initiatives										
20	1.0	0.5	0.0		Need more	Revisit, team to resize - labor would all come from purple folder, and inventory impact is all that's left - this is small									
21	1.0	1.0	-0.1												
22	1.0	0.5	0.0		"Purple folder" example if this is INTERNAL - requires some additional evaluation										
23	1.0	0.3	0.0		Questions remain regarding union input here										
24	1.0	0.0	0.0												
25	0.0		N/A												
26	0.0	N/A	N/A	210	Timeline = 2	Would need to win franchise from city council when it's up for renewal. Probably can't talk to Board publicly about this; removing									
27	1.0	4.3	-1.7		Agreement w	Some questions around what is and isn't allowed (e.g., selling, financing) - team is following up to size, confirm this is OK									
28	1.0	0.0	0.0		Agreement that charging for cost of service (e.g., review of applications) is reasonable										
29	0.0	N/A	N/A		Requires investment; condition-based maintenance elsewhere										
30	0.0	N/A	N/A		Requires investment, pursue and size in LT (just not including in SQ2)										
31	0.0	N/A	N/A		This will be	Ability to provide service; need to avoid losing key employees; need to work across groups to think about and size this									
32	0.0	N/A	N/A		Addressable; not enough questions are currently asked. Goal of cuts; this is not additive to everything else. This is now listed as sepa										
33	0.0	N/A	N/A		Combine w/ Purple Folder: part of broader headcount reduction										
34	0.0	N/A	N/A		Remove because this is included in broader headcount savings										
35	1.0	X	0.0		Team to size "bare bones functionality" - enabler of cost reduction targets on NL										
36	1.0	2.1	0.0		Resized to remove utility savings component										
37	1.0	0.5	-0.3												
38	1.0	0.2	0.0		Potential for adding to "marketplace"										
39	1.0	0.1	0.0		Either market, or work offered on-site										
40	1.0	0.1	0.0												
41	1.0	0.1	0.0												
42	1.0	0.1	0.0												
43	1.0	0.0	0.0		Either market, or work offered on-site										
44	0.0	N/A	N/A		*Check w/ Sarah how to discuss this vs. prior?										

	A	B	C	D	E
45			ERP cost optimization	NL	In doc
46			Reconcile vendor use of duct bank to existing project agreements	NL	In doc
47			Telecom audit	NL	In doc
48			Four Ten-Hour Days for Select Field Staff	L	Trade-offs
49			Minimize Costs for Pump Station PM Visits	L	Trade-offs; reliability risk + effort to implement
50			Project Funding Revisions	NL	No regrets
51			Scope and Fee Negotiator	NL	No regrets
52			Perform Crane Inspections Utilizing JEA Personnel	NL	Trade-offs; effort involved to certify
53			Wastewater Biosolids Hauling	NL	Trade-offs; unclear level of impact
54			Design-Build Continuing Service Contract	NL	No regrets
55			Hydrogen Peroxide Use Reduction	NL	Trade-offs; potential customer dis-satisfaction
56			Glycerin Use Reduction	NL	Trade-offs; environmental risk
57			Hydrogen Peroxide cost at Arlington East WRF	NL	Trade-offs; potential environmental impact
58			Non-labor O&M: water	NL	
59			Water Softener and Faucet Aerator Troubleshooting and Repair		Trade-offs; impact to plumbers in community
60			eLearning Technologies (HR)		No regrets
61			Expand lab services (Enviro)		No regrets
62			JEA Academy (HR)		No regrets
63			Co-branded retail sales		Trade-offs; risk of non-performing partner doing reputational damage
64			Expand natural gas sales		No regrets
65			Collection/Conversion of Brown Grease to Biofuel or Methane (Enviro)		Trade-offs; capital investment, taking on more services, politics
66			Non-labor O&M: Corporate Non-IT		
67			Eliminate participation in 3 rodeos	NL	Trade-offs; morale
68			Eliminate Septic tank phase out study	NL	Trade-offs; customer satisfaction
69			Reduce storm resiliency planning	NL	Trade-offs; commnity
70			Remove GIS position for outage mapping	NL	Trade-offs; community
71			Reduce portable pump reserveration	NL	Trade-offs; resiliency
72			Reduce standards studies	NL	Trade-offs; efficiency
73			Reduce coating / paint for metal surfaces	NL	Trade-offs; reliability
74			Perform CCTV inspections in-house	NL	Trade-offs; efficiency
75			Reduce cleaning of pumps and wells	NL	Trade-offs; risk of clogging
76			Reduce marketing budget	NL	Trade-offs; customer engagement
77			Reduce professional services	NL	Trade-offs
78			[Placeholder supply chain initiative]	NL	Trade-offs
79			Professional services reduction	NL	Trade-offs
80			Reduce contracted lab and remediation services	NL	Trade-offs
81			Miscellaneous supplies and tools reduction	NL	Trade-offs
82			Reduce professional services	NL	Trade-offs; increased regulatory risk
83			Reduce tools, training, travel	NL	Trade-offs; increased regulatory risk
84			Reduce professional services	NL	Trade-offs
85			Reduce legal and supplemental workforce	NL	Trade-offs
86			Rental and lease	NL	

	F	G	H	I	J	K	L	M
45	IT	IT	O&M	TO	1.8		2020	0.0
46	IT	IT	O&M	TO	0.4	-0.25	2020	0.0
47	IT	IT	O&M	NR	0.2		2020	0.0
48		Water	O&M	TO	TBD		2021	0.0
49		Water	O&M	TO	0.3		2021	0.0
50	Water	Water	O&M	NR	0.3		2020	0.0
51	Other	Water	Capex	NR	1.8	-0.1	2020	0.0
52	Water	Water	O&M	TO	0.1		2020	0.0
53	Water	Water	O&M	TO	0.4	-0.57	2020	0.0
54	Water	Water	Capex	NR	0.3		2020	0.0
55	Water	Water	O&M	TO	0.2		2020	0.0
56	Water	Water	O&M	TO	0.1		2020	0.0
57	Water	Water	O&M	TO	0.0		2020	0.0
58		Water	O&M	TO			2020	
59		Water	Revenue	TO	0.0		2021	0.0
60		General	Revenue	NR	0.0		2021	0.0
61		General	Revenue	NR	0.0		2021	0.0
62		General	Revenue	NR	0.0		2021	0.0
63		Customer	Revenue	TO	TBD		2021	0.0
64		Energy	Revenue	NR	TBD		2021	0.0
65		Water	Revenue	TO	TBD		2021	0.0
66								
67	Energy	Energy	O&M	TO	0.2		2020	0.0
68	Water	Water	O&M	TO		1.5	2020	0.0
69	Water	Water	O&M	TO		1.2	2020	0.0
70	Water	Water	O&M	TO	0.2		2020	0.0
71	Water	Water	O&M	TO	0.2		2020	0.0
72	Water	Water	O&M	TO	0.1		2020	0.0
73	Water	Water	O&M	TO	0.3		2020	0.0
74	Water	Water	O&M	TO	0.1		2020	0.0
75	Water	Water	O&M	TO	0.1		2020	0.0
76	Customer	Customer	O&M	TO	2		2020	0.0
77	Gov Affairs	Corporate	O&M	TO	0.243		2020	0.0
78	Supply chain	General	O&M	TO			2020	0.0
79	Environmental	General	O&M	TO	0.375		2020	0.0
80	Environmental	General	O&M	TO	0.1		2020	0.0
81	Environmental		O&M	TO	0.044		2020	0.0
82	Compliance	Corporate	O&M	TO	0.193		2020	0.0
83	Compliance	Corporate	O&M	TO	0.06		2020	0.0
84	EWP	Corporate	O&M	TO	0.2		2020	0.0
85	EWP	Corporate	O&M	TO	0.1		2020	0.0
86	IT	IT	O&M	NR	0.2		2020	0.0

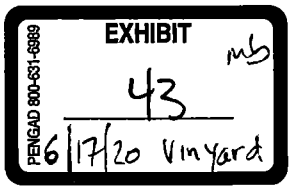
	N
45	3rd party support provider for Oracle and other support
46	Recover revenue according to original contracts with Comcast for use of space
47	Identify over-billing opportunities to address
48	There may be benefit in utilizing four, ten-hour days for certain classes of work. For instance, construction projects typically have a longer set up and break down time each day. One les
49	Reduce pump station inspections through condition-based maintenance and hire entry-level workers to perform remaining work
50	Modify project funding processes and requirement to streamline business processes
51	Hire an expert with experience in negotiating rates and fee structures for capital projects
52	Bring crane inspections in-house if certifications can be obtained
53	In-source biosolids hauling from wastewater reclamation facilities to Buckman WRF
54	Develop master contracts with qualified design-build contractors for repeat, small capex jobs
55	Optimize hydrogen peroxide feed rate while maintaining odor control (estimate 10% reduction in usage possible)
56	JEA can reduce glycerin usage and still meet compliance limits (28% under compliance limit now)
57	Reduce hydrogen peroxide feed rate and remain under TN TMDL limit
58	
59	Provide water softener servicing/minor maintenance and faucet aerator replacement/cleaning to correct poor pressure issues
60	Sell JEA's eLearning to external parties
61	Provide lab services to other government agencies
62	Opportunity selling JEA's eLearning to public; requires payment for non-JEA customers and ability to sell new services
63	Sell co-branded items (e.g., wipes, water filtration) and services with major providers. Create awareness for key issues, generate revenues.
64	Additional natural gas sales to commercial customers (likely need to implement fixed price option)
65	Establish dedicated "brown grease" collection and treatment facilities for conversion to bio-diesel and/or carbon source for digesters at WWTP
66	
67	Eliminate participation in 3 rodeos
68	Eliminate Septic tank phase out study
69	Reduce storm resiliency planning
70	Reduce GIS position for outage mapping
71	Reduce portable pump reservation
72	Make do with in-house investigation of proposed standards changes
73	Reduce coating / paint for metal surfaces
74	Perform CCTV inspections in-house
75	Reduce cleaning of pumps and wells
76	Reduce marketing budget
77	Reduce professional services
78	
79	Reduce professional services and supplemental staff for permitting, compliance
80	Reduce professional services and supplemental staff for labs, remediation
81	Reduce professional services and supplemental staff for labs, remediation
82	Reduce professional services for QA, other activities
83	Reduce tools, training, travel
84	Reduce professional services related to resource planning
85	Reduce legal and professional services
86	Negotiate cost of rented and leased equipment

	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC
45	1.0	1.8	0.0		Pursue separate from broader cost optimization effort										
46	1.0	0.4	-0.3		Pursue separate from broader cost optimization effort										
47	1.0	0.2	0.0		Pursue separate from broader cost optimization effort										
48	0.0	N/A	N/A												
49	0.0	N/A	N/A												
50	1.0	0.3	0.0												
51	1.0	1.8	-0.1	2											
52	1.0	0.1	0.0	0.01											
53	1.0	0.4	-0.6	2.29											
54	1.0	0.3	0.0												
55	1.0	0.2	0.0												
56	1.0	0.1	0.0												
57	1.0	0.0	0.0												
58	0.0	N/A	N/A												
59	1.0	0.0	0.0		Either market, or work offered on-site										
60	1.0	0.0	0.0												
61	1.0	0.0	0.0	0.2											
62	1.0	0.0	0.0												
63	1.0	TBD	0.0												
64	0.0	N/A	N/A		Parking lot - currently "no" b/c Board didn' t want it before										
65	0.0	N/A	N/A		Not a short-term project, questions over whether this is competitive										
66	1.0	0.0	0.0												
67	1.0	0.2	0.0												
68	1.0	0.0	1.5												
69	1.0	0.0	1.2												
70	1.0	0.2	0.0												
71	1.0	0.2	0.0												
72	1.0	0.1	0.0												
73	1.0	0.3	0.0												
74	1.0	0.1	0.0												
75	1.0	0.1	0.0												
76	1.0	2.0	0.0												
77	1.0	0.2	0.0												
78															
79	1.0	0.4	0.0												
80	1.0	0.1	0.0												
81	1.0	0.0	0.0												
82	1.0	0.2	0.0												
83	1.0	0.1	0.0												
84	1.0	0.2	0.0												
85	1.0	0.1	0.0												
86	1.0	0.2	0.0												

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Thursday, June 27, 2019 9:30 AM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Travels

I plan to finish the revised memo and send you that along with the chart today.

> On Jun 27, 2019, at 9:27 AM, Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com> wrote:
>
> Please send me what you can on x/check before you head north. Thx.



July Board Meeting – Draft
Revised <AUTODATE>

JEA is looking for growth opportunities; methods of expanding its revenue beyond providing water, sewer, and electricity in Jacksonville. There are many ideas being discussed throughout our industry, including ideas submitted by employees.

[Insert growth examples]

As part of our due diligence on the potential growth opportunities, we wanted to research what legal hurdles we would face to get into that business, and then assess the likelihood we could change the law, and the time and money required to effect that change.

We examined the hurdles created by the Florida Constitution, Public Service Commission (PSC), public records, City Charter, bond resolutions, public policy considerations, and JEA business structure. I will explain these in greater detail.

The overarching hurdle we would face is the category we describe as "Policy Consideration". To overcome legal hurdles to be successful in these growth opportunities, we may need to convince the voters to change the Florida Constitution, the Legislature and Governor to change the Florida Statutes, the City Council to amend the City Charter, or the Public Service Commission would be needed to change the PSC requirements or approve certain activities of JEA.

We generally have a pro-business state with a small government City Council, Legislature, and Governor. If JEA approaches elected officials for a statutory change to make it easier for JEA to compete for more business, one of the first questions the Legislature, City Council, and the voters will ask, "Do we want government (JEA) competing against the private companies that provide the same product or service?" It's an important policy consideration that goes far beyond whether the elected officials support JEA because he or she will need to consider whether JEA will be trying to take business from a private company in his or her district. [OGC competing for legal work against private law firms.]

The second component of the public policy debate is those private entities will be fighting us to stay out of their business. They may hire lobbyists to help with their fight. So, even if the Legislature or City Council support JEA, the private companies that may lose business to JEA will not roll over. By the way, there are almost 2,000 registered lobbyists in Tallahassee and

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EXHIBIT
44
mb
6/17/20 Vinyard

they are paid tens of millions of dollars each year for a policy, an appropriation, or to kill a policy or an appropriation. [Kerri Stewart anecdote]

For example, if we needed some legislative help in our core electric business, which may negatively impact another electric provider, there are already 74 lobbyists registered in Tallahassee for electrical generation and transmission issues. The point is, if JEA wants to take business from another company or even get a leg up, competitors will fight us at the legislature and City Council, and there are some compelling public policy considerations against JEA, as government, expanding its business.

Now, pivoting to laws that prevent us from pursuing growth opportunities. I will describe the legal hurdle, why that hurdle prevents us from growing the business, why it's important to remove the legal hurdle, and finally, I will give you my best estimate of the time it will take to change the law, the money it will take, and the probability of success.

We will start with Florida's constitution. Florida constitution requires that every action that JEA takes will be for a "municipal purpose". "Municipal purpose" is one that is related to the "health, morals, safety, protection, or welfare of the municipality". Courts have been lenient on what is a "municipal purpose", but municipal purpose is not unlimited.

Electrification is one option that has been discussed by our industry to increase electricity demand. Some in the industry are discussing whether to sell, finance, or lease electric vehicles to accelerate the demand: more electric vehicle, more electric demand. There are no Florida court decisions on the issue, but there is a legal question for any municipal utility in Florida as to whether vehicle sales or financing meets the municipal purpose test. Therefore, pursuing opportunities to increase electric demand may not meet the constitutional test of what is a "municipal purpose".

The other Florida constitutional provision that is a constraint which prohibits government from becoming a "joint owner with or lending credit to aid any private entity." [Railroad] Courts have interpreted that provision to mean that any partnership or joint ownership with a private entity must have a "sufficiently strong public purpose" and the public interest must "dominate the private gain." There is an exemption to this constitutional prohibition for joint power plants.

As JEA looks for opportunities to grow and bring in new revenue from different sources, one quick way would be to partner with a successful company already in that business, essentially buy stock in the company. This constitutional provision would likely foreclose this as an option.

One Florida Supreme Court case jumped out at me that touches on municipal purpose and joint ventures. It was a case where the City of Daytona Beach proposed to give a golf course owner a refund on all the taxes he paid to the City if the golf course owner would improve the course and charge reasonable fees to the City of Daytona Beach. The Florida Supreme Court states that they aren't prohibiting government from owning a municipal golf course, and this arrangement would probably save taxpayer dollars. The court struck down this arrangement and prohibited the use of tax dollars at a privately-owned golf course and the partnership between the City and the private course. What caught my eye was a reference to the automobile business given that utilities are looking at EVs. The Court stated, "If the taxpayers' money can be diverted and used to finance a private golf course, why not take a further step and finance a private billiard parlor, a private dance hall, a private baseball team, a private 'juke', or set up a private drugstore or private automobile business?"

Therefore, we have two constitutional hurdles that may prevent us from getting into businesses beyond electric, water, and sewer: "municipal purpose" and the prohibiti0n against partnering or lending credit to private entities.

How do we remove this barrier? There are two practical paths to change Florida's Constitution. It's been amended 100 times in the previous 50 years, but it's not easy. All you need is time, money, and a compelling issue.

The first path is by citizen initiative. You need to obtain almost 800,000 signatures from registered voters throughout Florida. After that, there is a process of signature validation and Florida Supreme Court review. The going rate paid to signature gatherers, which is a cottage industry, was $5 per signature. The Legislature enacted several reforms that went into law on July 1 that made the signature gathering process much more regulated. One impact of those reforms will be that the cost to collect the necessary signatures will increase significantly. Instead of paying $4m to gather the signatures, it may be $6m to $8m. We don't know yet because the laws just went into effect.

We have missed our window to get on the November 2020 ballot. Signatures have to be submitted to the Secretary of State by year-end, and the 20 citizen initiatives are much further along. If this Board wanted us to go down this path, our proposals would not go on the ballot until November 2022 at the earliest.

Alternatively, the Legislature can place items on the ballot if we obtain 60 percent of the vote of both the Florida House and Senate. It has to go through the regular committee process and voted on by the full House and Senate. I looked at the last two legislative sessions. There were 56 resolutions filed to place constitutional amendments on the ballot. None got the 60 percent vote, and none got on the ballot.

If we went the citizen initiative route, I think it would take $12m to get an amendment on the ballot, a minimal amount of statewide advertising, and 2022 would be the earliest time to do so.

If we went the legislative route, I think it would take at least two legislative sessions if our changes are viewed favorably, and we would spend $250,000 to $400,000 on lobbyists. That would put it on the ballot, at the earliest, in November 2022. Then we would have to run a multi-million dollar campaign to get 60 percent of the voters to approve the provisions.

While the constitutional barriers to growth are some of our biggest hurdles, and it will take at least three to five years to get something on the ballot, I think the chances of successfully changing the Constitution are almost zero. I don't see the public wanting to expand what is a "municipal purpose". I also don't see a willingness by the public to make it easier for government to lend its credit to private entities or invest in private companies.

The second legal hurdle is a statutory one. As a government agency, we comply with the public records laws. Florida appreciates its Sunshine laws. How would public records requests negatively impact how JEA could get into new businesses? If JEA starts competing in any line of business, our private sector competitors could make a public records request and obtain our business plan, cost structure, and even some of our bid preparation work could be obtained by our competitors. [Kerri?]

The public records requirements extend to any corporation created by government, so if JEA formed a subsidiary company to get into a new line of business, public records laws would apply to that subsidiary.

As a result of some expanded public records laws, private companies acting on behalf of government agencies are, in many instances, subject to public records laws. [Totality of Factors Test – nine factors evaluating an agency's relationship with a company and the Delegation of Function test]. Therefore, public records laws open most of our books to competitors, which gives them a substantial advantage over us. If we formed a company to pursue a particular line of business, that subsidiary would be subject to public records laws. Finally, partners and certain entities that we contract with may subject that private company to public records requirements. Over the years, the Florida legislature has created a number of exemptions to the public records laws. Many of you are familiar with the legislative process. We would need to draft legislation that would exempt JEA or municipal utilities from the public records laws. JEA was successful in obtaining an exception to the Sunshine laws to protect cybersecurity issues from the public. It may not be as compelling to shield business data as cybersecurity data. Again, the rule of thumb is at least two years to pass legislation, and it might take $250,000 for lobbying. I think our probability of success is less than 50 percent. It goes much closer to zero percent if our potential competitors try to kill the legislation.

City Charter

The City Charter is JEA's primary governance document. The Florida Constitution, state law, and the Public Service Commission all continue to have restrictions impacting JEA, but the Charter is the most granular document impacting JEA. JEA only has the authority that city Council grants us. Obviously, we are also limited by Constitution and state statutes regardless of the authority granted by City Council.

The Charter grants JEA broad authority to own, manage, and operate a utilities system – electric, water, sewer, and natural gas. Interestingly, the Charter limits JEA to serving electric utility customers in Duval and its adjacent counties. Therefore, if JEA wanted to own utilities beyond Duval and the adjacent counties, it would need a charter amendment.

JEA is also authorized to provide services or products that are related to energy conservation and efficiency products, load management, repair and maintenance of HVAC and water cooling

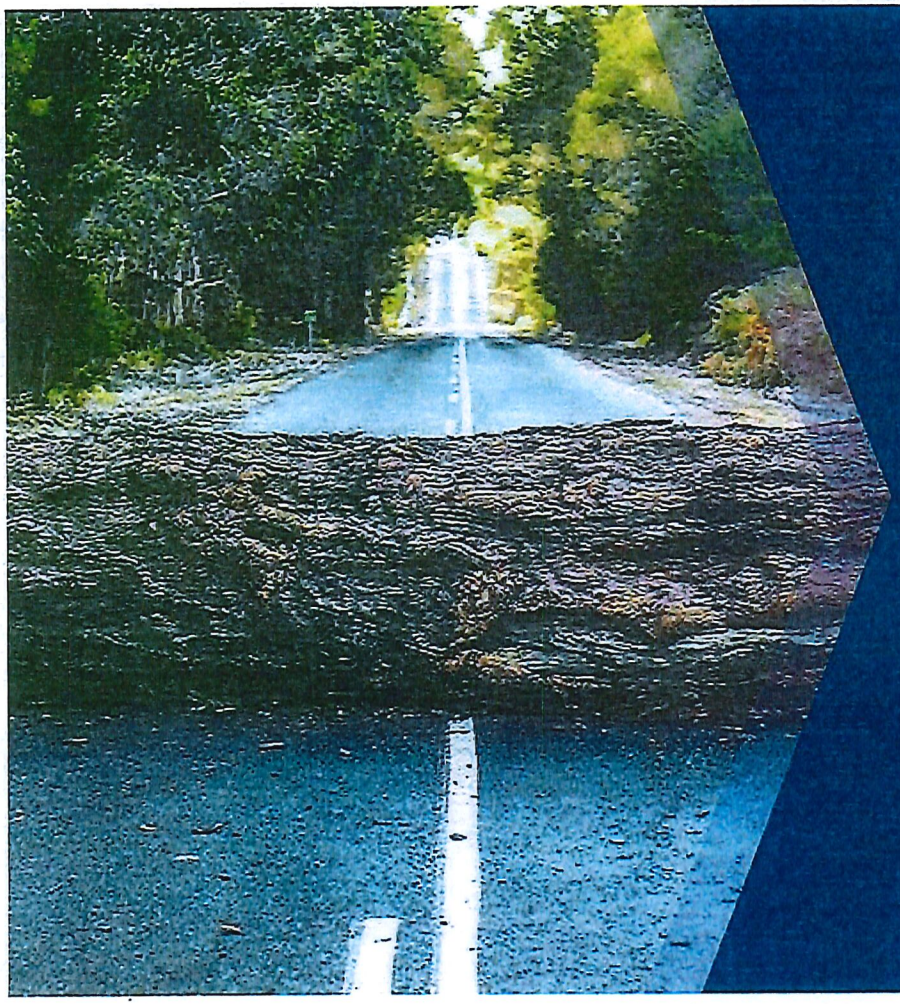
and heating systems. It is unclear whether this geographic limitation contained in the Charter extends to these services or products. JEA has miles and miles of fiber but the Charter doesn't authorize JEA to be in the telecom business. In addition, we have some very smart and talented people at JEA. JEA's charter contemplates us being in the R&D/IP world for electric and water issues. It is unclear whether the Charter limits these other ancillary services and IP to the same geographic constraints placed on the electric utility system. As a reminder, that business opportunity would be vulnerable to public records requests that would require us to give to the public the research or code produced by our employees.

The JEA Charter can, however, be amended or clarified with 13 votes of the City Council. I think our City Council has been very supportive of JEA. If we were to attempt to get into a business or business location that negatively impacts an existing business, our City Council will hear from them, and the public policy and lobbyist arguments that we discussed earlier will resurface. [why we need it and probability]

There is one other item in the Charter that we do not recommend we change but which does impact how we do business. JEA employees are considered government employees who are entitled to civil service protection and benefits that are not afforded to private sector employees. Those rules are designed to be rigid in their application. If we are competing against a more nimble private sector, rigid rules are not helpful. In addition, if JEA were to acquire a company, the widget installer, the employees of the widget installer would immediately become government employees. Again, we don't think it would be productive to look for a Charter change in this area, but we do recognize it may impact our ability to compete.

If we started chasing different lines of business, our bond covenants would have to be amended and consent obtained by those bondholders. I'm told that this task, while important, does not rise to the level of difficulty as changing the Constitution or Charter. It will take several months and involve bond counsel participation.

Similarly, if we venture too far from our core rate structure or territory, we may need certain approvals from the Public Service Commission. The PSC has developed a reputation of being thorough but fair to utilities, and I don't see a huge problem with gaining PSC approvals unless we have a competitor work against us. Nevertheless, like amending our bond covenants, PSC approvals take several months, and attorneys and consultants would need to be involved.



OVERVIEW OF MAJOR LEGAL AND PUBLIC POLICY CONSTRAINTS

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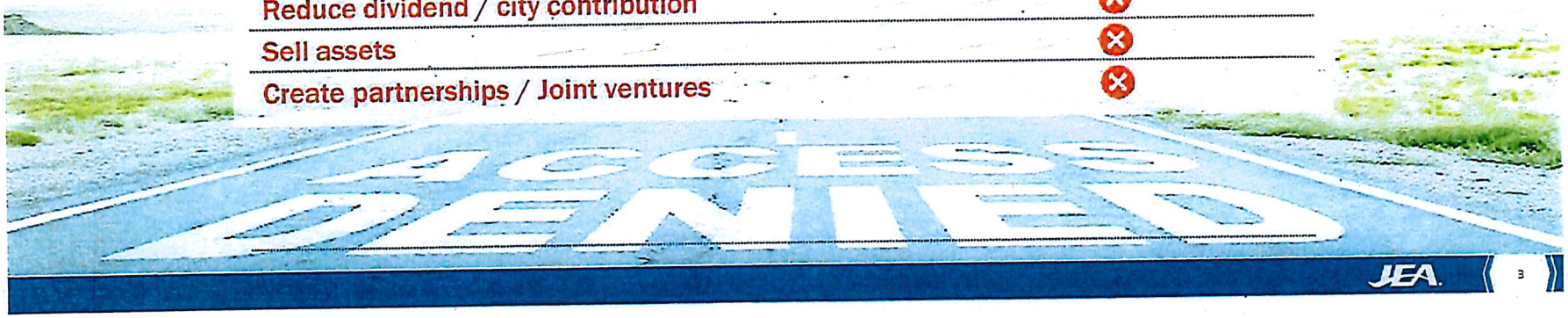
POTENTIONAL BUSINESS EXPANSION OPPORTUNITIES VIA INNOVATION AND TECHNOLOGY

Family	Description	Example services	
Building efficiency and automation	**Use of energy-efficient and smart appliances, modern heating and cooling equipment, and IT solutions** to reduce building (B2C and B2B) consumption	▪ Relighting/LEDs ▪ Insulation ▪ HVAC ▪ Smart heating	▪ Smart office automation ▪ Smart home automation ▪ EPC
Equipment efficiency	**Use of energy-efficient industrial equipment, modern heating and cooling equipment as well as IT solutions** to reduce consumption	▪ Industrial applications ▪ Electric motors ▪ HT and LT cabins	▪ Leakages management
Distributed generation	**Use of distributed generation technologies** (solar PV, combined heat & power systems , waste heat recovery plants) to reduce grid demand	▪ Solar PV ▪ Mini-CHP ▪ Mini-wind	▪ Micro-CHP (for apartments)
Flexibility and storage	**Shift of energy demand to optimize profile** thereby lowering total cost of consumption or need for installed capacity at system level	▪ Virtual power plants ▪ Storage ▪ Smart metering	▪ Demand side aggregation
Electric vehicles / electrificaton	**Development of electric vehicle re-charging infrastructure and related services** and supporting electrification of facilities, equipment beyond the vehicle	▪ Charging infrastructure ▪ Power supply services ▪ Fleet management ▪ EV fleet leasing	▪ Port conversion ▪ Electric water heater program ▪ Industrial equipment
Value added services	**Supply of a variety of services for buildings and final customers** to provide maintenance services, insurance services, consultancy and audit	▪ Home services ▪ Equipment maintenance	▪ Insurance ▪ Audit/consultancy

1 Energy performance contracting 2 Heating, Ventilation and Air Conditioning

JEA IS LIMITED TO HOW IT CAN DO BUSINESS TODAY

Opportunity	Can JEA do this Today?
Sell more electric and water services	✗
Cut costs and workforce	✓
Increase customer rates	✓
Investment in R&D and IP for an ROI	✗
Sell alternative new product lines or offerings	✗
Sell equity and retire debt	✗
Acquire new businesses & customers	✗
Reduce investment in capex	✓
Reduce dividend / city contribution	✗
Sell assets	✗
Create partnerships / Joint ventures	✗



VIABILITY OF INITIATIVES WITH CONSTRAINTS

PROHIBITED OR NOT VIABLE
SIGNIFICANT CONSTRAINTS
LIKELY PERMISSIBLE

CONTEMPLATED INITIATIVE	EXAMPLE	FLORIDA CONSTITUTION	FPSC	IP	City Charter	Bond Resolution	Policy Considerations	JEA Business Structure	IMPACT OF CONSTRAINTS
CHANGE RATE STRUCTURE									
	Preferential rate structure								
	Flat rates								
	Critical peak pricing								
	Rate decoupling								
	Real time pricing								
RAISE RATES									
	Raising water and sewer rates by 52%								
	Raising electric rates by 31%								
SELL CUSTOMIZED ELECTRICITY, WATER, AND SEWER									
	Increase premium services (renewable-sourced electricity, resilient power, premium reliability)								
	Increase chilled water sales								
	Increase reclaimed water sales								
SELL MORE NATURAL GAS									
	Local Distribution Company (retail)								
	Expand wholesale sales								
	LNG								
EXPAND ELECTRICITY, WATER, SEWER, AND NATURAL GAS SERVICE TO MORE CUSTOMERS IN ADJACENT COUNTIES									
	Territorial agreements								
EXPAND ELECTRICITY, WATER, SEWER, AND NATURAL GAS SERVICE TO CUSTOMERS IN NON-ADJACENT COUNTIES									
	Develop an electric utility system in a non-adjacent county								
SELL OR LEASE NEW ELECTRIC, WATER, OR SEWER-RELATED PRODUCTS AND SERVICES									
	Warranty and protection services (electric, HVAC, surge protection)								
	Electrification (provision/ maintenance of EV charging infrastructure)								
	Energy Services Company								
	Grid (solar distributed generation, energy storage, demand response, backup generation, microgrids)								
SELL NEW OTHER SERVICES									
	Telecom								
	On and off-road electric vehicles sales and financing								
CUT OPERATING EXPENSES									
	Customer communication								
	Employee training								
	Security								
	Tree trimming								

CONTEMPLATED INITIATIVE	EXAMPLE	FLORIDA CONSTITUTION	FPSC	IP	City Charter	Bond Resolution	Policy Considerations	JEA Business Structure	IMPACT OF CONSTRAINTS
CUT WORKFORCE									
	Targeted outsourcing								
	Across the utility layoffs								
REDUCE CITY CONTRIBUTION									
	Eliminate annual assessment								
SELL ASSETS (10% OR LESS)									
	Sell underperforming assets								
	Sell surplus or antiquated equipment								
SELL ASSETS (MORE THAN 10%)									
	Sell underperforming assets (more than 10% of total assets)								
ACQUIRE, GROW, & OPERATE NEW ELECTRIC UTILITY BUSINESSES THROUGHOUT THE U.S.									
	Buy and operate 100% of a municipal utility in south Florida								
ACQUIRE, GROW, & OPERATE NEW NON-UTILITY TYPE BUSINESSES THROUGHOUT THE U.S.									
	Buy or start water and energy financing platform								
	Buy a lemon co.								
	Buy 100% of a software or A.I. company								
	Buy 100% of a vehicle fleet management company								
JOINT OWNERSHIP/VENTURE WITH ELECTRICAL ENERGY GENERATING OR TRANSMISSION FACILITY									
	Buy less than 100% of an electric generating or transmission facility								
JOINT OWNERSHIP/VENTURE WITH NON-UTILITY									
	Buy less than 100% of a landscaping co.								
CONTRACT WITH OTHER UTILITIES FOR UTILITY SERVICES									
	Power purchase agreement								
SELL A PORTION OF EQUITY TO FUND GROWTH OR DELEVERAGE									
RESEARCH & DEVELOPMENT FOR MONETIZATION									
	Advanced data analytics solutions								
	Real-time operations software								
MAKE INVESTMENTS PURPOSED TO ACCELERATE AND GROW UTILITY TECHNOLOGIES, SERVICES, AND/OR PLATFORMS									

* NOTE: Constraints considered are the Florida Constitution, the Florida Public Service Commission jurisdiction, intellectual property (IP) considerations, the City of Jacksonville Charter, JEA's Bond Resolutions, JEA's business structure, and policy considerations. The cumulative impact analysis assumes current law, is based on general and not specific initiative terms, and is subject to confirmation and change by legal counsel. It is not possible to analyze the universe of policies, laws, and regulations that may impact the development, adoption, funding, and implementation of a proposal at this point in the discussion. Any specific initiative will require extensive and detailed legal analysis and counsel.

FOUR MAJOR BUCKETS OF LEGAL/PUBLIC POLICY BARRIERS

- PUBLIC POLICY
- PUBLIC RECORDS
- FLORIDA CONSTITUTION
- CITY CHARTER

PUBLIC POLICY

WHAT IS PUBLIC POLICY?

Public policy is the principled guide to action taken by government with regard to a class of issues, in a manner consistent with law and institutional customs

DO "WE" WANT GOVERNMENT COMPETING AGAINST THE PRIVATE SECTOR?

How much will the private sector push back? How will lobbyists defend their territories? Will elected officials make choices that are not aligned with their local businesses?

FLORIDA CONSTITUTION

CONSTRAINTS

ARTICLE VIII, Sec. 2(b)

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

ARTICLE VII, (Sec. 10)

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person

AMENDMENT PROCESS

ARTICLE XI, (3)

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

ARTICLE XI, Sec. 1

A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission.

FLORIDA CONSTITUTIONAL AMENDMENT

Estimated Time to Achieve:	3–5 years
Estimated Cost to Pursue:	$10–12M
Probability of Achieving:	<5%

PUBLIC RECORDS

WHAT IS A PUBLIC RECORD?

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. 119.011(12), Florida Statutes

PUBLIC RECORDS PROVIDE COMPETITORS AN UNFAIR ADVANTAGE

JEA competitors have access to information because JEA is a governmental entity. Public Records laws extend to certain JEA partners.

PUBLIC RECORDS CHANGE

Estimated Time to Achieve:	2 years
Estimated Cost to Pursue:	$250k
Probability of Achieving:	<20%

CITY CHARTER

JEA AS DEFINED WITHIN THE JAX CITY CHARTER

JEA is created for the express purpose of acquiring, constructing, operating, financing and otherwise having plenary authority with respect to electric, water, sewer, natural gas and such other utility systems as may be under its control now or in the future.

GEOGRAPHICAL GROWTH IS NOT ALLOWED

JEA is limited to providing electricity to customers in Duval and adjacent counties. JEA is unable to enjoy greater economies of scale due to geographic constraint.

CITY CHARTER CHANGE

Estimated Time to Achieve:	4–6 months
Estimated Cost to Pursue:	$250k
Probability of Achieving:	50%

SUMMARY OF TIME, COST AND PROBABILITY OF SUCCESS

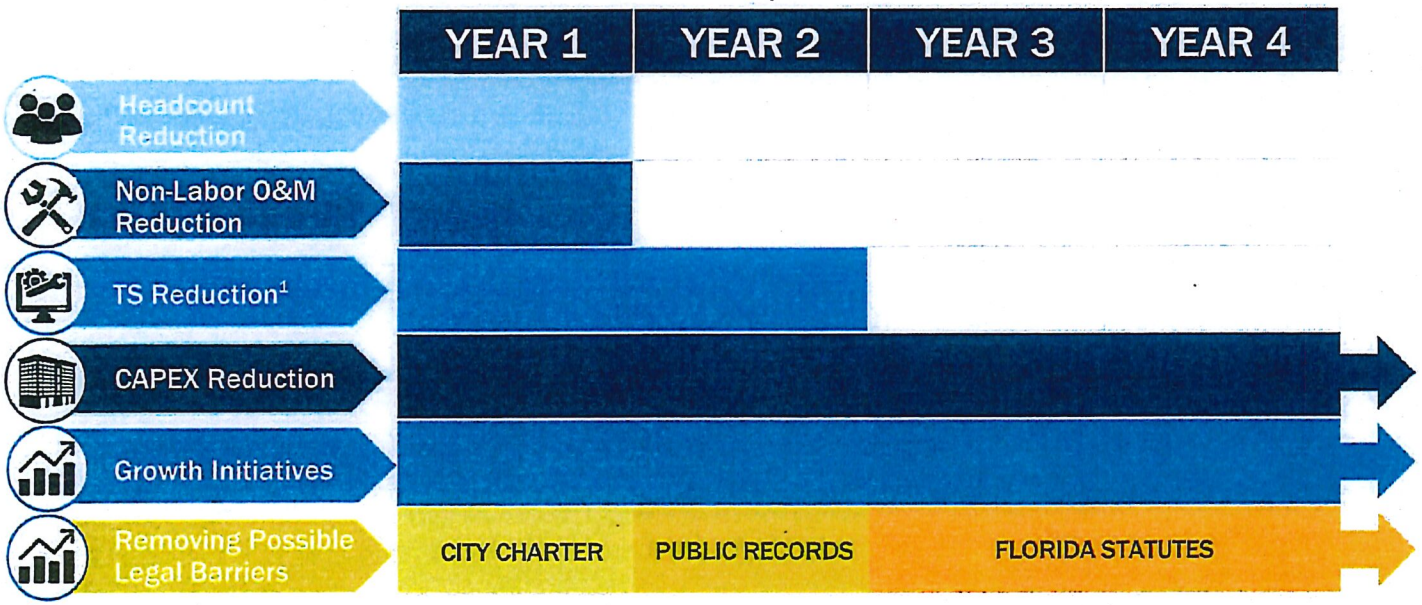
OVERARCHING PUBLIC POLICY QUESTION:

Should government compete against the private sector?

	TIME	COST	PROBABILITY
FLORIDA CONSTITUTION	3–5 years	$10–12M	<5%
PUBLIC RECORDS	2 years	$250k	<20%
CITY CHARTER	4–6 months	$250k	50%

SCENARIO 2b: TRADITIONAL UTILITY RESPONSE WITH REMOVING SOME LEGAL BARRIERS

INITIATIVE IMPLEMENTATION SCHEDULE



[1] TS Reduction extends into year 2 to ensure all technology initiatives currently being implemented are supported

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Wednesday, November 27, 2019 10:24 AM EST
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: Docs
Attachment(s): "Memo IV NOTES.docx","Municipal Purpose NOTES.docx"

Thanks Herschel! Happy Thanksgiving to you too!
Please see attached. Let me know if you need anything else.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

-----Original Message-----
From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, November 27, 2019 8:10 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: Docs

Lynne

I hope you are having fun!

IF you have time, please send me any memo prepared regarding the constraints.
Thank you and Happy Thanksgiving!

H

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46 mb
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Municipal purpose NOTES

Municipalities are legal entities, established for local government purposes. Waller v. Osban, 60 Fla. 268, 52 So. 970 (1910).

To the extent that governmental functions are discharged within prescribed area and consistent with its grant of authority, a municipal corporation exercises attributes of sovereignty and as such is a "political subdivision" or arm of the state. City of Miami v. Lewis, App. 3 Dist., 104 So.2d 70 (1958).

The Lake Worth utilities authority, created by special act as a separate autonomous unit of city government for prescribed specialized purposes of providing, operating and managing utilities for the city, is not a "municipality," nor vested with home rule powers within the purview of this section, and the Municipal Home Rule Powers Act and it may exercise only those powers granted by its enabling special act, as amended. Florida Op.Atty.Gen., 079-3, Jan. 16, 1979 (1979 WL 31352).

The legislature has constitutional power to establish and to abolish municipal corporations, to provide for their government, to prescribe their jurisdiction and power and to alter or amend such provisions. Morin v. City of Stuart, 1940, 111 F.2d 773.

Power of legislature over municipalities under constitution is plenary. State v. City of Boca Raton, 172 So.2d 230 (1965).

Evidence in action seeking to enjoin city from selling photographs of sinkhole established that city, in selling pictures of an unusual natural phenomenon within its corporate limits, was furthering educational needs of the community as well as transmitting information about the city to others, promoting knowledge about the city and increasing tourism to the area, and thus sale of pictures constituted a valid municipal purpose. City of Winter Park v. Montesi, App. 5 Dist., 448 So.2d 1242 (1984), petition for review denied 456 So.2d 1182

It is within the province of the legislature to declare what is a municipal purpose; and a duly enacted statute designating a municipal purpose is subject only to the provisions and principles of organic law. City of Tampa v. Prince, 63 Fla. 387, 58 So. 542 (1912). Municipal Corporations Key Number 73

The legislature may, within reasonable and lawful bounds, determine what is a municipal purpose for which a municipal tax may be levied, or what powers it will give a municipality, subject only to the organic laws. Brown v. City of Lakeland, 61 Fla. 508, 54 So. 716 (1911).

Statute incorporating lands into municipality is not ipso facto or prima facie unconstitutional on ground that some of lands may be adjudged to be unsuited for municipal purposes, or that some of lands cannot be benefited by incorporation, since those matters are within legislative judgment. City of Winter Haven v. A. M. Klemm & Son, 132 Fla. 334, 181 So. 153 (1938), rehearing denied 133 Fla. 525, 182 So. 841.

Municipalities may exercise any power for valid municipal purposes unless expressly prohibited by law. Basic Energy Corp. v. Hamilton County, App. 1 Dist., 652 So.2d 1237 (1995), on subsequent appeal 709 So.2d 124, rehearing denied, review denied 722 So.2d 192.

In determining whether municipality is exercising power for valid municipal purpose, generally, "municipal purpose" is one that is related to health, morals, safety, protection or welfare of municipality. Basic Energy Corp. v. Hamilton County, App. 1 Dist., 652 So.2d 1237 (1995), on subsequent appeal 709 So.2d 124, rehearing denied, review denied 722 So.2d 192.

Legitimate public purpose was served by revenue bonds issued by Florida Development Finance Corporation (FDFC) for purpose of making loan to public entity to finance its plant expansion and acquisition of new equipment, as required by State Constitution. State v. Florida Development Finance Corp., 650 So.2d 14 (1995).

Generally, only constitutional limitation on municipal power is that such power must be exercised for municipal purpose; therefore, municipalities are not dependent on legislature for further authorization, but legislative statutes may be relevant to determine limitations of authority. Thomas v. State, App. 5 Dist., 583 So.2d 336 (1991), approved 614 So.2d 468.

Provision for day-care educational facilities is valid municipal purpose which is rationally related to health, morals, protection and welfare of municipality. City of Boca Raton v. Gidman, 440 So.2d 1277 (1983).

Because only constitutional limitation placed on municipalities' authority to conduct municipal government, perform municipal functions, and render municipal services, is that such power be exercised for valid "municipal purpose," municipalities are not dependent upon Legislature for further authorization and legislative statutes are relevant only to determine limitations of authority. State v. City of Sunrise, 354 So.2d 1206 (1978).

Contract whereby city of Daytona Beach agreed to pay owner of golf course an amount equal to all state, county, and municipal taxes assessed against golf course, in consideration of owner's improvement of course and admission of citizens and visitors for reasonable fee, was invalid as providing for payment of municipal funds for private purpose beyond city's powers. City of Daytona Beach v. King, 132 Fla. 273, 181 So. 1 (1938).

Where a statute expressly authorizes a city to raise by taxation funds "necessary to maintain a public library in said city" (Laws 1911, c. 6402, § 14), the maintenance of such a library is a municipal purpose not excluded by organic law, and any proper action taken by the city to effectuate the designated purpose within the prescribed limits is authorized. City of Tampa v. Prince, 63 Fla. 387, 58 So. 542 (1912).

Unless and until judicially determined otherwise, providing postal services through a contract station in the city hall for the benefit, convenience and welfare of local citizens is within the home rule powers of a municipality and using public funds and property therefor serves a valid municipal purpose. Florida Op.Atty.Gen., 079-25, March 20, 1979 (1979 WL 31374).

...the question is whether the exercise of authority is for a valid municipal purpose, and if so, whether there is any constitutional or statutory limitation on the exercise of that authority. "Article VIII, section 2, Florida Constitution, expressly grants to every municipality the authority to conduct municipal government, perform municipal functions, and render municipal services. The only constitutional limitation placed on the municipalities' authority is that such powers be exercised for valid 'municipal purposes.' " City of Ocala v. Nye, 608 So.2d 15 (Fla.1992). Municipalities may exercise any power for valid municipal purposes unless expressly prohibited

by law. Id.3 Thus, "whenever a municipality exercises its powers, a two-tiered question is presented. First, was the action taken for a municipal purpose? If so, was that action expressly prohibited by the constitution, general or special law, or county charter." City of Winter Park v. Montesi, 448 So.2d 1242, 1244 (Fla. 5th DCA 1984), review denied 456 So.2d 1182 (Fla.1984).

Basic Energy Corp. v. Hamilton Cty., 652 So. 2d 1237, 1239 (Fla. Dist. Ct. App. 1995) (finding that a City's condemnation action to obtain land for donation to the state for construction of a state prison did not specifically relate to the welfare of the city residents but rather to a broader state purpose so a municipal purpose was not shown).

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, November 27, 2019 11:10 AM EST
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: Docs

Stay safe on the slopes. Aaron has assigned me legal research to perform on constraints.

> On Nov 27, 2019, at 9:25 AM, Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com> wrote:
>
> Thanks Herschel! Happy Thanksgiving to you too!
> Please see attached. Let me know if you need anything else.
>
> Lynne C. Rhode
> Vice President and Chief Legal Officer
> 21 West Church Street Jacksonville, FL 32202
> Office: (904) 665-4115
> Email: rhodlc@jea.com
>
>
>
> -----Original Message-----
> From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
> Sent: Wednesday, November 27, 2019 8:10 AM
> To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
> Subject: Docs
>
> Lynne
>
> I hope you are having fun!
>
> IF you have time, please send me any memo prepared regarding the constraints.
> Thank you and Happy Thanksgiving!
>
> H
> <Memo IV NOTES.docx>
> <Municipal Purpose NOTES.docx>

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6/17/20 Vinyard

From: Powers, Ted <ted.powers@pillsburylaw.com>
Sent: Wednesday, August 14, 2019 10:45 AM EDT
To: khyde@foley.com <khyde@foley.com>; RHosay@foley.com <RHosay@foley.com>; CKise@foley.com <CKise@foley.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
CC: Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>; Platt, Justin S. <justin.platt@pillsburylaw.com>; Calcado, Alexandra F. <alexandra.calcado@pillsburylaw.com>; Weissman, Andrew D. <andrew.weissman@pillsburylaw.com>
Subject: Call on Alternatives

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Foley team,

We have some questions, excerpted below, we were hoping to run by you in connection with analyzing the IPO and Coop alternatives. Please let us know if you're available for a call today or tomorrow to discuss.

Thanks,
Ted

IPO Questions:

1. What protections would exist for the Company if someone were to request a copy of an S-1 confidentially submitted to the SEC?
2. To what extent could the public request communications between the Company and its auditors, underwriters, and/or legal counsel?
3. Would the Company have grounds to refuse an information request if it would otherwise violate federal law (i.e., federal securities laws)?
4. Are there any exemptions to the public records that we should be aware that would be relevant to this process?
5. Is there a (feasible) process for working with the Florida legislature or governor's office or otherwise to obtain case by case exemptions to the public records laws?
6. Is the Company permitted statutorily or otherwise to own stock of a public company or a private company?
7. Would the Company be required to state in its referendum that the sale transaction contemplated is an IPO, as opposed to just an exit transaction for a minimum dollar amount?

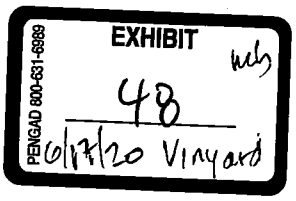
Co-Op Questions:

1. What statutory basis would the Company have to operate its business as a cooperative? The Florida Code, Section 619 seems to only apply to agricultural based cooperatives. Could a cooperative be formed pursuant to Chapter 617 as a nonprofit? We note that there appears to be a few cooperative energy companies in Florida, but perhaps they were formed under a law that has since been amended or replaced.

Ted Powers | Special Counsel
Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street | New York, NY 10019-6131
t +1.212.858.1141
ted.powers@pillsburylaw.com | website bio [pillsburylaw.com]

AUSTIN BEIJING HONG KONG HOUSTON LONDON LOS ANGELES MIAMI
NASHVILLE NEW YORK NORTHERN VIRGINIA PALM BEACH SACRAMENTO
SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO SHANGHAI
SILICON VALLEY TAIPEI TOKYO WASHINGTON, DC

pillsbury [pillsburylaw.com]



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Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

Exhibit 49 - Being Reviewed

Exhibit 50 - Being Reviewed

Exhibit 51 - Being Reviewed

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Friday, December 13, 2019 6:56 AM EST
To: Hill, Miriam R. (COJ OGC) <hillmr@jea.com>
CC: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: Letter from Mayor Curry to JEA Board...
Attachment(s): "BoardLetDec12.pdf","ATT00001.htm"

Miriam

We will probably needs some resolutions quickly drafted for the Board. I talked to Alan Howard, Kevin Hyde and Robert Hosay about the Mayor's letter. last night about assisting. Please use them as a resource.

Thank you

Begin forwarded message:

From: "Zahn, Aaron F. - Managing Director/CEO" <zahnaf@jea.com>
Date: December 12, 2019 at 5:07:42 PM EST
To: "(Mgmt - JEA Senior Leadership Team (SLT)" <Mgmtslt@jea.com>
Cc: "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com>
Subject: Fwd: Letter from Mayor Curry to JEA Board...

FYI.

Get Outlook for iOS

From: Hughes, Brian - Mayor's Office <hughesb@coj.net>
Sent: Thursday, December 12, 2019 5:03 PM
To: danegrey@eliteparkingsoa.com; 'Henry Brown'; 'April Green'; newbill32218@yahoo.com; camille@leewesley.com; flanagank@jaguars.nfl.com
Cc: Zahn, Aaron F. - Managing Director/CEO (zahnaf@jea.com); 'Melissa Dykes'; jeaboard@jea.com; Elsbury, Jordan
Subject: Letter from Mayor Curry to JEA Board...

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Dear JEA Board members,

Attached as a scan is a signed letter from Mayor Curry. As this is being sent to all board members please do not reply all in respect to Florida Sunshine laws. If you have individual questions please call me or Mayor Curry directly.

Brian Hughes
Chief Administrative Officer
Office of the Mayor, City of Jacksonville
117 W. Duval Street, Suite 400
Jacksonville, Florida 32202
Phone: (904) 225-5000

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6/17/20 Vinyard

OFFICE OF MAYOR LENNY CURRY

ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 400
JACKSONVILLE, FLORIDA 32202

PH: (904) 255-5000
FAX: (904) 255-5032
www.coj.net

December 12, 2019

JEA Board members,

Thank you for your dedication to our community with your service on the JEA Board during a time of challenge. As you and the senior leaders of JEA know, the utility industry is facing marketplace disruption and technological innovation that presents very serious threats to the future success of a government-owned utility. Turning a blind eye to this would leave JEA on a course toward rapidly increasing rates, unconstrained debt, and more uncertainty for employees, customers, and taxpayers. So, again, thank you for continuing to put the best interest of the community foremost.

In the process of strategic planning, you and JEA leadership have opened a dialog related to five scenarios for the future of JEA. While much attention is focused on one scenario related to possible sale, I know and appreciate that JEA continues to simultaneously explore several scenarios and options that can ensure clean, consistent energy and water for our city. Unfortunately, facts about JEA's strategic planning and exploration of all scenarios in this process remain misunderstood or unknown by large segments of the community.

A process of vetting five different pathways and aligning them for simultaneous board consideration has been complicated, and decision-making of this magnitude is not easy. Nevertheless, I am convinced that you have all conducted the process openly and in accordance with the law.

Furthermore, despite the clear delineation of responsibilities between you as a board for an independent authority and our elected City Council (as defined in the Charter of the Consolidated Government of the City of Jacksonville), City Council has expressed the wish for an active role in the strategic planning options and challenges facing the JEA.

I am requesting a path that will acknowledge the important work accomplished by JEA over the past year and give City Council the strategic opportunity it seeks because both are important for the people of Jacksonville. Therefore, I ask you as a board to do the following:

1. At your board meeting next week, tell JEA senior leaders to prepare specific legislative requests for Council related to each of the five scenarios that have been laid out. The assignment is as simple as this question; What action would City Council need to take for each scenario to be possible and what challenges would remain even if Council accomplished the local legislative fixes for each? These requests would be prepared for simultaneous transmission to Council via a Board vote in January.

2. One of the scenarios includes the ongoing ITN process, so tell the senior leaders and their advisors to conclude the ITN by the end of January.

3. Although the ITN – as written today – seems to contemplate the board being presented and considering a single, final proposal, the leadership team and advisors should amend the ITN and conclude it by the January board meeting with a top tier of proposals rather than any single entity. And, rather than consideration of that proposal being reviewed and accomplished by you as a board, that top tier of the proposals should be given to City Council for them to review and consider their disposition legislatively as they see fit.

4. Immediately make available the time and resources of any JEA personnel or advisors needed to engage in a series of community townhalls on the future of JEA. While the JEA Board and City Council have done a lot of important work, the people of our city need to hear from JEA directly regarding all possible scenarios. Coordination and scheduling community meetings in each of the 14 districts represented on City Council must be the minimum standard. These meetings should be conducted before City Council and I take any formal action on the scenarios as provided to Council by the Board.

5. Finally, City Council has spoken much to old models of municipal utility service, so I would ask you to instruct the JEA team to consider a sixth scenario and prepare research on it. This scenario would be collapsing and moving the independent authority into a municipal department whose operation and budget is directly managed by City Council and the Mayor's Administration. Although, on its face this is a scenario I would be inclined to reject, I believe providing City Council research and legislative changes they can consider is important.

6. Confer with General Counsel Jason Gabriel to ensure the steps I'm proposing are done in compliance with the City Charter and all applicable laws.

I believe City Council has always had the authority to determine the next steps of the strategic planning process, but they have demonstrated they want to exercise this authority sooner with more flexibility. I believe if the December JEA Board meeting provides this guidance to senior leadership and advisors, and the January board meeting advances to Council all potentialities for all scenarios, Council will have every tool it needs to determine the future of JEA. They can take as much time as they need, and you – the JEA Board – and senior leadership can get back to the daily operations as we await Council's work.

The City Council can conclude the strategic planning process in conjunction with myself and JEA personnel as needed. Then, ultimately, the Council can also consider whether one option is sent to a ballot or if multiple options are sent to a ballot for voters consideration. Either way, the elected representatives of every person in Jacksonville will work together to ensure the future of the utility.

Lenny Curry
Mayor

From: Alan Howard <ahoward@milamhoward.com>
Sent: Tuesday, December 24, 2019 10:56 AM EST
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Re: scan_mcdonm_2019-12-23-13-48-44.pdf

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Thank you. Please confirm this assignment is still a "go." And Merry Christmas!

G. Alan Howard
Sent from my iPhone

> On Dec 24, 2019, at 10:27 AM, Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com> wrote:
>
>
>
>
> <scan_mcdonm_2019-12-23-13-48-44.pdf>
>

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6/17/20 Vinyard

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Monday, December 09, 2019 8:46 AM EST
To: RHosay@foley.com <RHosay@foley.com>
CC: bgrossman@foley.com <bgrossman@foley.com>
Subject: couple of questions
Attachment(s): "image001.jpg"

Hi Robert

I think you were driving when we discussed the two small research questions posed by the council member. I wanted to make certain that remained on your radar.

Thanks!

Herschel T. Vinyard Jr.
Chief Administrative Officer
Direct: (904) 665-8303
Mobile: (904) 504-0510

JEA

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

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

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

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

From: Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Sent: Friday, August 16, 2019 3:53 PM
To: Rhode, Lynne C. (City of Jacksonville)
Subject: RE: For review

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Hi Lynne,

Attached please find my comments to the allocation parameters (clean and a redline). I've marked a couple of items for your consideration in yellow. I know that you're working on an introduction, but I added a mini introduction for purposes of framing a couple of the issues in the parameters.

Please call or email with any questions.

Best,
Jessica

Jessica Lutrin | Partner
Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street | New York, NY 10019-6131
t +1.212.858.1090
jessica.lutrin@pillsburylaw.com | website bio [pillsburylaw.com]

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Friday, August 16, 2019 10:02 AM
To: Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Subject: For review

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EXHIBIT
55 mb
6/17/20 Vinyard

*** EXTERNAL EMAIL ***

Under Section 3 of the *, at my sole and reasonable discretion, I (as Administrator) am directed to interpret the * and to, among other powers, determine the number of [PU] that may be purchased by a * Participant and (under Section 6) notify each employee of the maximum number of [PU] that employee may purchase. A total of 100,000 [PU] will be issued and allocated. "[PU]" means "a bookkeeping entry representing a potential right [of a * Participant] to receive a payment under this *." A Participant is an employee who makes a deferral election to purchase [PU] under the *. Also under Section 3, I may delegate any of my responsibilities to JEA's senior executive management.

In order to further the purpose of the * and in accordance with my duties as Administrator, I delegate my authority to you, as CEO, to assign to and notify each eligible employee of the maximum number of [PU] he or she may purchase, *within the following parameters*:

(1) The maximum number of [PU] each eligible employee may purchase shall be based on two factors: (i) a base number of [PU] in accordance with the employee's position level at JEA and (ii) an increase or decrease or

no change to the base number of [PU] based on the employee's performance during the most recent twelve month period prior to the time at which the allocation is determined.

(2) Each employee's performance for the purpose of this allocation shall be measured by his or her assessment under the annual JEA Performance Ranking Program.

(3) The position levels at JEA for the purpose of this allocation shall be: Manager, Individual, Civil Service, Director, Senior Leadership Team, Executive Leadership Team, and Chief Executive Officer. I note that temporary JEA employees are ineligible for * participation.

(4) One-hundred percent of the 100,000 [PU] available shall be allocated.

(5) [PU] must be purchased as whole units.

(6) Allocated units that are not purchased by the requisite deadline shall be reallocated as available for purchase on a pro-rata basis to eligible employees. [Upon notice of the number of reallocated [PU] available for purchase, eligible employees will need to complete an additional Schedule I to their executed Agreement.]

(7) The allocation for the Chief Executive Officer shall be [%] of the total 100,000 Performance Units. [I have determined that the CEO has exceeded his performance metrics _____ and such [%] allocation is inclusive of both a base number of [PU] and a performance-based number of [PU].]

(8) The allocation for all eligible employees at the Manager, Individual, Civil Service, Director, Senior Leadership Team, and Executive Leadership Team shall total the remaining [%] of the total 100,000 [PU].

(9) No position level shall be allocated in excess of [20%] of the next highest position level allocation.

(10) The base number of [PU] allocated to each eligible employee shall be based solely on his or her position level and shall be uniform for all employees within each position level.

(11) The increase or decrease or no change to the base number of [PU] based on the employee's assessment under the annual JEA Performance Ranking Program shall be determined on an individual employee basis.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

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The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the

original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

Introduction

Pursuant to the authority in Section 3 of the * (the "*"), this letter (this "Letter") contains the parameters for use in administering the *. Also under Section 3 of the *, I may delegate any of my authority under the * to JEA's senior executive management and, as described below, I delegate my authority to you, as JEA's CEO, as set forth in this Letter. [Will the Compensation Committee adopt resolutions delegating authority under the * to the CEO? This is how delegation is typically accomplished.]

Capitalized terms not otherwise defined in this Letter have the same meanings as those found in Section 2 of the *.

Allocation Parameters

Under Section 3 of the *, ~~at~~in my sole ~~and~~but reasonable discretion, I (as Administrator of the *) am ~~directed~~authorized to interpret the * and to, among other powers, determine the number of [PU] that may be purchased by a * ~~Participant~~Employee and (under Section 6) notify each ~~employee~~Employee of the maximum number of [PU] that ~~employee~~each such Employee may purchase under the *. A total of 100,000 [PU] will [may?] be issued and allocated. ~~"[PU]" means "a bookkeeping entry representing a potential right [of a * Participant] to receive a payment under this *." A Participant is an employee who makes a deferral election to purchase [PU] under the *. Also under Section 3, I may delegate any of my responsibilities to JEA's senior executive management.~~[See comment below.]

Only Employees are eligible to participate in the *. The * defines an "Employee" as, except as otherwise recommended by you, as JEA's CEO, and approved by me, as Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three months prior to the Purchase Date.

In order to further the purpose of the * and in accordance with my duties as Administrator of the *, I delegate my authority to you, as CEO of JEA, to ~~assign to and notify each eligible employee of the~~ allow each Employee (other than yourself as CEO) [The CEO should not have the ability to determine his allocation.] to purchase a maximum number of [PU] ~~he or she may purchase, *within*~~determined in accordance with the following parameters and to notify each such Employee of the maximum number of PU that may be purchased by such Employee:

(1) The maximum number of [PU] each ~~eligible employee~~Employee may purchase shall be determined based on two factors: (i) a base number of [PU] determined in accordance with ~~the employee's~~each such Employee's position level at JEA (the "Base Number") and (ii) an increase or decrease or no change to the ~~base number~~Base Number of [PU] based on ~~the employee's~~such Employee's performance during the most recent twelve month period prior to the time at which the allocation is determined. [Are there circumstances where, based on performance, an employee should receive zero PUs – e.g., where an employee is on probation? If yes, then consider specifying as such.]

~~(2) Each employee's performance for the purpose of this allocation shall be measured by his or her assessment under the annual JEA Performance Ranking Program.~~

(i) ~~(3)~~ The position levels at JEA for the purpose of this allocation shall be: Manager, Individual, Civil Service, Director, Senior Leadership Team, and Executive Leadership Team~~, and Chief Executive Officer. I note that temporary~~. [Do these position levels include OGC attorneys?] Temporary JEA employees are ineligible for * participation.

(ii) Each Employee's performance for the purpose of this allocation shall be measured by his or her assessment under the annual JEA Performance Ranking Program. [See comment below.]

(2) ~~(4)~~ One-hundred percent of the 100,000 [PU] available shall be allocated. [Allocating all the PUs and re-allocating PUs that are not purchased suggests that the * is not long-term which had initially been expressed as a concern.]

(3) ~~(5)~~ [PU] must be purchased as whole units.

(4) ~~(6)~~ Allocated units that are not purchased by the requisite deadline shall [may?] be reallocated as available for purchase on a pro-rata basis to ~~eligible employees.~~Employees. [What happens if there are not enough PUs to be reallocated to all employees – e.g., will participation be determined based on seniority? What happens if there are not enough PUs for employees to receive whole PUs? What happens if all the PUs are still not purchased after being reallocated?] [Upon notice of the number of reallocated [PU] available for purchase, ~~eligible employees~~Employees will need to complete an additional Schedule I to their executed Agreement.] [Recommended that participants sign new Schedule I for additional PUs purchased. Will reallocated PUs only be available for purchase by employees who purchased PUs in the first round?]

(5) ~~(7)~~ The allocation for the Chief Executive Officer shall be [%] of the total 100,000 ~~Performance Units~~[PU]. [I have determined that the CEO has exceeded his performance metrics _____ and such [%] allocation is inclusive of both a base number of [PU] and a performance-based number of [PU].] [It would be typical for the number of PUs to be awarded to the CEO to be determined in the Compensation Committee resolutions. Also, if the allocation for non-CEO employees is determined based on the annual JEA Performance Ranking Program, should the same should apply to the CEO? Additionally, this should be moved to a separate section because its current placement in the letter suggests that the CEO has the authority to determine his own allocation, which is not the case.]

(6) ~~(8)~~ The allocation for all ~~eligible employees~~Employees at the Manager, Individual, Civil Service, Director, Senior Leadership Team, and Executive Leadership Team shall total the remaining [%] of the total 100,000 [PU].

(7) ~~(9)~~ No position level shall be allocated in excess of [20%] of the next highest position level allocation.

(8) ~~(10)~~ The ~~base number~~Base Number of [PU] allocated to each ~~eligible employee~~Employee shall be based solely on his or her position level and shall be uniform for all ~~employees~~Employees within each position level.

(9) ~~(11)~~ The increase or decrease or no change to the ~~base number~~Base Number of [PU] based on the ~~employee's~~Employee's assessment under the annual JEA Performance Ranking Program shall be determined on an individual employee basis. [How will this work as a practical matter? Will the CEO review all 2,000 employees and adjust up or down/make no change? If so, should there be parameters for the upward/downward/no change adjustment? For example, the employee's ranking could equate to a multiplier – e.g., employees who are ranked 5 are allocated a number of PUs equal to the Base Number

multiplied by 1.25; employees who are ranked 4 are allocated a number of PUs equal to the Base Number multiplied by 1.20, etc.]

Summary report: Litera® Change-Pro for Word 10.5.0.0 Document comparison done on 8/16/2019 2:52:36 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: JEA - Allocation Parameters.docx	
Modified filename: JEA - Allocation Parameters(1).docx	
Changes:	
Add	65
~~Delete~~	41
~~Move From~~	7
Move To	7
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	120

Hartman-Zahn Meeting 10-02

Miller
Hartman
Vinyard
Cloud
Brown
Zahn
Wannemacher

Hartman: The JCC is the first one to look at the ITN from the outside. This call is to coordinate and get some questions answered. We don't want to rely on what we hear in the community; we want to hear it from JEA.

Miller: Hartman and Cloud have been retained by us in the past and they are informing us on the process now. Purpose of this is to understand all of the facts and details that can be provided.

Hartman: This is a process that we have gone through and have been looking at. It is a process that if anyone owns something you should look at for a sale. Getting the most out of your asset and Approach. Cloud and I worked with Vero through their process, split power and water. There are several different approaches to this. We have looked at different ownership models like nonprofits and regulations. It is prudent for management to evaluate which way to go. JEA is the most marketable asset that the city owns. I have looked at the ITN and the addendums and we also have stuff going back to February 2018. I did a process briefing in June of 2018 for the JCC and we are updating that report. It looks as if you have gone through the initial evaluation of what you want to do, and we have seen the briefings on that. At this juncture we are looking at a sale vs. any other option. Your market model has certain assumptions that I believe are conservative. With low interest rates it's a good time to consider divestiture. Is there a comparison between sale and other options?

Vinyard: Disclosure, we cannot provide any info to you that we can't provide to all other bidders. Some responses may be muted. There was a presentation at our board meeting last week that identified the various forms JEA could take, coop, other options.

Zahn: You made a statement that management has decided that sale is the proper course, but I don't think that is the case. We don't have enough data yet. We have completed an analysis of the future of energy and water and what JEA is capable of doing with the way it is currently structured. That was all presented to the board. Where we are is effectively utilizing the ITN process to evaluate the potential structural changes to JEA that can only be accomplished by consulting with third parties. We have done all we can to look at this internally. We have to present 6 months of work at a two hour board meeting. There are more scenarios, but we only presented the ones where the was consensus among leadership. Alan Howard asked for variance analysis that was presented in July, looking at more conservative and aggressive cases to help them understand the changes from one scenario to another. Even looked a models for different ownership companies, energy, tech, etc. At the end of the ITN process we will have sufficient information to make a recommendation to the board for the path of JEA. In parallel we are completing an analysis of the different growth models of JEA without the constraints we currently have. Vinyard pointed out how these would have to be removed without ownership change. You can eliminate constraints of government by not being government.

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Hartman: You are aware of the sale in Indy, you are not proposing a charitable trust or nonprofit?

Zahn: We are not proposing any specific structure. We have teams investigating all types of structures, including nonprofit and IPO.

Hartman: That's a lot to go through.

Zahn: We have good consultants for this project.

Hartman: So no feasibility analysis for specific approaches yet?

Zahn: Yes, only feasibility we have done so far are strategies if we remain as is. We looked at this at the July board meeting. I can provide more details on that if you would like. We have a lot of backup data that we just don't have time to present.

Hartman: Have you or the city looked at how much you would need to get out of a sale?

Zahn: We looked at it in revenue side, expense side, and capital side when it relates to JEA, but how the city spends it is beyond our purview.

Hartman: So uses have not been defined to you then? No schedule from the city saying how much they need or when. NO TIMELINE?

Zahn: The implies a crisis and the city does not have a crisis. We are just evaluating how to get the most out of this utility. The mayor has made public statements to use proceeds to pay off debt and unfunded liabilities. I am unaware of any formal analysis of the use of funds. Need to know how much we will produce before we produce a timeline.

JEA board of directors set a minimum of $3 billion. I have talked uses with JEA and I am concerned with it but we have little say.

Hartman: You have not made any decisions relative to selling or breaking up the utility system?

Zahn: No decisions on that made.

Hartman: Are you taking a wholistic viewpoint of asset management?

Zahn: It is a wholistic view of evaluation. Evaluating it like a CEO values a company. How do I get the most value out of it, and do I need third parties to do it. Investigating through ITN process, level of interest is high but no determination yet and no recommendation yet. I won't until I have all the information.

Hartman: You are going through the various stages of this and you are getting to phase 3, indication of interest. Is this just information gathering? Still in the informational stage. I saw the ITN and there is an assumption that certain things can or cannot be done by government. Look on page 16, can JEA do this, I am concerned with this. Looking at the first X on the page, that you can't sell more energy or water, I have served in many capacities in utilities, and was able to do that, expanded sales and created

economies of scale. You did not talk about how public utilities address these constraints. Why can't government do that?

Zahn: As with any presentation, there is interpretation to it. The core of it is there are restrictions around expanding our geographic footprint. Our customer base is growing with economic development but they are being more efficient. All they are doing is encouraging additional fixed costs unless you raise prices. There are expansion opportunities in Duval County but they cannot solve the cash gap we face. We are limited by charter from expanding our territory. Analysis was based on charter and legislation changes would not occur until the board decided to take them on individually. I am familiar with expansion of service in other counties like Martin, JEA did a lot of asset aggregation in early 2000s. This is expansion done only withy debt and that is risky. Now we can't expand anymore.

Hartman: Martin county hired me to do the analysis you are referencing, and have looked at rates from around the state for years.

Zahn: These aren't assumptions, they are legal opinions and analysis carried out by us to determine what we can and cannot do.

Hartman: Utilities that are regional are function because of economies of scale. They do well in marketplaces since there are more opportunities for expansion.
Moving on, acquiring new businesses and customers, JEA can't do that. Can you sell off assets that are underperforming?

Zahn: We are selling underperforming assets. We cannot sell more that 10% of our operating assets because of the charter.

Hartman: Can you do partnerships?

Vinyard: Constitution stops that through rules dealing with the extension of credit, exception for generating power.

Zahn: And I consider that more of an outsourcing.

Hartman: I call it a partnership. I have seen public utilities respond to the tough market. This shows you are in a difficult position when it comes to rates, sales, and purchasing agreements.

Zahn: If you look at July board meeting there is an appendix that provides more details about these constraints. Not everything is due to a charter, constitution, or legislative reason. Some of it is business structure, for example our structure means we can't get credits for solar power, we also have to use a unionized work source that prices us out of the market.

Vinyard: We did not emphasize that because we did not want to antagonize the employees. Our rate payers have to carry the unionized, civil service protected employees. All the inflexible union rules are another layer that we have to get through. Firing and regulations are dictated by the civil service board.

Hartman: Did you do some prep work with the Florida Service board to look at fair market value? 16 states have been able to facilitate sale of public utilities. Doesn't look Florida is taking that up and it will be more difficult. The trend in the United States is positive relative to that.

Vinyard: We should stay away from that one.

Hartman: No appraisal either then?

Vinyard: That one too.

Zahn: At the end of this process we will have better than an appraisal, we will have the value from firm bids. We have hired consultants for evaluation opinions on how much JEA is worth.

Hartman: And that's normal for this process. You don't want to disclose analysis on the ten points at this juncture? This helps you negotiate.

Zahn: We are abiding by all statues and regulations that deal with disclosures.

Hartman: Once you are done with this informational phase then you get into the serious work, responses to the ITN and evaluate different structures?

Vinyard: The timeline is laid out in ITN.

Hartman: ITN is very general. Is the selection team who you are relying on? What is out there in the public that is just not true that we can help with.

Zahn: We don't know about the water side. We do not own the water side, the state of Florida does.

Hartman: Yes, beneficial use rule by the state.

Zahn: We deal with the perception that there is a predetermined outcome. There is no predetermined outcome here. As you have said we are in the informational phase to evaluate structure, then we will make a recommendation that is best for the community. To that end one thing we have not discussed is what the city will do with sale proceeds, that is in the purview of JCC, not JEA.

Hartman: How much time are you going to give decision makers once you look at responses?

Zahn: Pg. 24 in ITN shows the timeline, the board package from September board meeting shows a more updated timeline. Subject to change as this is a difficult process.

Hartman: You will be giving briefings to JEA board and city council?

Vinyard: We have monthly board meetings and other updates will be provided recognizing the cone of silence.

Zahn: We will have all initial responses to the ITN by the end of the month.

Hartman: Evaluation after that?

Zahn: Look at materials from September board meeting, timeline through March.

Hartman: But its not finalized and there will be things past March right?

Vinyard: Yes, according to the charter council has to vote on it and then it has to be voted on by the people in a referendum.

Zahn: Yes that is a timeline for our internal and ITN operations. If the board decides to do a divestiture of assets then it has to go to council and referendum. That timeline is beyond our purview.

Hartman: So this is a wholistic analysis of different ownership models to be considered by the board. Then it goes to the council and referendum if necessary.

Vinyard: referendum only if 10 of 19 council members agree, we don't want to change the charter to get around that.

Zahn: What is the scope of Hartman's engagement?

Hartman: I did a report in 2018 and I am updating that.

Vinyard: Can we get that.

Miller: Has not been distributed to membership, but it focuses on the information, data, and timeline for a disposition.

Vinyard: Does that mean you are going to send it to me?

Miller: I can ask.

Zahn: JCC should be comfortable that we hired the right consultants and are going through the right process. Maybe you should focus on what the city would do with the cash in a sale and what would happen to the contribution, how would that be accounted for? We have set minimum requirements that must be met. Contribution over next 10 years is $2 billion, we have asked for $3 billion for a 50% premium.

From:	Hutchinson, Jasen C. - Mgr Corporate Records Compliance
To:	Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville)
Subject:	FW: Need shredding bin on T17
Date:	Tuesday, October 8, 2019 2:04:00 PM
Attachments:	FW REQ 32190 --- Public Record Request.msg
Importance:	High

Please advise.

From: Kaippillil, Serena M - Executive Assistant <kaipsm@jea.com>
Sent: Tuesday, October 8, 2019 2:00 PM
To: Hutchinson, Jasen C. - Mgr Corporate Records Compliance <hutcjc@jea.com>
Cc: McCollum, Jenny G. - Dir Procurement Services <gleejs@jea.com>; McCarthy, John P. - VP & Chief Supply Chain Officer <McCaJP@jea.com>
Subject: Need shredding bin on T17
Importance: High

Hi Jasen,

We have confidential material from ITN that need to be thrown out in its own shredding bin. Can you let me know if you can bring a shredding bin up to T17.

T17 is on restricted access. Please let me know when one of your guys gets off the elevators and I can open the door for them.

Thank you,

Serena Kaippillil
Executive Assistant to
John McCarthy, VP/Chief Supply Chain Officer
Steven McInall, VP/Chief Energy and Water Planning
Paul Steinbrecher, VP/Chief Environmental Services Officer
Direct: (904) 665-7774
Mobile: (216) 816-5232

PENGAD 800-631-6989
EXHIBIT
mb
57
4/17/20 Vinyard

Osburn, Beth

From: Public Records Request Mailbox
Sent: Tuesday, October 8, 2019 1:59 PM
To: Rhode, Lynne C. (City of Jacksonville); Vinyard, Herschel T. - Chief Administrative Officer; Stewart, Kerri - VP & Chief Customer Officer
Cc: Public Records Request Mailbox
Subject: FW: REQ 32190 --- Public Record Request

Good afternoon,

FYI

Jeanie Gillespie
Public Records Compliance Specialist
Direct: (904) 665-7309

From: Barbara Petersen
Sent: Tuesday, October 8, 2019 1:13 PM
To: CLBrown@coj.net; CFeiser@coj.net; PRR@coj.net; Public Records Request Mailbox
Cc: LCurry@coj.net; BHughes@coj.net; jgabriel@coj.net; azhan@jea.com
Subject: REQ 32190 --- Public Record Request

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Pursuant to Article I, s. 24(a), Fla. Con., and ch. 119, F.S., I am requesting copies of the following public records:

- All correspondence relating to the potential sale of the JEA sent or received by Mayor Lenny Curry, Chief of Staff Brian Hughes, and JEA CEO Aaron Zhan, including all communications sent or received on personal communication devices or private email accounts.
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If there are fees associated with this request, please provide me with a written detailed estimated of all costs prior to production of the requested copies.

Thank you. I look forward to your response.

Barbara Petersen, President
850.224.4555
800.337.3518 (Toll-Free Hotline)

First Amendment
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Protecting Your Right to Know Since 1985

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From: Rhode, Lynne C. (City of Jacksonville)
To: Hutchinson, Jasen C. - Mgr Corporate Records Compliance; Kaippillil, Serena M - Executive Assistant
Cc: McCollum, Jenny G. - Dir Procurement Services; McCarthy, John P. - VP & Chief Supply Chain Officer; Vinyard, Herschel T. - Chief Administrative Officer
Subject: RE: Need shredding bin on T17
Date: Thursday, October 10, 2019 9:33:21 AM

Good morning Serena,

I have confirmed with John that the request for a shredding bin on T17 is related solely to the destruction of duplicate hard copies of records which have already been preserved for the record. As John has confirmed that those managing the process on T17 are fully aware, under no circumstances may ITN-related documents of any kind, including those that may contain confidential information, be destroyed unless they are purely duplicate hard copies. All documents (in any form) related to the ITN process are public records (unless otherwise exempt) and must be preserved. While I understand you are simply delivering a bin upstairs, and I know those on T17 are fully aware of and adhering to our strict document preservation policy, I wanted to make sure you're aware as well.

Let me know if you have any questions!

Lynne

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

JEA
Building Community®

From: Kaippillil, Serena M - Executive Assistant <kaipsm@jea.com>
Sent: Tuesday, October 8, 2019 2:00 PM
To: Hutchinson, Jasen C. - Mgr Corporate Records Compliance <hutcjc@jea.com>
Cc: McCollum, Jenny G. - Dir Procurement Services <gleejs@jea.com>; McCarthy, John P. - VP & Chief Supply Chain Officer <McCaJP@jea.com>
Subject: Need shredding bin on T17
Importance: High

Hi Jasen,

PENGAD 800-631-6989
EXHIBIT
58
MB
6/17/20 Vinyard

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Executive Assistant to
John McCarthy, VP/Chief Supply Chain Officer
Steven McInall, VP/Chief Energy and Water Planning
Paul Steinbrecher, VP/Chief Environmental Services Officer
Direct: (904) 665-7774
Mobile: (216) 816-5232

From:	Public Records Request Mailbox
To:	Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville)
Cc:	Public Records Request Mailbox
Subject:	FW: REQ 32190
Date:	Tuesday, October 29, 2019 9:12:00 AM
Attachments:	32190- First Amendment Foundation.xlsx REQ 32190 --- Public Record Request.msg

Herschel & Lynne,

I have reached out to Jenny to provide an estimate to pull records associated with item 7 on the attached request. Her and John have advised that they are not to be pulling any documents associated with this solicitation. Is there someone else I should contact for the estimate? Thank you!

Jeanie Gillespie
Public Records Compliance Specialist
Direct: (904) 665-7309

From: Public Records Request Mailbox <publicrecords@jea.com>
Sent: Friday, October 25, 2019 12:36 PM
To: McCollum, Jenny G. - Dir Procurement Services <gleejs@jea.com>
Cc: Public Records Request Mailbox <publicrecords@jea.com>
Subject: FW: REQ 32190

Afternoon Jenny,

Following-up on the below request associated with PRR 32190.

Thank you,

Jeff Moore
Records Compliance Coordinator
Direct: (904) 665-7863

From: Public Records Request Mailbox
Sent: Tuesday, October 15, 2019 11:08 AM
To: McCollum, Jenny G. - Dir Procurement Services <gleejs@jea.com>
Cc: Public Records Request Mailbox <publicrecords@jea.com>
Subject: REQ 32190

PENGAD 800-631-6989
EXHIBIT mb
59
6/17/20 Vinyard

Osburn, Beth

From: Barbara Petersen <Sunshine@floridafaf.org>
Sent: Tuesday, October 8, 2019 1:13 PM
To: CLBrown@coj.net; CFeiser@coj.net; PRR@coj.net; Public Records Request Mailbox
Cc: LCurry@coj.net; BHughes@coj.net; jgabriel@coj.net; azhan@jea.com
Subject: REQ 32190 --- Public Record Request

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From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Thursday, November 07, 2019 4:40 PM EST
To: McDonald, Nancy M - Executive Assistant <mcdonm@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: Stump Speech Presentation - SECOOND DRAFT
Attachment(s): "Why Now dmg v9.pdf","ATT00001.htm"

Please print

Begin forwarded message:

From: "Goldberg, David M. - Director Customer & Community Engagement" <golddm@jea.com>
To: "Stewart, Kerri - VP & Chief Customer Officer" <stewk@jea.com>, "'Michael Munz'" <mmunz@daltonagency.com>, "'Banks Willis'" <bwillis@daltonagency.com>, "Ham, Melissa L. - Manager Product Marketing" <hamml@jea.com>, "Magee, Jay B. - Manager Digital Communications" <magejb@jea.com>, "Hall, Sherry L." <hallsl2@jea.com>, "'Maddie Milne'" <mmilne@daltonagency.com>, "Kyle, Gina A. - Manager Media Relations" <kylega@jea.com>, "'Cantrece Jones'" <cjones@adgmark.com>, "'Hanne Volkaerts'" <hvolkaerts@daltonagency.com>, "'Shanoiya Clark'" <sclark@adgmark.com>, "'Sophia Ward'" <sward@daltonagency.com>, "'Devin Pascoe'" <dpascoe@daltonagency.com>, "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>, "Dykes, Melissa H. - President/COO" <dykemh@jea.com>, "'Melissa Stone'" <melissa@cavalrystrategies.com>
Subject: Stump Speech Presentation - SECOOND DRAFT

All,

I incorporated feedback I received from Melissa Dykes. I added slide 8, and changed the last section to be more benign. Herschel also provided feedback, some of which is incorporated and other comments best left for discussion. Perhaps we can all get together and walk through this iteration.

David Goldberg
Director, Customer and Community Engagement

From: Goldberg, David M. - Director Customer & Community Engagement
Sent: Sunday, November 3, 2019 9:00 PM
To: Stewart, Kerri - VP & Chief Customer Officer <stewk@jea.com>; Michael Munz <mmunz@daltonagency.com>; Banks Willis <bwillis@daltonagency.com>; Ham, Melissa L. - Manager Product Marketing <hamml@jea.com>; Magee, Jay B. - Manager Digital Communications <magejb@jea.com>; Hall, Sherry L. <hallsl2@jea.com>; Maddie Milne <mmilne@daltonagency.com>; Kyle, Gina A. - Manager Media Relations <kylega@jea.com>; Cantrece Jones <cjones@adgmark.com>
Cc: 'Hanne Volkaerts' <hvolkaerts@daltonagency.com>; Shanoiya Clark <sclark@adgmark.com>; Sophia Ward <sward@daltonagency.com>; Devin Pascoe <dpascoe@daltonagency.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; Dykes, Melissa H. - President/COO <dykemh@jea.com>; Melissa Stone <melissa@cavalrystrategies.com>
Subject: New Stump Speech Presentation - First Draft

All,

Per our comms team meeting on Monday, I have a created a first draft of the PP presentation we are wanting to showcase and use as a springboard for the needs we discussed, including a new web microsite, stump speeches, City Council, and evolving this to tell our story as it unfolds. You will see I created this in a way that flows in a self-explanatory way, broke things down to simple and understandable points that include: how we got here, where we are at, why this is the time to make this transition, and what the potential future holds for us.

Of course this is in the absence of knowing who a potential suitor might be, so I crafted this in a way to bring home the comparison of "private versus government" in more general terms, presenting the facts as we know them. I incorporated recent talking points we have put out, facts versus rumors/myths, op-ed talking points, etc.

Looking forward to hearing your feedback tomorrow. Hope you all had a good weekend, sans the Gators and Jags losingL

David

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EXHIBIT
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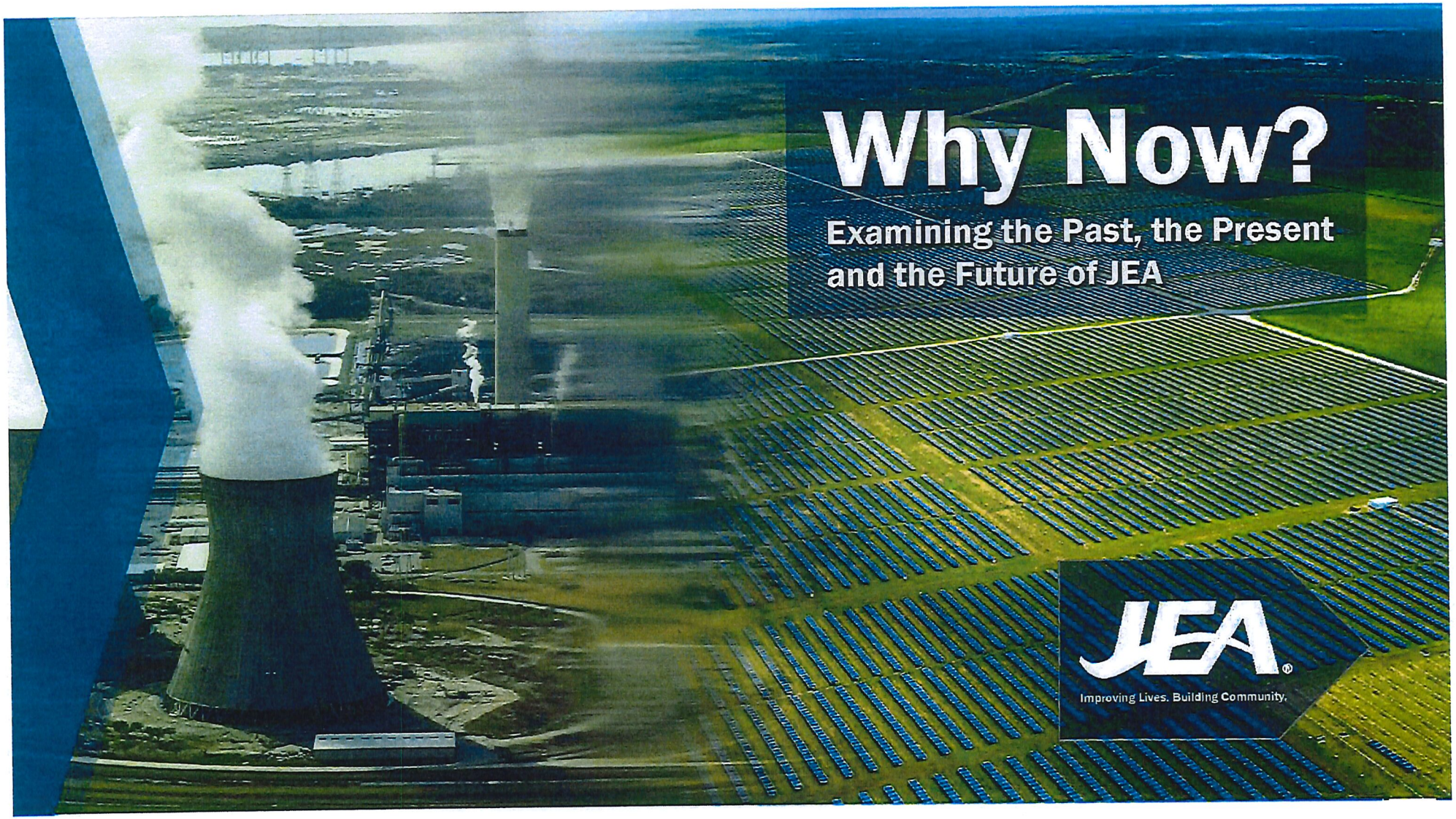
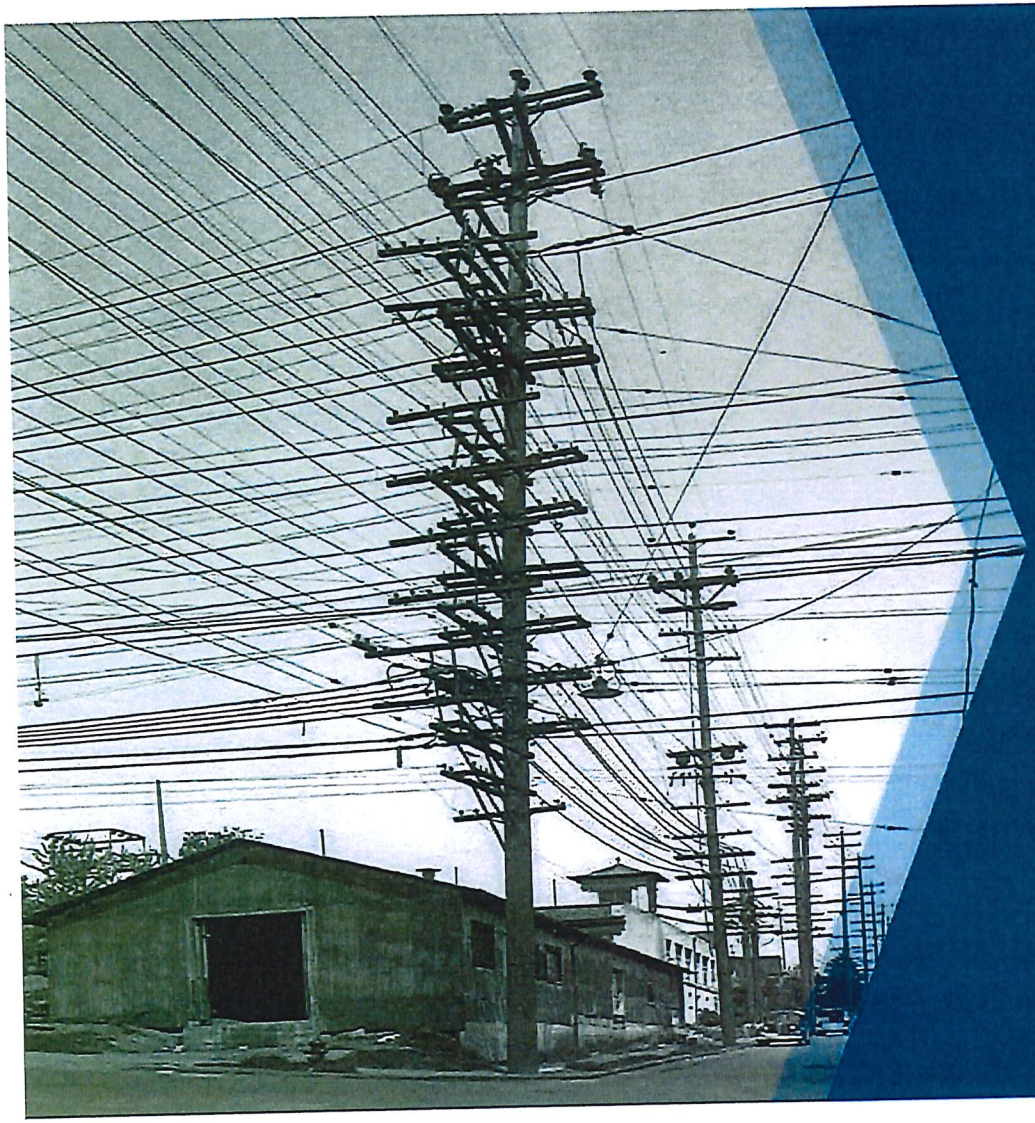
60
6/17/20 Vinyard


Why Now?
Examining the Past, the Present and the Future of JEA
JEA
Improving Lives. Building Community.



Historical Impacts

The Past Affects Our Present

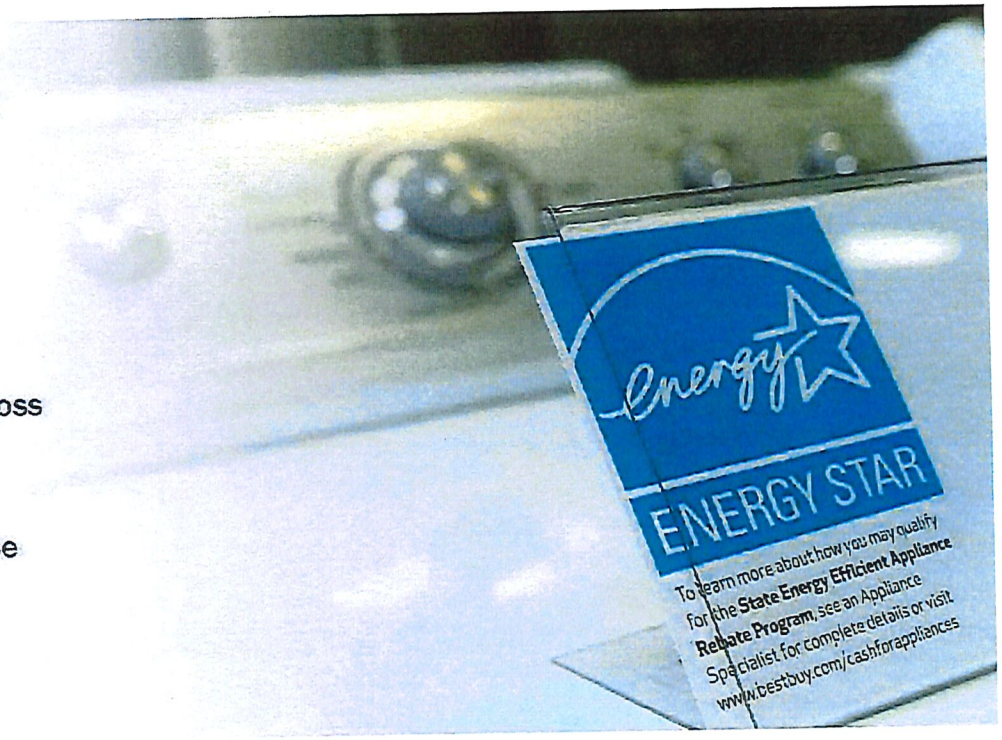
JEA®

The Energy Policy Act (EPA) of 2005 changed the way energy would be used for decades to come

The EPA incentivized cleaner energy use, conservation and efficiency. To this day, and for years to come, the EPA has helped change the way products, vehicles and appliances are designed. Think of LED lightbulbs, Energy Star Appliances, solar and wind farms and electric vehicles.

What is the impact to JEA?

- As a result, JEA customers (as well as electric consumers across the country) use less and less energy each year, even as population grows
- JEA closed a major coal power plant (SJRPP) in 2018 because energy demand had declined so steeply
- Revenues have declined since 2006 due to customers using less and less energy per household



At the turn of the millennium, JEA was in a debt crisis and needed to find a way out

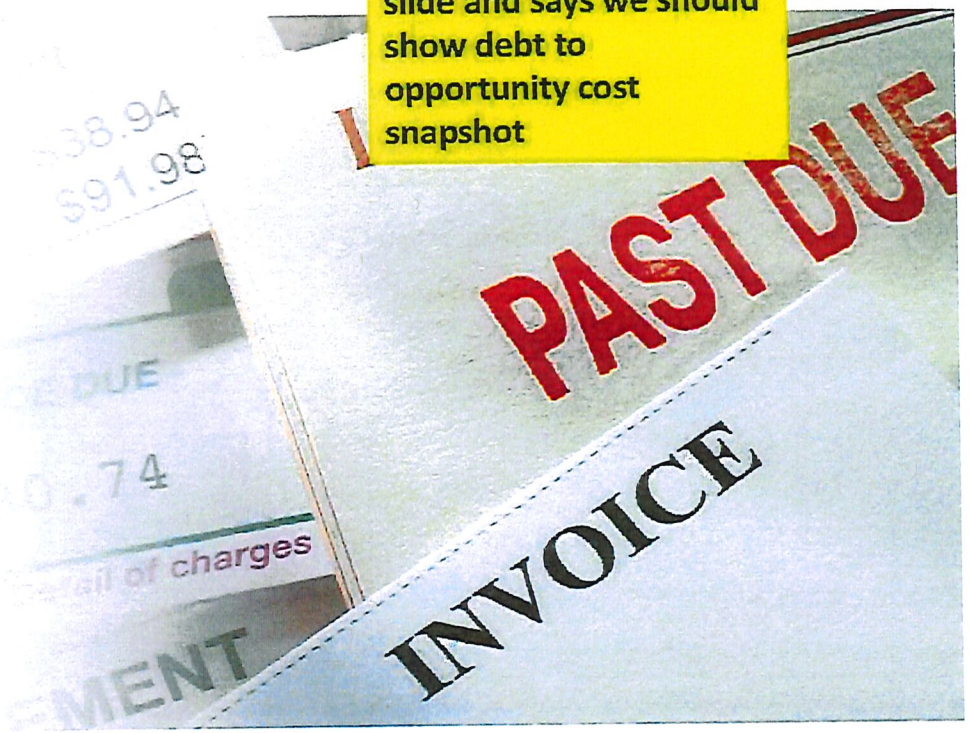
Herschel is not comfortable with this slide and says we should show debt to opportunity cost snapshot

Due to the need for expansion, coupled with a commitment to not raise customers' rates, JEA borrowed – a lot. So much so that, at times more borrowing had to be done to make payroll.

Then in 2006, JEA decided to begin to correct its debt problem and this led to a series of customer rate increases. Rate increases continued through (2012?) to offset massive debt service.

What is the impact to JEA?

- As a result, JEA has continued to pay down the debt, with record debt reduction in 2018 of more than half a billion dollars
- JEA has maintained stable rates for the past six years, although electric sales continue to decline year over year



In 2008, JEA invested in nuclear energy to diversify its portfolio, but now it's costing JEA billions

When JEA decided to invest in a nuclear power plant (Plant Vogtle), traditional fuel prices were high and nuclear power was seen as a lower cost hedge to keep fuel prices down for customers.

However, over the past decade, solar, oil, gas and coal have come down in price. In addition, cost overrides for Plant Vogtle have doubled the original cost of construction ($14 billion to now $28 billion), making the Plant Vogtle investment one that will end up costing JEA customers even more.

What is the impact to JEA?

- As a result, JEA will be required to purchase a certain amount of capacity and energy from Plant Vogtle as well as pay for the construction and maintenance of the plant – capacity that costs seven times as compared to other JEA energy sources
- Customers will have to bear the brunt of this massive annual expense for the next two decades

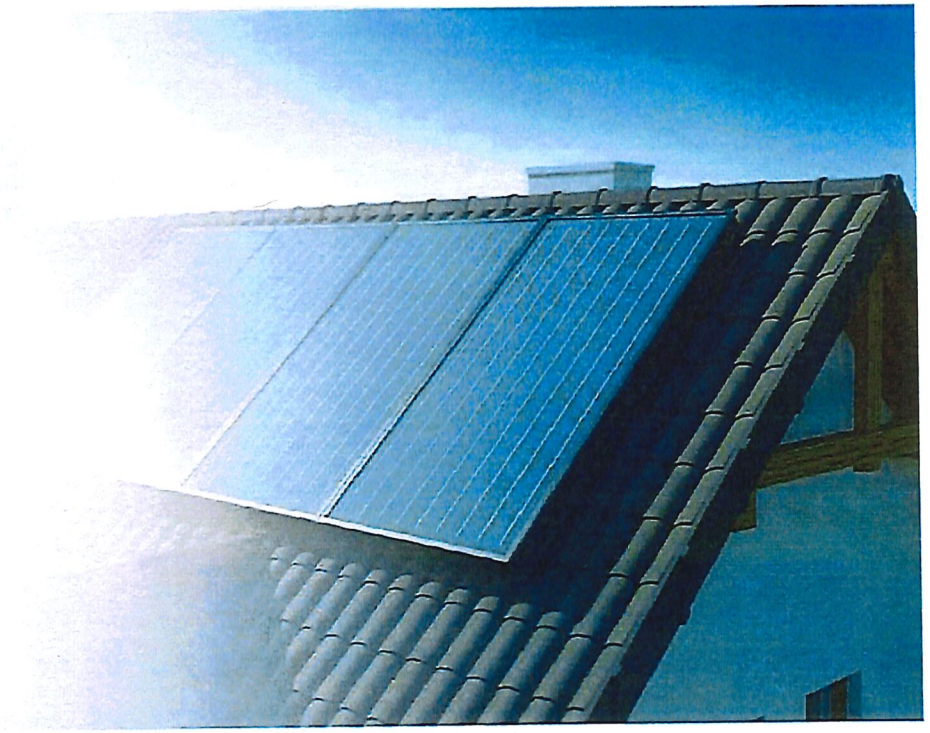
The American Recovery and Reinvestment Act of 2009 catapulted the solar industry with massive stimulus

In addition to tax credits and grants, the government provided heavy subsidies to the solar industry to promote research and development, commercialization, and regulatory support.

Today, costs of solar panel systems have come down in price, installations are exponentially growing and batteries can now store solar electricity for use at night.

What is the impact to JEA?

- As more JEA customers adopt solar energy for their homes, they may not have a need for the electricity JEA provides through the utility's grid
- As large companies migrate to solar, JEA will experience a large loss of revenues, as commercial customers account for half of all JEA revenues.



The Path Forward

Government or Private?

JEA®

JEA's leadership team has conducted a thorough long-term strategic planning process

Is JEA in a Proverbial "Death Spiral"?

Not currently. However, within the next 10 years, JEA's revenues will decline while expenses rise if nothing changes, forcing JEA to shrink.

- JEA leadership began the strategic planning process to dissect and analyze the present and plan for the future of JEA. This included looking at industry trends and forecasts, trends within JEA (as you will see in later slides) and examining competitive forces that are entering the energy/electric market.
- Throughout this strategic process, in collaboration with McKinsey Group – a leading national consulting firm, vigorous research and number crunching was performed to examine impacts on rates (revenues), costs (expenses) and capital investment (CapEx).
- This scenario-based planning yielded various scenarios for JEA to prepare for as possible future paths. The current exploration of a private path is part of this process.
- Ultimately, City Council and the Residents of Jacksonville will make the final decision, incorporating all stakeholders in this process.

Examples of companies that waited too long to change and position for the future:

BARNES & NOBLE → amazon.com

Encyclopædia Britannica →

NYC TAXI → Uber

BLOCKBUSTER → NETFLIX

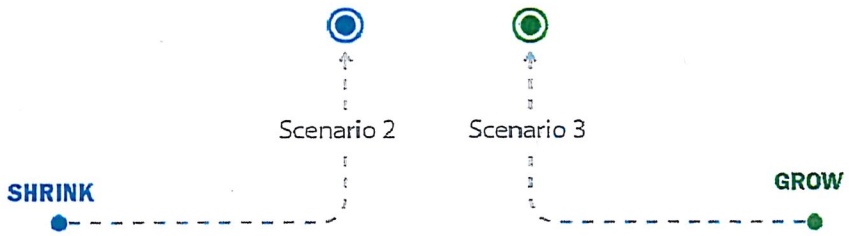
As a private entity, JEA would be freed from the governmental constraints it currently experiences

	Government	Private
Sell more electric and water services	✗	✓
Cut costs and workforce	✓	✓
Increase customer rates	✓	✓
Investment in R&D and IP for an ROI	✗	✓
Sell alternative new product lines/offerings	✗	✓
Sell equity and retire debt	✗	✓
Acquire new businesses & customers	✗	✓
Reduce investment in capex	✓	✓
Reduce dividend / city contribution	✗	✓
Sell assets	✗	✓
Create partnerships / Joint ventures	✗	✓

As you can see on the left, if JEA remains a government entity, the main "levers" JEA has to work with are raising customer rates, cutting costs/jobs, and reducing investment in infrastructure and technology.

JEA, the City of Jacksonville and the community are engaging and learning so the best decision can be made

DECISION POINT



REMAIN A GOVERNMENT ENTITY

Choosing to remain a municipality allows JEA to do only what it has been able to do to date. It cannot explore new lines of business or revenue streams beyond its core services. Therefore, JEA would need to shrink, as an asset, in order to maintain positive cash flows.

BECOME A PRIVATE ENTITY

Choosing for JEA to become a private entity would allow JEA to pursue revenue streams, technology advances and infrastructure improvements that a government entity just couldn't afford. If JEA becomes private, it would be well-positioned to grow as needed.

If the JEA Board, City Council and the voting public determine JEA would be best served to become a private entity, the following minimum requirements would go into effect upon a recapitalization event

	REMAINING A GOVERNMENT ENTITY	MINIMUMS IF JEA BECOMES A PRIVATE ENTITY
Financial	• <$2 billion of value to the City of Jacksonville[1]	• >$3 billion of value to the City of Jacksonville
Customers	• $0 customer distributions • Significant rate increases required over next several years	• >$400 million of value distributed to customers; $350 paid to each JEA account ($1,400 for customers with electric, water, sewer and irrigation accounts) • At least 3 years of contractually guaranteed base rate stability
Environmental	• Viable renewable energy requirements at 0% funding • Viable sources of alternative water capacity at 0% funding	• Commitment to fund and provide City of Jacksonville and Duval County Public School system 100% renewable electricity by 2030 • Commitment to fund and provide 40 million gallons per day of alternative water capacity for Northeast Florida by 2035
Community Impact	• Status quo retirement obligations • No employment guarantees and termination of ~600 employees • No retention payments to employees	• Protection of certain employee retirement benefits • Guarantee of employee compensation and benefits for three (3) years • Retention payments to all full-time employees of 100% current base compensation • Commitment to new headquarters and employees in downtown Jacksonville contributing to the economic development of the community

[1]NPV of JEA's expected contribution to the City of Jacksonville over the next 20 years

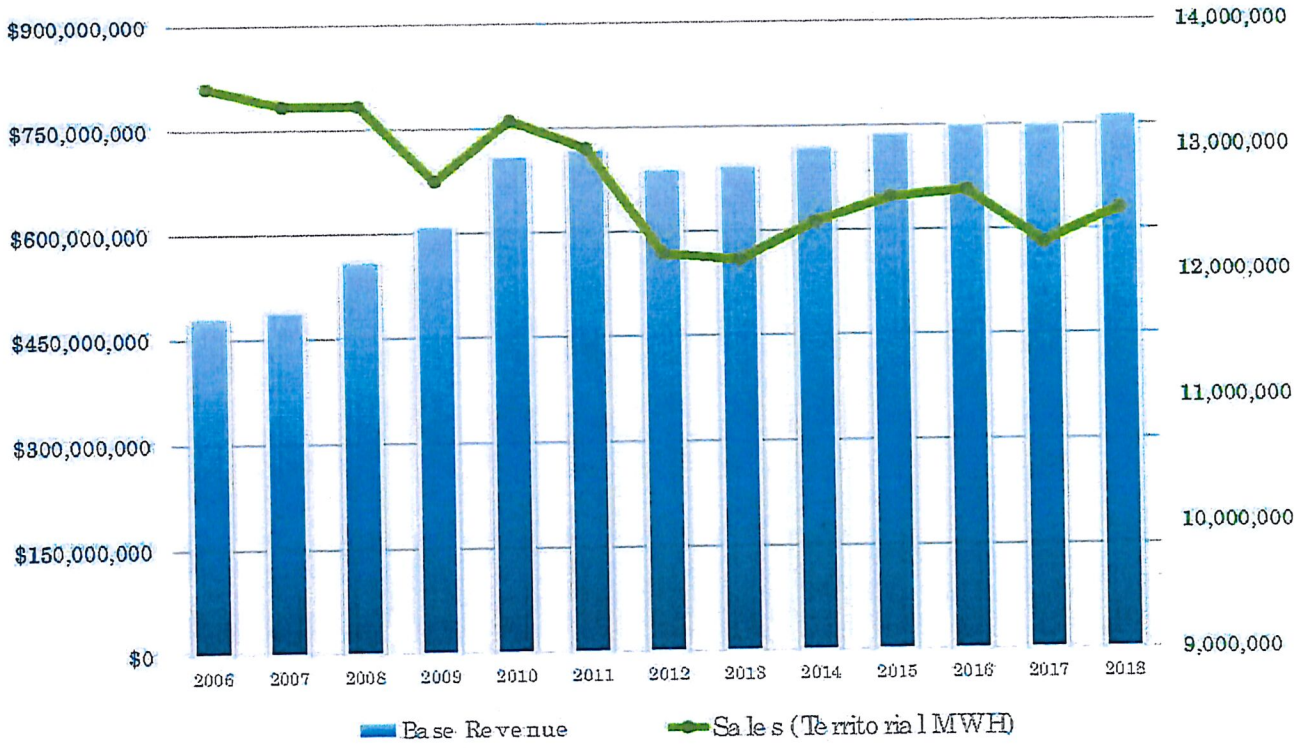
Examining the Need for Rate Increases

Since 2006, JEA has needed to raise customer base rates 71%, increasing revenues by $279 million on average each year due to declining sales and rising expenses.

Since 2009, fuel prices have declined and JEA was simultaneously reducing staff and cutting costs to temporarily offset raising base rates further

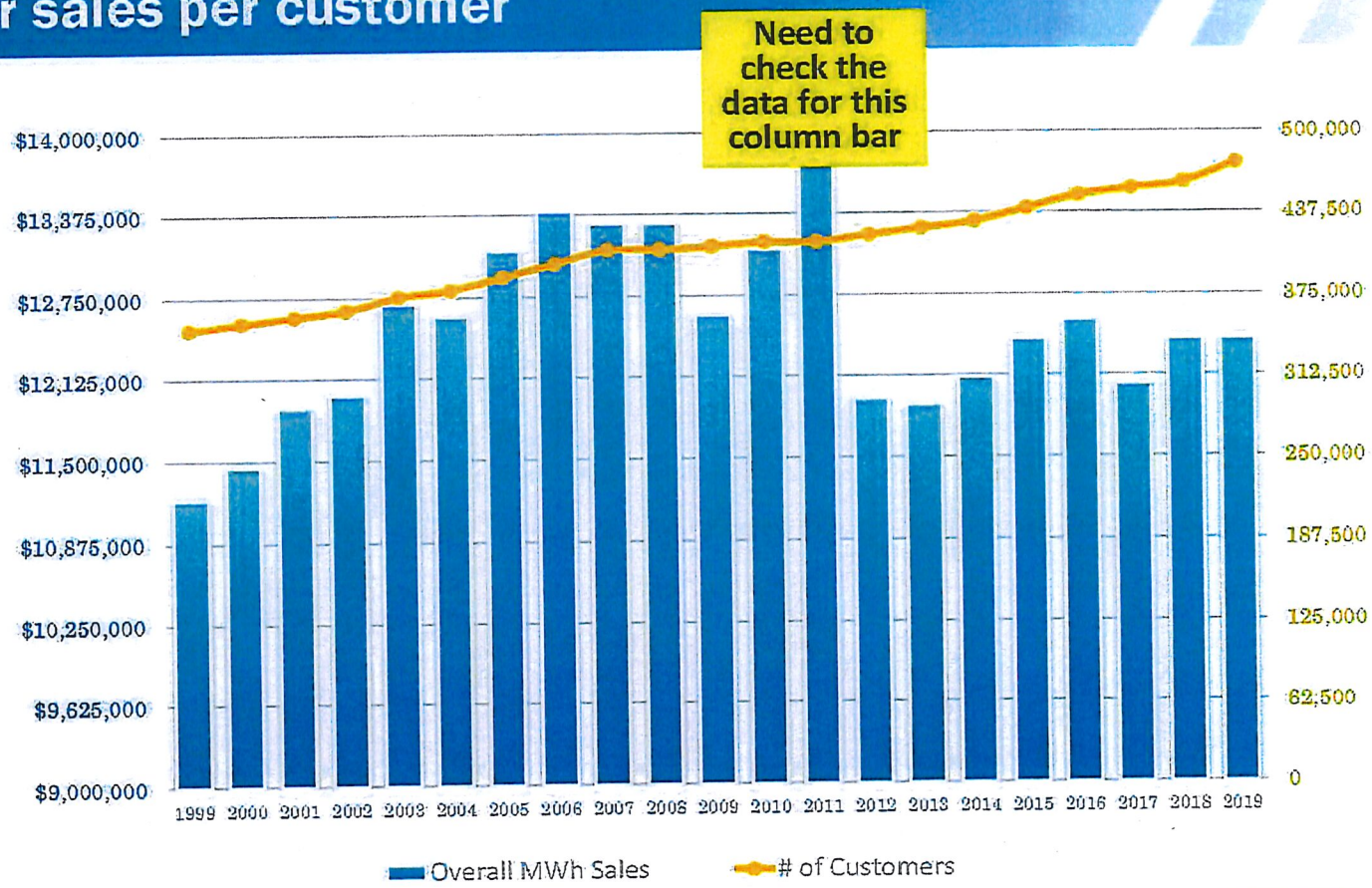
JEA raised base rates 71% since 2006 to service debt, maintain infrastructure, and provide for customers

From 2006 to 2018 JEA lost over 1 million MWh in sales and charged an extra $279 million to customers to raise sufficient revenue to offset costs.



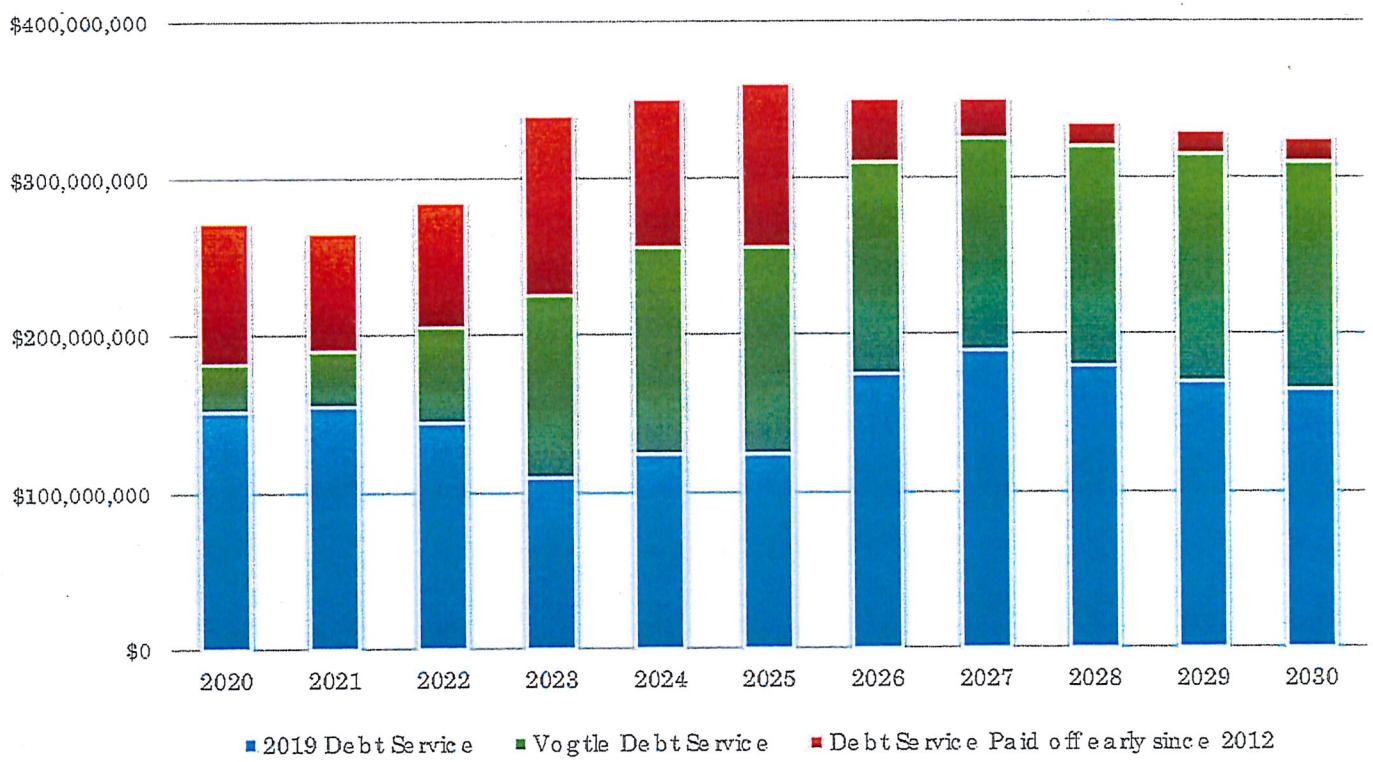
JEA's customer growth has not been able to overcome lower sales per customer

2006 sales were 8.7% higher than 2019 sales, despite a 15% growth in customers.



JEA has prevented additional rate increases through aggressive pay-down of debt

JEA's focus on debt reduction from 2012 through today has mitigated a portion of the Plant Vogtle debt service required, preventing an additional $106 million annual customer base rate increase.



WILL FUTURE RATE INCREASES BE NECESSARY?

IF JEA REMAINS A GOVERNMENT ENTITY

Yes, quickly and perhaps by as much as 52%.

- Per the preceding charts showing the historical trends and future cost increases, rates hikes are necessary to ensure there is sufficient revenue to provide positive cash flow.
- Electrification (e.g., electric vehicles) will provide a bump in sales, however, due to competing electric generation sources and even potential deregulation, electrification is not projected to neutralize the loss of revenue in the long-term.
- JEA must raise rates at some point by the end of 2021, especially with Plant Vogtle coming on-line – which will amount to an additional cost to customers of approximately $160 million per year – an average rate increase of approximately $29 per month per customer.

IF JEA IS ABLE TO BECOME A PRIVATE ENTITY

Possibly, but not for years and may not be as much.

- If JEA is able to become a private entity, base rates are guaranteed to remain the same for a minimum of three years.
- The new private entity may decide to raise rates after three years, however, private utilities must receive approval from the Public Service Commission (PSC) to raise rates. In addition, the PSC limits private utilities to only make a limited amount of return on investment.
- Rates may not need to be increased much, as revenue streams and economies of scale may mitigate the higher costs JEA experiences today and in the future.
- Even if rates go up years from now, customers will have received a rebate ranging between $350 and $1,40, depending on the number of accounts they have.

Examining the Need to Cut Costs & Jobs and a Reduction in Capital Investment

JEA eliminated 403 electric employee positions from 2008 to 2019, amounting to a 23% reduction of electric employees at JEA.

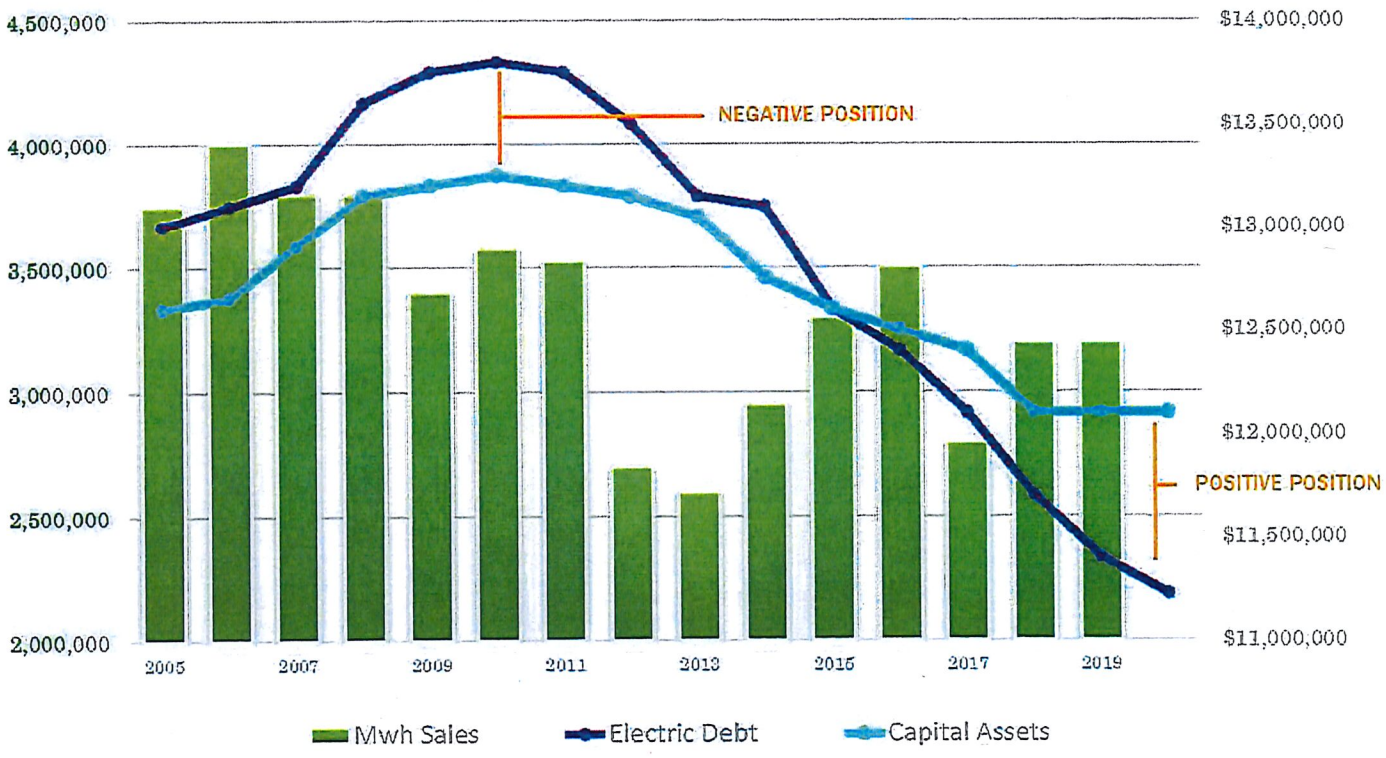
Even as electric customers grew, their usage of electricity continued to decline, meaning the company was forced to make spending reductions in response to this loss of revenue.

Going forward, JEA's infrastructure will require heavy investment to harden the electric grid, provide underground electric in areas of concern, and keep up with technology and customer needs.

JEA's electric debt peaked at the same time sales growth remained stagnant

In 2009, JEA had $492 million more debt than capital assets *(negative position)*.

Today, JEA has $743 more in capital assets than debt *(a positive position)*, although we still have more than $2.25 billion in debt remaining.

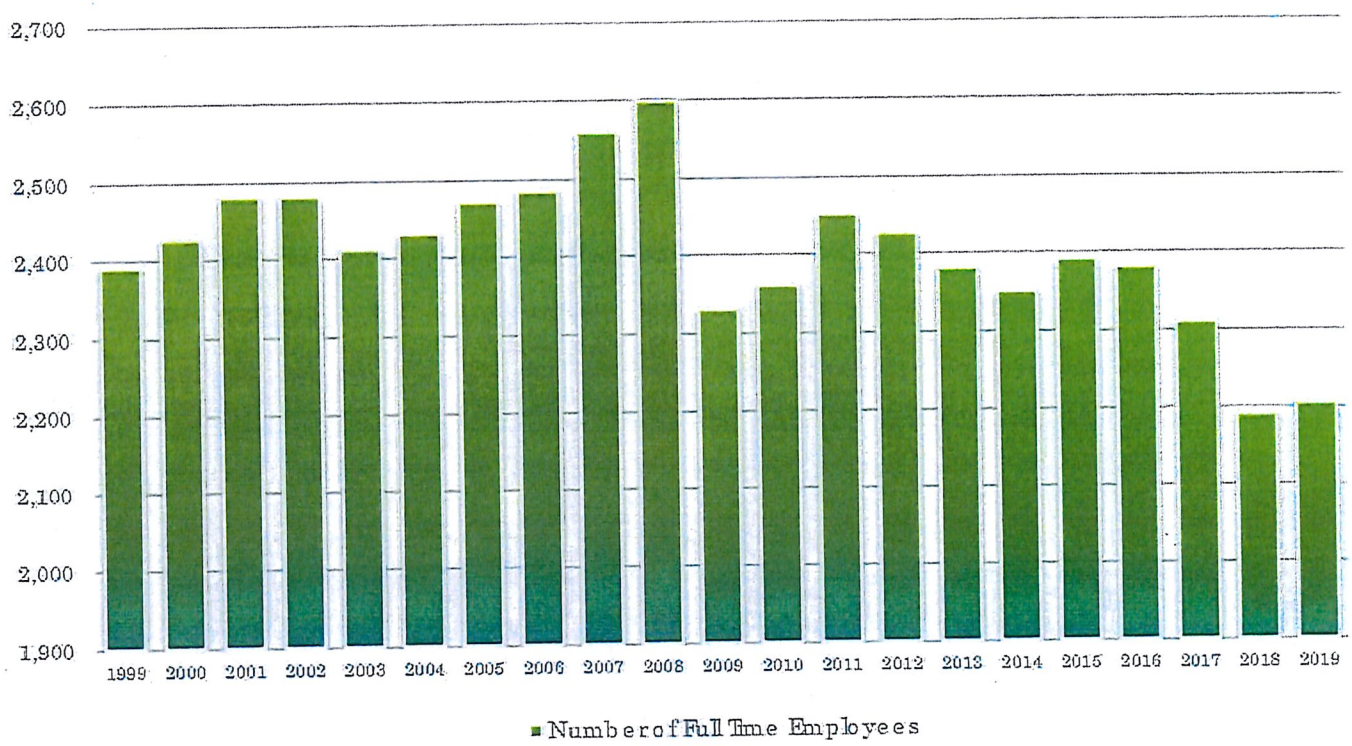


JEA had to reduce the number of employees to help cut costs due to declining sales/customer energy usage

In 2008, JEA had 2,598 employees and in 2019, just 2,191 employees.

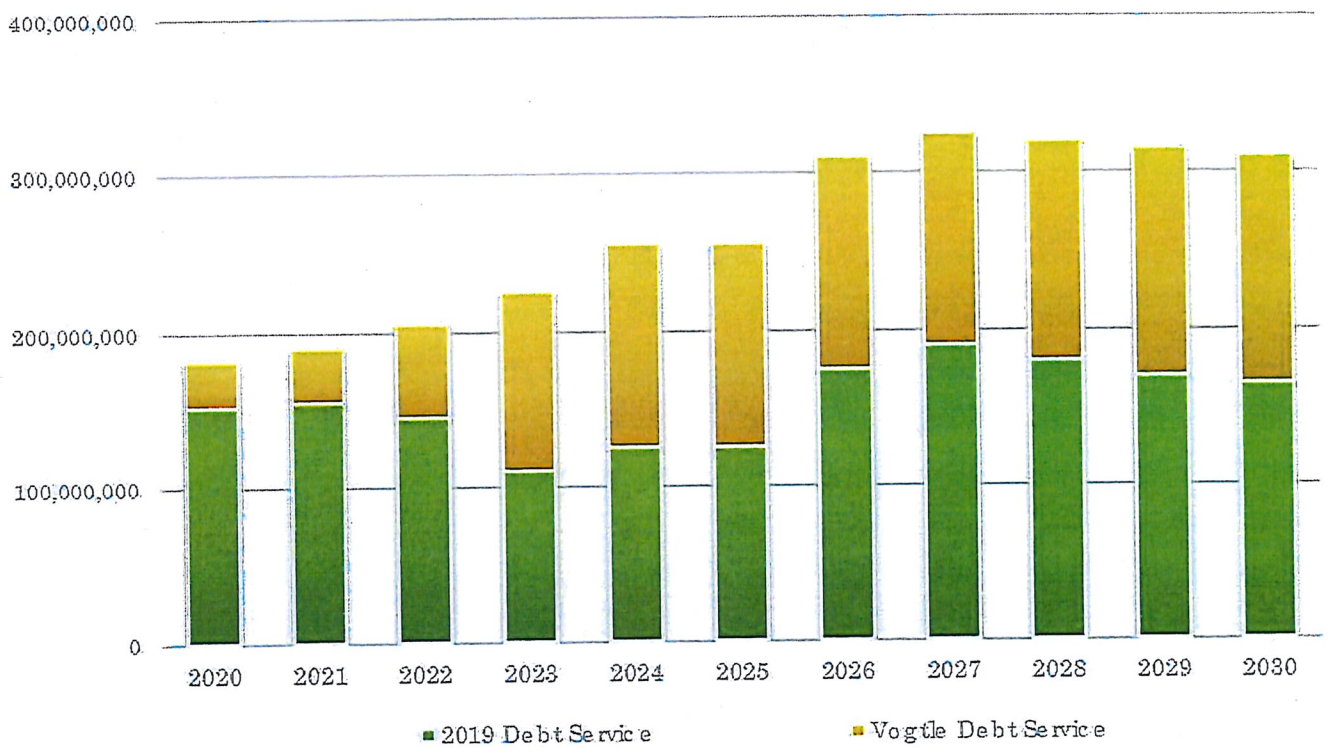
JEA experienced a 407-employee reduction in 10 years due to declining sales and increasing costs.

Ryan will give me electric only numbers on this slide including SJRPP)



JEA's electric debt service obligations will continue to increase over the next 10 years

Combined electric and Plant Vogtle annual debt service obligations will increase by almost $160 million over the next 8 years.



WILL FUTURE COST CUTS BE NECESSARY?

IF JEA REMAINS A GOVERNMENT ENTITY

Yes, and they will be deep cuts.

- If JEA remains as it stands, between 400 and 600 employees will need to be laid off in order to properly realign salaries/benefits as a percentage of overall anticipated operational expenses.
- Employees would not have any employment guarantees, retention bonuses or pension guarantees.
- Cuts in investments towards innovation and technology would lead to JEA falling further behind in how it serves its customers, both from a technical aspect, but also in terms of response times, outages and the customers experience.

IF JEA IS ABLE TO BECOME A PRIVATE ENTITY

Perhaps, but with guarantees to employees.

- If JEA is able to become a private entity, employees are guaranteed a minimum of three years salary plus benefits, even if laid off.
- JEA employees will also receive a retention payment equal to a full year's pay (over the course of two years) if they choose to remain with the private entity; If they are laid off, they receive this full bonus anyway.
- JEA employees are entitled to pension guarantees as outlined in the ITN solicitation that help ensure their retirement is protected.
- A private entity, not limited by the constraints of a government entity, would implement unconstrained revenue growth opportunities and leverage economies of scale.

Examining the Impact on Our Community and the Customer Service JEA Provides

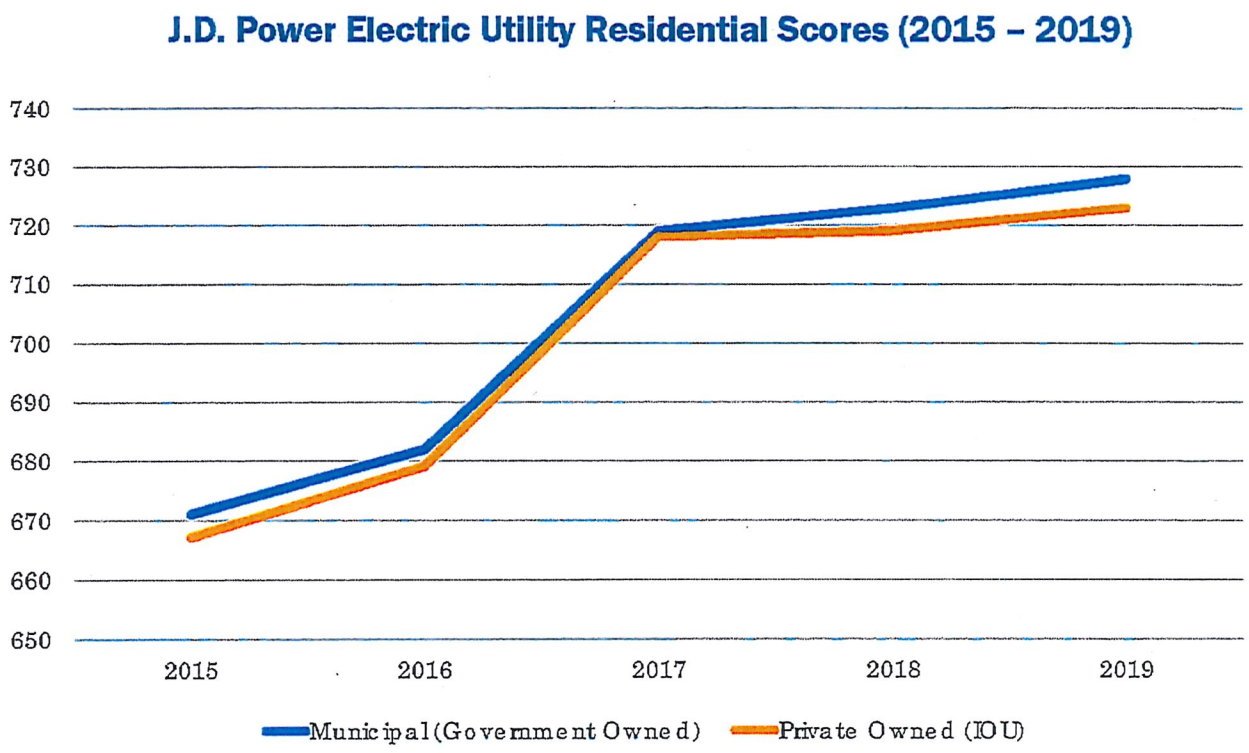
JEA prides itself in the customer service it delivers, as measured by J.D. Powers and being in the top quartile for both residential and commercial customers.

In addition, JEA employees spend more than 7,500 hours volunteering annually and provide a healthy monetary contribution to charities like the United Way and Community Health Charities.

Lastly, while JEA has focused on minimizing the impacts of their footprint on the environment, more can be done to help our air and water, especially by investing in renewable energy.

Customer service satisfaction for private investment-owned utilities (IOUs) are consistent with government-owned utilities

Throughout the past five years, both private IOUs and municipals have made substantial gains in customer satisfaction, mirroring each other closely in satisfaction scores.



IMPACT ON CUSTOMER SERVICE AND THE COMMUNITY

IF JEA REMAINS A GOVERNMENT ENTITY

Customer service will suffer. Investments in the community will diminish.

- As it has been stated, If JEA remains as is, 400-600 jobs will be cut along with operational areas within the organization to lower operating costs. A reduction in workforce, especially in areas that directly impact customers, will affect outage restoration times, service call center experience, and some programs and services that customers enjoy today.
- JEA employees would have to do more with less, likely impacting availability to contribute the volunteer hours they currently do, as well as outreach throughout the community.
- Environmental goals will not have the investment required to keep pace with private utilities in the area of renewable energy, including solar.

IF JEA IS ABLE TO BECOME A PRIVATE ENTITY

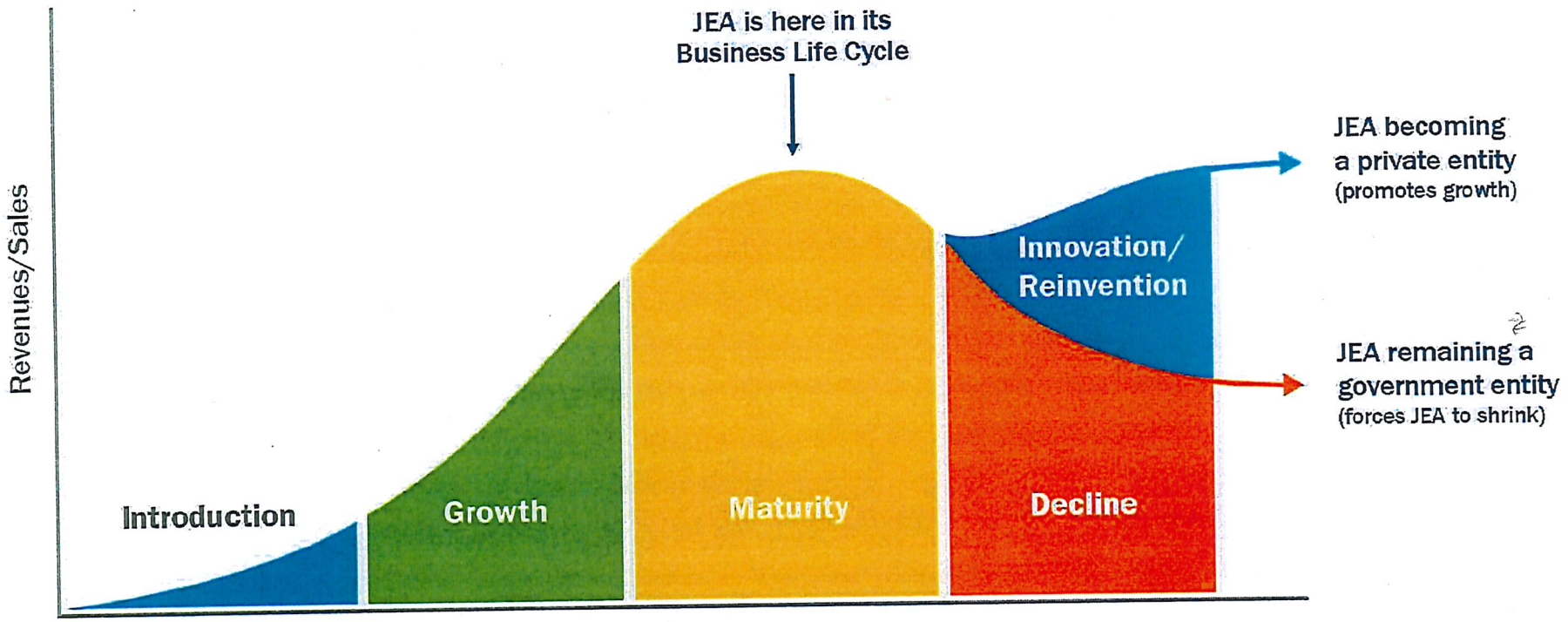
Customer service could improve further. The community and environment will be better off.

- As a private entity, JEA could invest in cutting-edge customer solutions, (e.g. paying your bill via Alexa™ by Amazon, having a face-to-face virtual technical help you with issues in your home, etc.)
- A private entity, as part of the minimum guarantees within the ITN, would ensure the City of Jacksonville and Duval County Public School system would use 100% renewable electricity by 2030 as well as fund and provide 40 million gallons per day of alternative water capacity for Northeast Florida by 2035
- The use of solar power could significantly increase as a percentage of overall generation resources, providing cleaner, sustainable energy.

What is the best path forward for JEA, its customers and the community?

The question before the public is straightforward – if JEA remains the same as today, will a shrinking JEA be the best solution for a growing community – or is JEA best served to become a private entity and benefit from the removal of constraints and limitations in order to grow and continue to provide optimal value?

JEA is a mature company in a changing industry and needs governmental constraints removed to innovate and grow



Five options will be presented for debate and discussion as the potential path forward for JEA

The JEA Board, City Council, Duval Voters will all have the opportunity to decide the path forward for JEA

This is Your JEA

Be informed, get engaged and learn the facts.
For more information, please visit WhatsNextJax.com.

November 14, 2019

President Tim Cost
Chairman, Jacksonville Civic Council
Howard Administration Building
2800 University Boulevard North
Jacksonville, FL 32211

By Email (tcost@ju.com) and U.S. Mail

Dear President Cost:

This correspondence is regarding public statements made on November 6, 2019 at the Jacksonville City Council JEA workshop by the Jacksonville Civic Council representative, Jeanne Miller. The stated goal of these fact-findings workshops, being chaired by Council Member Michael Boylan, is to engage subject matter experts to inform and educate the City Council and the public and provide an opportunity for constructive dialogue on the future of JEA. As I am sure you would agree, this is important work, and ensuring that the City Council and public receive accurate and thorough information is crucial to this process.

At the November 6 workshop, Ms. Miller stated that JEA was not responsive to public records requests. As Chief Administrative Officer, JEA's public records division is within my responsibility. The public records group is comprised of dedicated professionals and attorneys who take seriously their responsibilities related to Florida public records law and perform their public records duties at the highest level. As you can imagine, Ms. Miller's claim was very troubling to me.

In response to Ms. Miller's statement last week, JEA undertook an extensive review of all public records requests made by the Civic Council, both in writing and verbally, and concluded that there are no outstanding records requests from the Civic Council. We did, however, identify that JEA had more than 700 pages of correspondence with the Civic Council from September 2017 through October 2019. That page count does not include the instances in which JEA provided Civic Council members with hard copy presentations and thumb drives containing large public record files, or when JEA directed Civic Council members to its website where many of the requested documents are available to the public. In addition, this count does not include the 257-page presentation prepared for and presented to the Civic Council by JEA at one of the numerous meetings we had with the Civic Council and its members.

The Civic Council, through Ms. Miller, also stated at the City Council workshop that the Civic Council's local expert asked Mr. Zahn in a one-hour interview for certain documents, and the requests "weren't answered." I was on that call. Ms. Miller and I have been friends for decades, so I personally followed up with her last month by e-mail asking that she contact me if she needed documents resulting from that call with Mr. Zahn (see attached). Ms. Miller did follow up with me, and I provided the documents she requested by e-mail (see attached). If the e-mail did not transmit due to file size or some other technical reason, I am confident that Ms. Miller would be comfortable contacting me. I did not receive any further requests from Ms. Miller, her staff, or any member of the Civic Council.

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This background information clearly demonstrates that JEA has cooperated (and is cooperating) extensively with the Civic Council.

The Civic Council also included in its letter to the City Council an Exhibit entitled "Documents requested but not produced." We have no record of those requests. Nevertheless, JEA responds to the Exhibit as follows:

1. A financial feasibility report: No such document exists. Data that may be similar are, however, available as part of our May and June 2019 board meeting packages located on jea.com or in the documents that I provided the Civic Council on October 15, 2019. While these documents can be retrieved electronically via jea.com, JEA can provide you with a thumb drive or hard copy if necessary. Please know that Civic Council members can call us any time to request a specific data point, and we will do our best to accommodate the request.
2. The appraisal: No such appraisal exists. The investment banks retained by JEA are, however, contractually obligated to provide a fairness opinion if any agreement is reached with one of the ITN respondents. As you know, fairness opinions are customary in situations such as this.
3. Advance determination by the Florida Public Service Commission of what rate base is and the total amount of contributions in aid of construction (CIAC): No such document exists.
4. Supporting reports and assumptions used by JEA in its decision-making, options, analysis, etc.: Many reports and assumptions used and supported by McKinsey have been provided (see attached email from Aaron Zahn in June 2019 as one example). If there is something more that is being requested, it would be useful if the Civic Council could be more specific in its request. As noted above, please feel free to call us.

Again, the Civic Council's concerns related to this information could have been alleviated if it submitted a public records request or called me or members of my team directly.

Finally, I do not normally engage in letter writing when it comes to these types of matters, but in this instance, I determined it was necessary to set the record straight. JEA takes pride in its compliance with Florida's public records laws and will continue to provide the Civic Council with any such public records.

Very truly yours,

Herschel T. Vinyard, Jr.

cc: Jacksonville City Council

From:	Vinyard, Herschel T. - Chief Administrative Officer
To:	jeanne@jaxcivicouncil.com
Bcc:	Vinyard, Herschel T. - Chief Administrative Officer
Subject:	Info
Date:	Thursday, October 3, 2019 3:14:21 PM

Hi Jeanne

I know that Aaron was sending info to you. If there any items that are missing, please give me a holler.

Thanks,
Herschel

From:	Vinyard, Herschel T. - Chief Administrative Officer
To:	"jeanne@jaxciviccouncil.com"
Subject:	appendix
Date:	Tuesday, October 15, 2019 1:02:35 PM
Attachments:	Appendix C - Trad Utility Response - Support - FINAL.pdf Appendix A - Last 10 Years.pdf Appendix B - JEA Scenario 1 - Status Quo.pdf

Have a great day!

Herschel

From:	Zahn, Aaron F. - Managing Director/CEO
To:	Jeanne Miller; Wannemacher, Ryan F. - Chief Financial Officer; Kerri Stewart; Vinyard, Herschel T. - Chief Administrative Officer
Cc:	Bobby Stein - Chartwell Capital Management Company, Inc. (bstein@trgjax.com); Rusty Newton; John A. Delaney; John Baker - FRP Holdings, Inc. (jdbaker@patriottrans.com); Henry Brown (HBrown@mecojax.com); ricky.caplin@thehcigroup.com; "Brian Evans"; David Miller; "David Sweeney"; Michael Munz; Rusty Newton; Peter Rummell; Russell Armistead; Andrew Selevan (AndrewS@jaru.com); Adams, Bill; "Brian Evans"; Michael Munz; Susie Wiles; Tim Cost - Jacksonville University (tcost@ju.edu); Bartley, La"Trece M. - Mgr Executive Administration
Subject:	JEA Follow Up
Date:	Monday, June 10, 2019 5:01:47 PM
Attachments:	image001.png

All –

Thank you for your time today and for the thoughtful dialog. As a follow up, I would like to offer the following:

1. Submit any follow up data requests and we will happily provide information (as long as we have it);
2. If the JCC would like to have a "workshop" led by McKinsey to review assumptions and analytics JEA will host another meeting. Please provide some dates in the future that work for the JCC group and we will work to accommodate.
3. We will provide IS, BS and CF statements matching the Status Quo out;

Call me anytime.
Thanks.
Aaron

Aaron Zahn
Managing Director & Chief Executive Officer
Direct: (904) 665-4396
Mobile: (312) 286-1040
Fax: (904) 665-4238
Email: zahnaf@jea.com

From: Zahn, Aaron F. - Managing Director/CEO
Sent: Friday, June 7, 2019 5:05 PM
To: Jeanne Miller <jeanne@jaxciviccouncil.com>; Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Kerri Stewart <kerristewart@hotmail.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Cc: Bobby Stein - Chartwell Capital Management Company, Inc. (bstein@trgjax.com) <bstein@trgjax.com>; Rusty Newton <rnewton@timucuan.com>; John A. Delaney <JDelaney@RTLAW.com>; John Baker - FRP Holdings, Inc. (jdbaker@patriottrans.com) <jdbaker@patriottrans.com>; Henry Brown (HBrown@mecojax.com) <HBrown@mecojax.com>; ricky.caplin@thehcigroup.com; 'Brian Evans' <brian.evans@53.com>; David Miller <david.miller@brightway.com>; 'David Sweeney' <David.Sweeney@rsandh.com>; Michael Munz <mmunz@daltonagency.com>; Rusty Newton <rnewton@timucuan.com>; Peter Rummell <peter@rummell.org>; Russell Armistead <rarmistead@hotmail.com>; Andrew Selevan (AndrewS@jaru.com) <AndrewS@jaru.com>; Adams, Bill <BAdams@gunster.com>; 'Brian Evans' <brian.evans@53.com>; Michael Munz <mmunz@daltonagency.com>; Susie Wiles

<susie@ballardfl.com>; Tim Cost - Jacksonville University (tcost@ju.edu) <tcost@ju.edu>; Bartley, La'Trece M. - Mgr Executive Administration <bartlm@jea.com>
Subject: RE: Monday, June 10, 2019 Meeting regarding 2019 Status Quo Financial Projections

Jeanne / All –
Thank you. We look forward to the discussion. Each individual should arrive at the security desk and will be escorted to T17 for the meeting.

There is a simple answer to your specific question below. The difference is between: 1) engineering capacity forecasting – a forecast used for system planning; and 2) business planning forecasting – a forecast used for strategic decision making.

1) The forecast provided on May 30, 2018, as noted on each sheet of the spreadsheet, was a **"MODEL IS BASED ON PSC SYSTEM CAPACITY PLANNING ASSUMPTIONS *** ASSUMPTIONS AND FORECAST DO NOT REPRESENT A MANAGEMENT CASE FORECAST FOR FINANCIAL PURPOSES ***."** If you recall, at the time of my entry to JEA the company had never completed a true management cast forecast. We are attaching the files for your ease of reference. The assumptions and inputs for each model may be found on the "inputs" tabs in each excel file.
2) Forecast provided last week, on May 28, 2019, to the Board and Public (and on the JEA website) were a first of a kind true management case forecast for JEA. We are attaching the files for your ease of reference:
    a. The summary results are in the attached Status Quo v22 file
    b. The assumptions and inputs, as supported by McKinsey and Co., are in the Status Quo Appendix file
    c. Please note this a Scenario assuming JEA is operated "Status Quo." We are doing scenario strategic planning in order to increase transparency for the entire community. The steps are outlined in the presentations.

For Monday, we have arranged the following agenda:

1. Introduction to JEA's strategic planning process by McKinsey
2. Overview of Last 10 Years
3. Overview of Status Quo
4. Overview of Management Response
5. Discussion and Q&A

Have a great weekend!
Aaron

Aaron Zahn
Managing Director & Chief Executive Officer
Direct: (904) 665-4396
Mobile: (312) 286-1040
Fax: (904) 665-4238
Email: zahnaf@jea.com

From: Jeanne Miller <jeanne@jaxciviccouncil.com>
Sent: Friday, June 7, 2019 4:27 PM
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Kerri Stewart <kerristewart@hotmail.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>; Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>
Cc: Bobby Stein - Chartwell Capital Management Company, Inc. (bstein@trgjax.com) <bstein@trgjax.com>; Rusty Newton <rnewton@timucuan.com>; John A. Delaney <JDelaney@RTLAW.com>; John Baker - FRP Holdings, Inc. (jdbaker@patriottrans.com) <jdbaker@patriottrans.com>; Henry Brown (HBrown@mecojax.com) <HBrown@mecojax.com>; ricky.caplin@thehcigroup.com; 'Brian Evans' <brian.evans@53.com>; David Miller <david.miller@brightway.com>; 'David Sweeney' <David.Sweeney@rsandh.com>; Michael Munz <mmunz@daltonagency.com>; Rusty Newton <rnewton@timucuan.com>; Peter Rummell <peter@rummell.org>; Russell Armistead <rarmistead@hotmail.com>; Andrew Selevan (AndrewS@jaru.com) <AndrewS@jaru.com>; Adams, Bill <BAdams@gunster.com>; 'Brian Evans' <brian.evans@53.com>; Michael Munz <mmunz@daltonagency.com>; Susie Wiles <susie@ballardfl.com>; Tim Cost - Jacksonville University (tcost@ju.edu) <tcost@ju.edu>
Subject: Monday, June 10, 2019 Meeting regarding 2019 Status Quo Financial Projections

Dear Ryan and Team,

We look forward to meeting with you on Monday, June 10, 2019 from 1:00 pm – 3:00 pm at JEA Headquarters. The individuals listed below plan to attend.

To make the best use of our time together, we would like to focus the meeting on the Status Quo Financial Projections provided to us last month (May, 2019) for the electric portion of the business. Specifically, we would like to better understand the differences between the electric utility projections provided to us in Spring, 2018 and the May, 2019 projections. We will ask for the specific underlying assumptions and drivers that changed over the last year as it pertains to the electric projections for Revenue, Expenses, Capital Expenditures and EBITDA. In addition, we would like understand any fuel mix changes and the assumption or reason for the changes.

JEA Financial Projections Meeting 6/10/2019

1. Bobby Stein Attending
2. John Baker Attending
3. Ricky Caplin Attending
4. David Sweeney Attending
5. Peter Rummell Attending
6. Andrew Selevan Attending
7. Russ Armistead Attending
8. Rusty Newton Attending
9. Bill Adams Attending
10. Brian Evans Attending
11. Henry Brown Attending
12. Michael Munz Attending
13. Jeanne Miller Attending

14. Todd Higginbotham Attending

Would you please provide us with the specific floor and conference room where we will be meeting on Monday?

Thank you so much. Have a good weekend.

Jeanne M. Miller, Esq.
CEO & President
Jacksonville Civic Council, Inc.
31 West Adams Street, Suite 204
Jacksonville, Florida 32202
jeanne@jaxciviccouncil.com
Ofc: 904.354.4911
www.jaxciviccouncil.com

CIVIC
COUNCIL

From: Bartley, La'Trece M. - Mgr Executive Administration <bartlm@jea.com>
Sent: Wednesday, July 17, 2019 4:36 PM
To: Jones, Madricka L. - Executive Staff Assistant; Bartley, La'Trece M. - Mgr Executive Administration
Subject: JEA Board Packages - Delivered this Friday

Good Afternoon Board Members,

This month's JEA Board package will be in a hard-copy format versus an electronic format and will not be in Diligent. Madricka and I will have the packages delivered to your homes. Please reply and confirm your address so that we can have the package delivered to you on Friday. Have a great evening.

La'Trece Bartley
Manager-Executive Administration
Melissa Dykes, President/Chief Operating Officer and JEA Board of Directors
Direct: (904) 665-5471
Mobile: (904) 859-1726

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From: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>
Sent: Friday, April 12, 2019 10:05 AM
To: Vinyard, Herschel T. - Chief Administrative Officer
Subject: employment
Attachments: 2019-1-15 Employment Agreement A. Zahn - JEA - Redline Comp Committee.docx

Aaron Zahn
Managing Director & Chief Executive Officer
Direct: (904) 665-4396
Mobile: (312) 286-1040
Fax: (904) 665-4238
Email: zahnaf@jea.com

PENGAD 800-631-6989
EXHIBIT
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6/17/20 Vinyard

EMPLOYMENT AGREEMENT
FOR ~~INTERIM~~ MANAGING DIRECTOR & CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into in duplicate this ~~15th~~ ___day of ~~May~~ January ~~2018~~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 to as JEA ("JEA" or "Employer"), and Aaron F. Zahn, an individual currently residing in Neptune Beach, Florida, hereinafter referred to as Employee or ~~Interim~~ Managing Director & CEO.

WITNESSETH:

WHEREAS, JEA is a community-owned, not-for-profit utility providing electricity to more than 458,000 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 341,000 water customers, 9,000 reuse water customers and 264,000 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 & CEO to operate the eighth largest community-owned electric utility company in the United States and the largest in Florida, with total assets of $8.7 billion (2017), total equity of $2.6 billion (2017), and approximately 2000 employees (2017);

WHEREAS, ~~the former CEO/Managing Director resigned on April 8, 2018 and~~the Board ~~JEA is in the process of~~ approved a framework for measuring JEA's value going forward (the "Strategic Framework") on August 21, 2018 and ~~recruiting and filling the~~appointed Employee the permanent ~~position~~Managing Director & CEO on November 27, 2018;

WHEREAS, the Board~~, but will~~ needs time to complete design of a companywide total compensation plan aligned with and to drive the measures set forth in the Strategic Framework~~the recruitment~~;

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WHEREAS, JEA is desirous of employing Employee as ~~Interim~~ Managing Director & 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 the employ of JEA pursuant to such terms and conditions and for consideration.

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 employ Employee and Employee agrees to be employed by JEA, beginning as of ~~April 17~~November 27, 2018 ("Effective Date"), and terminating, unless earlier terminated in accordance with this Agreement, as of ~~April June 30~~July 31, 2019 ("Term"), subject to the terms and conditions of this Agreement.

1.2 **Terms and Duties**. Employee shall be employed as ~~Interim~~ Managing Director and Chief Executive Officer of JEA (hereinafter collectively "~~Interim~~ Managing Director & 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 required by such a position as determined by the JEA Board, as well as such duties that may from time to time be directed by the Board. Such duties include, but are not limited to, exercising the full authority, responsibility and duties commensurate with the laws establishing JEA to manage the affairs of JEA and to manage and direct staff, business, and operations of JEA.

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, with the consent of the Board, 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 or Employee's ability to perform your 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. Employee's authority, responsibilities and duties are generally described in the Position Profile for Managing Director and Chief Executive Officer which may be amended from time to time and which is attached hereto as Exhibit A and by reference made a part hereof; 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.

1.5 **Fiduciary Obligations**. Employee acknowledges and agrees that during the Term, Employee owes a fiduciary duty of loyalty, fidelity, and allegiance to act at all times in the best interests of JEA, and to do no act which would intentionally injure the direct or indirect interests of JEA, or benefit from any outside activities, which interests might conflict with JEA, or upon discovery thereof, allow such a conflict to continue. Moreover, Employee agrees to disclose to JEA, any facts which might involve a possible conflict of interest during the Term.

SECTION II – COMPENSATION AND BENEFITS:

2.1 **Annual Compensation.** Employee shall be paid a salary of Three Hundred Thirty Thousand Dollars Zero Cents ($330,000.00) per annum (the "Annual Base Salary"), which shall be paid in accordance with JEA's standard payroll practice, including deductions for all legally applicable taxes and withholdings, with accrual commencing ~~April 17~~November 27, 2018. JEA shall, not less than annually, conduct a performance review of Employee, including a review of Employee's Annual Base Salary and shall discuss the results of such review with Employee. Employee shall be eligible to participate in the JEA Pay for Performance Program established pursuant to the Board Policy Manual for the Fiscal Year 2018/19 and for applicable Pay for Performance Programs established thereafter during the Term of this Agreement~~The Board may, at its sole and absolute discretion, provide Employee the opportunity to participate in the JEA Pay for Performance Program established pursuant to the Board Policy Manual for the Fiscal Year 2017/18 and for applicable Pay for Performance Programs established thereafter during the Term of this Agreement~~.

2.2 **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, Employee may, at Employee's option, be provided a monthly automobile allowance of $850, payable on the first bi-weekly pay period of each month subject to withholding. It is specifically intended and understood that this allowance shall be provided for unreimbursed expenses incurred by the Employee within the territorial limits of the JEA service territory and receipt of this allowance shall not prevent the Employee from claiming and being reimbursed for travel expenses resulting from travel by him outside the JEA service territory in the manner provided by the Ordinance Code the City of Jacksonville.

2.3 **Business Allowance.** Employee will be provided a monthly allowance in the amount of $2,000 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 payable on the first bi-weekly pay period of each month, subject to withholding. Employee may expend the monthly allowance in such a manner, and in Employee's sole discretion, as supports Employee's ability to perform Employee's function for JEA.

2.4 **Expenses**. Notwithstanding anything herein to the contrary, JEA shall reimburse Employee for telephone, travel, continuing education, and general business expenses incurred by Employee in accordance with JEA policies and procedures.

2.5 **Annual Leave.** Employee will be provided annual leave ("Leave") in accordance with JEA's existing policies and procedures. Without limiting the generality of the foregoing, 64 hours of such Leave shall fully accrue on the Effective Date.

2.6 **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. Such benefits, plans, and programs may include, without limitation, medical, health, and dental care, life insurance, disability protection, and the pension plans including JEA's Supplemental Executive Retirement Plan including any amendments thereto. 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 Section II 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.

SECTION III – TERMINATION AND EXTENSION:

3.1 **Termination.** Employee's employment with JEA shall be terminated (i) on ~~April 30~~July 31, 2019 unless earlier terminated or extended pursuant to this Section III and unless otherwise modified by mutual agreement between Employer and Employee, (ii) upon Employee's death or resignation, (iii) upon Employee's Disability, (iv) by either party, without cause, upon 30 days advance notice to the other party, or (v) immediately for cause as defined herein in Section 3.1.2.

3.1.1 If Employee's employment is terminated with or without cause, all future compensation to which Employee is otherwise entitled and all future benefits for which Employee is eligible shall cease and terminate as of the date of termination, except as specifically provided in this Section 3.1.1 or as provided by law. Upon (i) termination by JEA without cause, or (ii) termination by Employee for Good Reason, then (a) JEA shall pay Employee a lump sum payment equal to twenty (20) weeks of the current Annual Base Salary, less applicable taxes and deductions, and (b) Employee shall be entitled to, and JEA shall cover the cost of, Employee's continued participation in all employee benefit plans or programs in which Employee was participating on the date of termination for a period of 20 weeks following the end of the month in which the termination occurs.

3.1.2 No severance shall be due to Employee if Employee terminates his employment without cause, dies or becomes Disabled, or if Employee's employment is terminated by JEA for cause. For purposes of this Agreement, termination for "cause" shall include: (i) willful breach of material duties, obligations and policies of JEA which Employee fails to cure within ten (10) days after written notice from JEA identifying such breach; (ii) gross negligence or gross neglect of duties and obligations required in performance of Employee's duties; or willful misconduct, (iii) continued violation of written rules and policies of the Board after written notice of same and reasonable opportunity to cure; (iv) conviction of any criminal act which is a felony; (v) commission in a public or private

capacity of theft, fraud, misappropriation of embezzlement of funds; or (vi) misconduct as defined in F.S. 443.036(29). Notwithstanding anything in this Agreement to the contrary, if Employee resigns his employment after a diminishment in Employee's role, responsibilities, compensation, benefits and/or title, Employee shall remain entitled to compensation as provided under Section 3.1.1. For purposes of the Agreement, termination "without cause" means any termination not explicitly defined as a termination for cause pursuant to this Agreement.

3.1.3 A termination of employment by Employee for Good Reason shall be effectuated by giving JEA written notice ("Notice of Termination for Good Reason") of the termination within 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. JEA shall have 30 days from the receipt of such notice 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 and such event has not been cured within such 30-day period, the termination of employment by Employee for Good Reason shall be effective as of the expiration of such 30-day period. If the event of Good Reason is cured within such 30-day period, the Notice of Termination for Good Reason shall have no effect.

3.1.4 For purposes of this Agreement, "Good Reason" shall mean a material diminution in Employee's responsibilities, compensation, benefits and/or title without Employee's consent. For purposes of this Agreement, the term "Disability" shall mean: if JEA provides long-term disability insurance to its employees generally, the term "Disability" shall have the meaning set forth in such plan regarding eligibility for long-term disability insurance; 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 (4) consecutive months.

3.2 **Extension and Amendment**. This Agreement may only be amended and / or modified by action of the Board along with Employee's concurrence, with the legal formalities accompanying the execution of this Agreement. ~~The Board Chairman shall notify Employee of an intent to bring a request to the Employee and the Board to extend this Agreement. Such notification need not include terms, and need not be in writing.~~Unless earlier terminated in accordance with the terms hereof, the term of this Agreement will be automatically extended for successive one-year periods, on the same terms and conditions as in effect immediately prior to the then-current expiration date, unless either party gives the other notice of non-extension at least three months before the then-current expiration date

~~3.3 **Transition.** If JEA hires a permanent CEO/Managing Director prior to April 30, 2019, the Employee shall be deemed terminated without cause.~~

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, with venue to lie in Duval County, and shall be binding on JEA's successors and assigns. 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 the 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 arising out of the exercise of Employee's duties and responsibilities to JEA with respect to acts entitled to indemnification pursuant to Section 768.28(9)(a), Florida Statutes. Employee shall be entitled to the benefits and protections of this Section 4.6 notwithstanding (i) any provision in this Agreement to the contrary, (ii) termination of Employee for cause (unless such claim for indemnification arises out of the same facts giving rise to the termination for cause) or without cause, or (iii) the termination of this Agreement.

4.7 **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.

4.8 **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.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Employment Agreement on the day and year above first written.

ATTEST:

_____

JEA

_____
G. Alan Howard, Chairman

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 2017/2018.

_____
Ryan ~~Wannemaker~~Wannemacher, ~~Interim~~ Chief Financial Officer

Approved:

_____
Jody Brooks, Chief Legal Officer

Exhibit A –
~~Position Profile for Managing Director and Chief Executive Officer~~

~~Vision, Strategy, Organization and Culture~~

- ~~to lead, in conjunction with the Board, the development of the Company's strategy that outlines the long-term role of JEA in the Jacksonville metro area and the state;~~
- ~~to lead and oversee the implementation of the Company's long and short term plans in accordance with its strategy;~~
- ~~to ensure the Company is appropriately organized and staffed and to have the authority to hire and terminate staff as necessary to enable it to achieve the approved strategy;~~
- ~~to develop a culture within the Company that promotes employee safety, engagement, efficiency, productivity, flexibility and accountability;~~
- ~~to ensure that the Company maintains high standards of corporate citizenship and social responsibility wherever it does business;~~

~~Management~~

- ~~to ensure that expenditures of the Company are within the authorized annual budget of the Company;~~
- ~~to assess the principal risks of the Company and to ensure that these risks are being monitored and managed;~~
- ~~to ensure effective internal controls and management information systems are in place;~~
- ~~to ensure that the Company has appropriate systems to enable it to conduct its activities both lawfully and ethically;~~
- ~~to keep abreast of all material undertakings and activities of the Company and all material external factors affecting the Company and to ensure that processes and systems are in place to ensure that the CEO and management of the Company are adequately informed;~~
- ~~to ensure the integrity of all public disclosure by the Company~~
- ~~to abide by specific internally established control systems and authorities, to lead by personal example and encourage all employees; and~~
- ~~to conduct their activities in accordance with all applicable laws and the Company's standards and ensure the Company's policies, including its environmental, safety and health policies are of the highest standard possible;~~

~~Major stakeholder affairs~~

- ~~to act as a liaison between management and the Board;~~
- ~~to act as a liaison between Company and the Jacksonville City Council;~~
- ~~to act as a liaison between Company and the Jacksonville Mayor;~~
- ~~to build consensus of the Board, City Council, and Mayor around the Company's strategy that outlines the long-term role of JEA as a financial asset of the City of Jacksonville and as a steward of the community and environment for the metro area of Northeast Florida and the State of Florida~~
- ~~to ensure that the Board of Directors are properly informed and that sufficient information is provided to the Board to enable the Directors to form appropriate judgments;~~
- ~~to communicate effectively with the financial community, employees, government authorities, other stakeholders and the public;~~
- ~~in concert with the Chairman, to develop Board agendas;~~
- ~~to request that special meetings of the Board be called when appropriate;~~

~~in concert with the Chairman, to determine the date, time and location of the annual meeting of shareholders and to develop the agenda for the meeting.~~

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The Company

Company	JEA (name changed from Jacksonville Electric Authority in 1998)
Ownership	City of Jacksonville (Not-For-Profit)
Year Founded	1895
Headquarters	Jacksonville, Florida
Revenues	$1.87 billion (FY 2017)
Employees	Approximately 2,100 (FY 2017)
Website	https://www.jea.com/
Company Mission	At JEA, our mission is to energize our community through high-value energy and water solutions. With our services, you can touch a button and your home gets warmer or cooler. You can turn a faucet handle and clean water comes out for you to drink. And if you flick a handle, waste is gone from your home, never to be seen again. JEA powers community businesses, military, hospitals, churches and schools. We provide essential services to our community that literally make life possible for everyone who lives, works and even visits Jacksonville.
Company Background	JEA is the largest community-owned utility in Florida and the eighth largest in the United States. JEA is committed to our purpose – to improve the quality of life in the communities we serve, with a spirit that has united our business for more than 100 years. JEA is located in Jacksonville, Florida, where we proudly serve an estimated 458,000 electric, 341,000 water and 264,000 sewer customers. JEA is not owned by investors. It was created by the City of Jacksonville to serve those who live here and in the surrounding communities. The sole purpose of our business is to ensure the electric, water and sewer demands of our customers are met, both today and for generations to come. Our goal is to provide reliable services at the best value to our customers while ensuring our areas' precious natural resources are protected. JEA's budget is divided into two distinct areas: the electric business and the water/wastewater business. The budget to operate these critical community services in 2017 is listed below. Electric System Revenue Uses: $1,383,122,000 Water/Wastewater Revenue Uses: $462,674,000 Residential customers generate approximately half of the company's electric revenue; the other half is generated through service to 50,000 commercial and industrial customers across the service territory. The commercial and industrial market segments also account for about one-third of the water and wastewater revenue.

JEA's five core values set the bar for how we conduct ourselves at work every day:

- Safety: Since many of our employees work out in the field in dangerous jobs using dangerous machinery, safety tops our list of core values. Our safety plan is a "Plan for Zero" incidents at JEA – no matter the department. Every employee is expected to adhere to all safety regulations and to be sure their co-workers do, too. No job is so important that it's worth anyone getting hurt. We want everyone to go home the way they came to work.
- Service: Providing excellent service to our customers is a constant expectation. But we also value service to our community. We all live and work in this area and most of us are JEA customers. We volunteer with a spirit of service to build community because it's our community, too.
- Growth: We expect our business to grow. Now more than ever we need to be flexible and adapt to the changing utility industry. We need new lines of business and we need our business to grow as our industry evolves. We also expect our employees to be life-long learners and we provide the training and individual growth and development here at JEA for them to accomplish this.
- Accountability: This is not to be confused with responsibility. We are all responsible for an activity or process, but accountability is more than that. With accountability, we are each responsible for the activity and the outcome.
- Integrity: Open, honest, fair, and ethical - integrity ties all the other four values together. It's how we act toward our colleagues, our stakeholders and above all our customers.

The Position

Position Title	Managing Director & Chief Executive Officer (CEO)
Location	Jacksonville, Florida
Reports To	This position is selected by and reports directly to the JEA Board of Directors, comprised of seven members appointed by the Jacksonville Mayor, confirmed by City Council, who serve staggered terms.
Reporting Structure	**Current Reporting Structure under the Interim CEO:** • President & Chief Operating Officer (COO) • Chief Financial Officer • Chief Public & Shareholders Affairs Officer *The President & COO role is a newly created position in conjunction with the Interim CEO structure. The Current Direct Reports to the President & COO:* • VP/GM Electric Systems • VP/GM Water/Waste Water Systems • Chief Legal Officer – *solid line reporting to the City of Jacksonville Office of General Counsel and a dotted line to the JEA President & COO*

- VP & Chief Information Officer
- VP & Chief Human Resources Officer
- VP & Chief Compliance Officer
- VP & Chief Customer Officer
- VP & Chief Environmental Services Officer – *newly created position in conjunction with the interim CEO structure*
- VP & Chief Supply Chain Officer – *newly created position in conjunction with the interim CEO structure*

Position Summary

JEA seeks to hire 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.

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.

In addition to working closely with the Board and his/her Executive Management Team, this position 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.
- Represents 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.

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From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Thursday, May 09, 2019 1:35 PM EDT
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: FW: employment
Attachment(s): "2019-1-15 Employment Agreement A. Zahn - JEA - Redline Comp Committee.docx"

From: Zahn, Aaron F. - Managing Director/CEO <zahnaf@jea.com>
Sent: Friday, April 12, 2019 10:05 AM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: employment

Aaron Zahn
Managing Director & Chief Executive Officer
Direct: (904) 665-4396
Mobile: (312) 286-1040
Fax: (904) 665-4238
Email: zahnaf@jea.com

PENGAD 800-631-6989
EXHIBIT
mb
64
6/17/20 Vinyard

EMPLOYMENT AGREEMENT
FOR [Title]

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into in duplicate this XXth day of XXX 2019 (the "Effective 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 ("JEA" or "Employer"), and [Employee Name], an individual currently residing in [City], Florida, hereinafter referred to as Employee or [Title].

WITNESSETH:

WHEREAS, JEA is a community-owned, not-for-profit utility providing electricity to more than 458,000 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 341,000 water customers, 9,000 reuse water customers and 264,000 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 & CEO to operate the eighth largest community-owned electric utility company in the United States and the largest in Florida, with total assets of $8.7 billion (2017), total equity of $2.6 billion (2017), and approximately 2000 employees (2017);

WHEREAS, JEA is desirous of employing 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 employ Employee and Employee agrees to be employed by JEA, beginning as of April 17, 2018 ("Effective Date"), and terminating subject to the terms and conditions of this Agreement.

Commented [A1]: Does this need to be updated?

1.2 **Terms and Duties.** Employee shall be employed as Chief Financial Officer of JEA (hereinafter collectively "[Title]"). 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 required by such a position as determined by the JEA Board or Managing Director & CEO (or Interim Managing Director & CEO) of JEA (the "CEO"), as well as such duties that may from time to time be 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, with the consent of the CEO (or Interim CEO, as the case may be), 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 or Employee's ability to perform your duties of employment at JEA, within the sole discretion of the CEO (or Interim CEO, as the case may be). 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. Employees responsibilities and duties are generally described in the Position Profile for President/Chief Operating Officer 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, fidelity, and allegiance to act at all times in the best interests of JEA, and to do no act which would intentionally injure the direct or indirect interests of JEA, or benefit from any outside activities, which interests might conflict with JEA, or upon discovery thereof, allow such a conflict to continue. Moreover, Employee agrees to disclose to JEA, any facts which might involve a possible conflict of interest during the Term.

SECTION II – COMPENSATION AND BENEFITS:

2.1 **Annual Compensation.** Employee shall be paid a salary of [Salary] Dollars Zero Cents ($[XXX],000.00) per annum (the "Annual Base Salary"), which shall be paid in accordance with JEA's standard payroll practice, including deductions for all legally applicable taxes and

withholdings, with accrual commencing xxx. JEA shall, not less than annually, conduct a performance review of Employee, including a review of Employee's Annual Base Salary and shall discuss the results of such review with Employee. The Managing Director/Chief Executive Officer of JEA shall make modifications to Employee Annual Base Salary as deemed to be appropriate based upon annual review of Employee's Annual Base Salary.

2.2 Employee shall participate on the same basis generally as other employees of JEA, in the JEA Pay for Performance Program established by the Board during Fiscal Year 2018/2019 and for applicable Pay for Performance Programs established thereafter during the Term of this Agreement, except as specified in this paragraph. This Pay for Performance Program shall include both a Short-Term Incentive component and a Long-Term Incentive component. The Short-Term Incentive payment to Employee is equal to x% of the total Short-Term Incentive pool created for and earned by all employees in the applicable Fiscal Year. The Long-Term Incentive is equal to y% of the total Long-Term Incentive pool created for and earned by all employees and payable according to the same terms and milestones as specified in the Pay for Performance Long-Term Incentive Program. For the avoidance of doubt, the total pools established for the Short-Term Incentive and Long-Term Incentive exclude incentive payments provided for under separate employment contracts; those contract payments are in addition to the all employee pool.

2.2 **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, Employee may, at Employee's option, be provided a monthly automobile allowance of $850, payable on the first bi-weekly pay period of each month subject to withholding. It is specifically intended and understood that this allowance shall be provided for unreimbursed expenses incurred by the Employee within the territorial limits of the JEA service territory and receipt of this allowance shall not prevent the 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 the City of Jacksonville.

2.3 **Business Allowance.** Employee will be provided a monthly allowance in the amount of $[1,000] 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 payable on the first bi-weekly pay period of each month, subject to withholding. Employee may expend the monthly allowance in such a manner, and in Employee's sole discretion, as supports Employee's ability to perform Employee's function for JEA.

2.4 **Expenses.** Notwithstanding anything herein to the contrary, JEA shall reimburse Employee for telephone, travel, continuing education, and general business expenses incurred by Employee in accordance with JEA policies and procedures.

2.5 **Annual Leave.** Employee will be provided annual leave ("Leave") in accordance with JEA's existing policies and procedures. Without limiting the generality of the foregoing, Employee shall be entitled to 280 hours of Leave during each year of employment commencing on [xxx].

2.6 **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. Such benefits, plans, and programs may include, without limitation, medical, health, and dental care, life insurance, and disability protection. 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 Section II 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.

2.7 **Pension Benefits.** Employee shall be allowed to participate in the General Employees Pension Plan and the Supplemental Executive Retirement Plan ("SERP"), including any amendments thereto. In the event a modified Supplemental Executive Retirement Plan is not in effect for Defined Contribution participants, once IRS limits are reached each year, JEA will continue to make applicable Defined Contribution and any other eligible 401(a) deposits to a taxable account of the Employee's choosing. Such contributions will be treated as taxable income for purposes of JEA payroll withholding calculations.

SECTION III – TERMINATION AND EXTENSION:

3.1 **Termination.** Employee's employment with JEA shall be terminated (i) upon Employee's death or resignation, (ii) upon Employee's Disability, (iii) by either party, without cause, upon 30 days advance notice to the other party, or (iv) immediately for cause as defined herein in Section 3.1.2.

3.1.1 If Employee's employment is terminated with or without cause, all future compensation to which Employee is otherwise entitled and all future benefits for which Employee is eligible shall cease and terminate as of the date of termination, except as specifically provided in this Section 3.1.1 or as provided by law. Upon (i) termination by JEA without cause, or (ii) termination by Employee for Good Reason, then (a) JEA shall pay Employee a lump sum payment equal to twenty (20) weeks of the current Annual Base Salary, less applicable taxes and deductions, and (b) Employee shall be entitled to, and JEA shall cover the cost of, Employee's continued participation in all employee benefit plans or programs in which Employee was participating on the date of termination for a period of 20 weeks following the end of the month in which the termination occurs.

3.1.2 No severance shall be due to Employee if Employee terminates his employment without cause, dies or becomes Disabled, or if Employee's employment is terminated by JEA for cause. For purposes of this Agreement, termination for "cause" shall include: (i) willful breach of material duties, obligations and policies of JEA which Employee fails to cure within ten (10) days after written notice from JEA identifying such breach; (ii) gross negligence or gross neglect of duties and obligations required in performance of Employee's duties; or willful misconduct, (iii) continued violation of written rules and policies of the Board and/or CEO after written notice of same and reasonable opportunity to cure; (iv) conviction of any criminal act which is a felony; (v) commission in a public or private capacity of theft, fraud, misappropriation of embezzlement of funds; or (vi)

misconduct as defined in F.S. 443.036(29). Notwithstanding anything in this Agreement to the contrary, if Employee resigns her employment after a diminishment in Employee's role, responsibilities, compensation, benefits and/or title, Employee shall remain entitled to compensation as provided under Section 3.1.1. For purposes of the Agreement, termination "without cause" means any termination not explicitly defined as a termination for cause pursuant to this Agreement.

3.1.3 A termination of employment by Employee for Good Reason shall be effectuated by giving JEA written notice ("Notice of Termination for Good Reason") of the termination within 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. JEA shall have 30 days from the receipt of such notice 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 and such event has not been cured within such 30-day period, the termination of employment by Employee for Good Reason shall be effective as of the expiration of such 30-day period. If the event of Good Reason is cured within such 30-day period, the Notice of Termination for Good Reason shall have no effect.

3.1.4 For purposes of this Agreement, "Good Reason" shall mean a material diminution in Employee's responsibilities, compensation, benefits and/or title without Employee's consent. For purposes of this Agreement, the term "Disability" shall mean: if JEA provides long-term disability insurance to its employees generally, the term "Disability" shall have the meaning set forth in such plan regarding eligibility for long-term disability insurance; 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 (4) consecutive months.

Commented [A2]: This seems out of place? Should this be a separate section 3.1.5?

3.2 **Extension and Amendment.** This Agreement may only be amended and / or modified by action of the Board along with Employee's concurrence, with the legal formalities accompanying the execution of this Agreement. Unless earlier terminated in accordance with the terms hereof, the term of this Agreement will be automatically extended for successive one-year periods, on the same terms and conditions as in effect immediately prior to the then-current expiration date, unless either party gives the other notice of non-extension at least three months before the then-current expiration date.

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, with venue to lie in Duval County,

and shall be binding on JEA's successors and assigns. 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 the 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 arising out of the exercise of Employee's duties and responsibilities to JEA with respect to acts entitled to indemnification pursuant to Section 768.28(9)(a), Florida Statutes. Employee shall be entitled to the benefits and protections of this Section 4.6 notwithstanding (i) any provision in this Agreement to the contrary, (ii) termination of Employee for cause (unless such claim for indemnification arises out of the same facts giving rise to the termination for cause) or without cause, or (iii) the termination of this Agreement.

4.7 **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.

4.8 **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.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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:

_____

_____

_____
[Employee 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.

_____
Ryan Wannemacher, Chief Financial Officer

Approved:

_____
Lynne Rhode, Chief Legal Officer

Subject: FW: Call
Location: Dial-In: 877-211-3621; Code: 232 495 3435

Start: Wednesday, July 17, 2019 3:30 PM EDT
End: Wednesday, July 17, 2019 4:00 PM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Lutrin, Jessica
Required Attendees: Hodges, Lawsikia <LHodges@coj.net>

-----Original Appointment-----
From: Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Sent: Wednesday, July 17, 2019 1:05 PM
To: Lutrin, Jessica; KHyde@foley.com; Rhode, Lynne C. (City of Jacksonville)
Subject: Call
When: Wednesday, July 17, 2019 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial-In: 877-211-3621; Code: 232 495 3435

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PENGAD 800-631-6989
EXHIBIT
65
mb
6/17/20 Vinyard

Subject: FW: Call
Location: Dial-In: 877-211-3621; Code: 232 495 3435

Start: Wednesday, July 17, 2019 4:30 PM EDT
End: Wednesday, July 17, 2019 5:00 PM EDT
Show Time As: Tentative

Recurrence: None

Meeting Status: Not yet responded

Organizer: Lutrin, Jessica
Required Attendees: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>

-----Original Appointment-----
From: Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Sent: Wednesday, July 17, 2019 3:15 PM
To: Lutrin, Jessica; 'KHyde@foley.com'; Rhode, Lynne C. (City of Jacksonville)
Subject: Call
When: Wednesday, July 17, 2019 4:30 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial-In: 877-211-3621; Code: 232 495 3435

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From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Wednesday, July 17, 2019 2:51 PM EDT
To: KHyde@foley.com <KHyde@foley.com>; Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Subject: RE: I have a very brief court call at 3:30 p.m.
Attachment(s): "GC-#1259642-v3-Employment_Agreement_A__Zahn_-_JEA.DOCX"

For use during today's call if needed. Existing (Jan 2019) employment agreement (for comparison).

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com

Building Community

From: Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>
Sent: Monday, July 22, 2019 4:17 PM EDT
To: Jones, Madricka L. - Executive Staff Assistant <joneml@jea.com>
Subject: Agreement
Attachment(s): "JEA - Separation and Transition Agreement - Form (Non-CEO) 4838-8862-9660 v.8.docx"

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

As discussed.

Jessica Lutrin | Partner
Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street | New York, NY 10019-6131
t +1.212.858.1090
jessica.lutrin@pillsburylaw.com

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PENGAD 800-631-6989
EXHIBIT
mb
66
6/17/20 Vinyard

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Thursday, September 05, 2019 11:12 AM EDT
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: conflict issue

Begin forwarded message:

From: "Columbo, Elizabeth" <EColumbo@nixonpeabody.com>
Date: September 4, 2019 at 3:28:08 PM EDT
To: "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>, "Rapaport, Mitch" <MRapaport@nixonpeabody.com>, "Orfano, Joseph E. - Treasurer" <orfaje@jea.com>
Cc: "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>
Subject: RE: conflict issue

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Ryan,

It is correct that we believe that we have a conflict in representing either JEA or MEAG on matters related to Vogtle as a result of our prior assistance to MEAG on tax matters related to Vogtle. However, this conflict affects both tax and bond/disclosure issues and, as a result, means that we cannot represent either JEA or MEAG on Vogtle matters absent a waiver from both parties. As discussed, as a result of that conflict, MEAG has determined to use other tax counsel on Vogtle matters and has informed us that it will not use Nixon Peabody attorneys on Vogtle tax matters. MEAG has agreed to provide Nixon with a waiver permitting Nixon to represent JEA on all bond, disclosure and tax counsel matters, with the exception that Mitch Rapaport cannot be involved in representing or advising JEA on Vogtle matters.

Thanks,

Liz

Elizabeth M. Columbo
Partner
ecolumbo@nixonpeabody.com
T 212-940-3183 | C 917-886-7284 | F 866-947-2264
Nixon Peabody LLP | Tower 46 | 55 West 46th Street | New York, NY 10036-4120
nixonpeabody.com [nixonpeabody.com] | @NixonPeabodyLLP [twitter.com]
[nixonpeabody.com]

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From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Wednesday, September 4, 2019 9:32 AM
To: Rapaport, Mitch <MRapaport@nixonpeabody.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Columbo, Elizabeth <EColumbo@nixonpeabody.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: conflict issue

[EXTERNAL E-MAIL]

Mitch,

Just to clarify, my understanding from the call is that it is Nixon's belief that a conflict of interest between MEAG and JEA has arisen related to tax work on Vogtle related securities and Nixon is no longer able to represent either MEAG or JEA in any Vogtle related tax questions without a waiver from both parties.

Can you please confirm that this is the case?

Thank you,
Ryan

Ryan Wannemacher
Chief Financial Officer
Direct: (904) 665-7223

PENGAD 800-631-6989
EXHIBIT
67 mb
6/17/20 Vinyard

From: Rapaport, Mitch
Sent: Thursday, August 29, 2019 2:49 PM
To: Wannemacher, Ryan F. - Chief Financial Officer; Orfano, Joseph E. - Treasurer
Cc: Columbo, Elizabeth
Subject: conflict issue

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Joe and Ryan—thanks again for taking the time yesterday to try to resolve the conflict issue. And I apologize if we hadn't been clear about what the approach was for going forward. Hopefully the following will help

Going forward, to address the conflict issue that has arisen, Nixon Peabody would continue to represent JEA as bond, tax and disclosure counsel on all finance and related matters provided that, Mitch Rapaport [and Bruce Sercuk] would not be involved in providing tax advice to JEA with regards to Plant Vogtle. Other Nixon Peabody tax lawyers would be able provide tax advice in connection with Plant Vogtle and other Nixon Peabody lawyers would be able to provide bond and disclosure counsel advice with respect to Plant Vogtle.

Let us know if this makes sense or if you'd like to have a follow up discussion.

Mitch Rapaport
Partner
mrapaport@nixonpeabody.com
T 202-585-8305 | C 202-288-4005 | F 866-947-3737
Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-5327
nixonpeabody.com [nixonpeabody.com] | @NixonPeabodyLLP [twitter.com]
[nixonpeabody.com]

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From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Wednesday, September 11, 2019 8:29 PM EDT
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
BCC: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: Fwd: conflict issue

I recommend that we not respond yet.

Begin forwarded message:

From: "Rapaport, Mitch" <MRapaport@nixonpeabody.com>
Date: September 11, 2019 at 5:38:39 PM EDT
To: "Columbo, Elizabeth" <EColumbo@nixonpeabody.com>, "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>, "Orfano, Joseph E. - Treasurer" <orfaje@jea.com>
Cc: "Vinyard, Herschel T. - Chief Administrative Officer" <vinyht@jea.com>
Subject: RE: conflict issue

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Ryan—we thought we'd check back on this. Hope all is well.

Mitch Rapaport
Partner
mrapaport@nixonpeabody.com
T 202-585-8305 | C 202-288-4005 | F 866-947-3737
Nixon Peabody LLP | 799 9th Street NW | Suite 500 | Washington, DC 20001-5327
nixonpeabody.com [nixonpeabody.com] | @NixonPeabodyLLP [twitter.com]
[nixonpeabody.com]

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From: Columbo, Elizabeth <EColumbo@nixonpeabody.com>
Sent: Wednesday, September 4, 2019 3:28 PM
To: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Rapaport, Mitch <MRapaport@nixonpeabody.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: conflict issue

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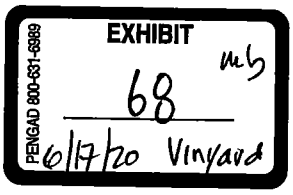
Liz

Elizabeth M. Columbo
Partner
ecolumbo@nixonpeabody.com
T 212-940-3183 | C 917-886-7284 | F 866-947-2264
Nixon Peabody LLP | Tower 46 | 55 West 46th Street | New York, NY 10036-4120
nixonpeabody.com [nixonpeabody.com] | @NixonPeabodyLLP [twitter.com]
[nixonpeabody.com]



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From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Wednesday, September 4, 2019 9:32 AM

To: Rapaport, Mitch <MRapaport@nixonpeabody.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Columbo, Elizabeth <EColumbo@nixonpeabody.com>; Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: RE: conflict issue

[EXTERNAL E-MAIL]

Mitch,

Just to clarify, my understanding from the call is that it is Nixon's belief that a conflict of interest between MEAG and JEA has arisen related to tax work on Vogtle related securities and Nixon is no longer able to represent either MEAG or JEA in any Vogtle related tax questions without a waiver from both parties.

Can you please confirm that this is the case?

Thank you,
Ryan

Ryan Wannemacher
Chief Financial Officer
Direct: (904) 665-7223

From: Rapaport, Mitch
Sent: Thursday, August 29, 2019 2:49 PM
To: Wannemacher, Ryan F. - Chief Financial Officer; Orfano, Joseph E. - Treasurer
Cc: Columbo, Elizabeth
Subject: conflict issue

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Joe and Ryan—thanks again for taking the time yesterday to try to resolve the conflict issue. And I apologize if we hadn't been clear about what the approach was for going forward. Hopefully the following will help

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Let us know if this makes sense or if you'd like to have a follow up discussion.

Mitch Rapaport
Partner
mrapaport@nixonpeabody.com
T 202-585-8305 | C 202-288-4005 | F 866-947-3737
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21 West Church Street
Jacksonville, Florida 32202-3139

September 27, 2019

St. Johns County ("SJC")
Attn: Mr. Michael D. Wanchick
County Administrator, St. Johns County
500 San Sebastian View
St. Augustine, FL 32084

ELECTRIC

WATER

SEWER

Re: Interlocal Agreement ("Agreement") – Notice of Exclusive Purchase Event ("Notice")

Dear Mr. Wanchick,

Thank you for your letter dated August 27, 2019 stating SJC's staff will "recommend that the Board of County Commissioners investigate and negotiate the purchase of JEA assets . . . should such action be determined to be in the best interest of [SJC] residents and businesses." We are also in receipt of your September 11, 2019, letter requesting an update on JEA's Invitation to Negotiate ("ITN") timeline.

JEA has set October 7, 2019 as the deadline to submit responses to JEA's ITN #127-19. Our evaluation team will meet and post a Notice of Intent to Negotiate on October 18, 2019. JEA expects that it will take several months to negotiate with the various respondents. At the conclusion of the negotiation, the JEA Board will, in the Spring of 2020, either approve the ITN recommendation or conclude the ITN with no change to JEA.

JEA understands SJC's desire to evaluate its option to purchase JEA assets in SJC. To that end, the following letter and support documentation is intended to aid the SJC Board of County Commissioners' analysis of the impacts on SJC, its residents, and its businesses. The enclosed Cost-Benefit Analysis and below figures have been prepared by JEA and its consultants.

A SJC Board of County Commissioners decision to exercise its purchase option under the Agreement would:

- Require SJC to more than double its debt load by adding over $340 million in debt (>$26 million per year);
- Increase water and sewer rates on JEA customers in SJC by over 15%;
- Deprive SJC JEA customers of over $34 million in utility rebates;
- Eliminate an immediate increase in tax base of over $300 million;
- Forego new revenues for SJC of over $4 million per year;
- Reduce SJC's current revenues by $3 million per year;
- Require SJC to increase its capital expenditures over $10 million per year;
- Increase the risk that SJC's Consumptive Use Permit (CUP) would be insufficient to meet the county's needs to serve residents and business while promoting economic growth; and
- Eliminate over $600 million of new taxable property values over the next 30 years.

Regarding your request for additional information, please note that not all of the information you requested is maintained in the ordinary course of business or readily available. JEA is working to assemble the requested information and will provide you all of the information that is available to assist you in making a decision. In addition, JEA is meeting with your staff on October 3 to discuss the materials requested in your letter of September 11.

PENGAD 800-631-6989
EXHIBIT
MD
69
6/17/20 Vinyard

Finally, please accept this letter as formal Notice of the ninety (90) day period upon which JEA requests SJC submit its decision on whether to: i) exercise a purchase option under the Agreement; or ii) waive any purchase option under the Agreement.

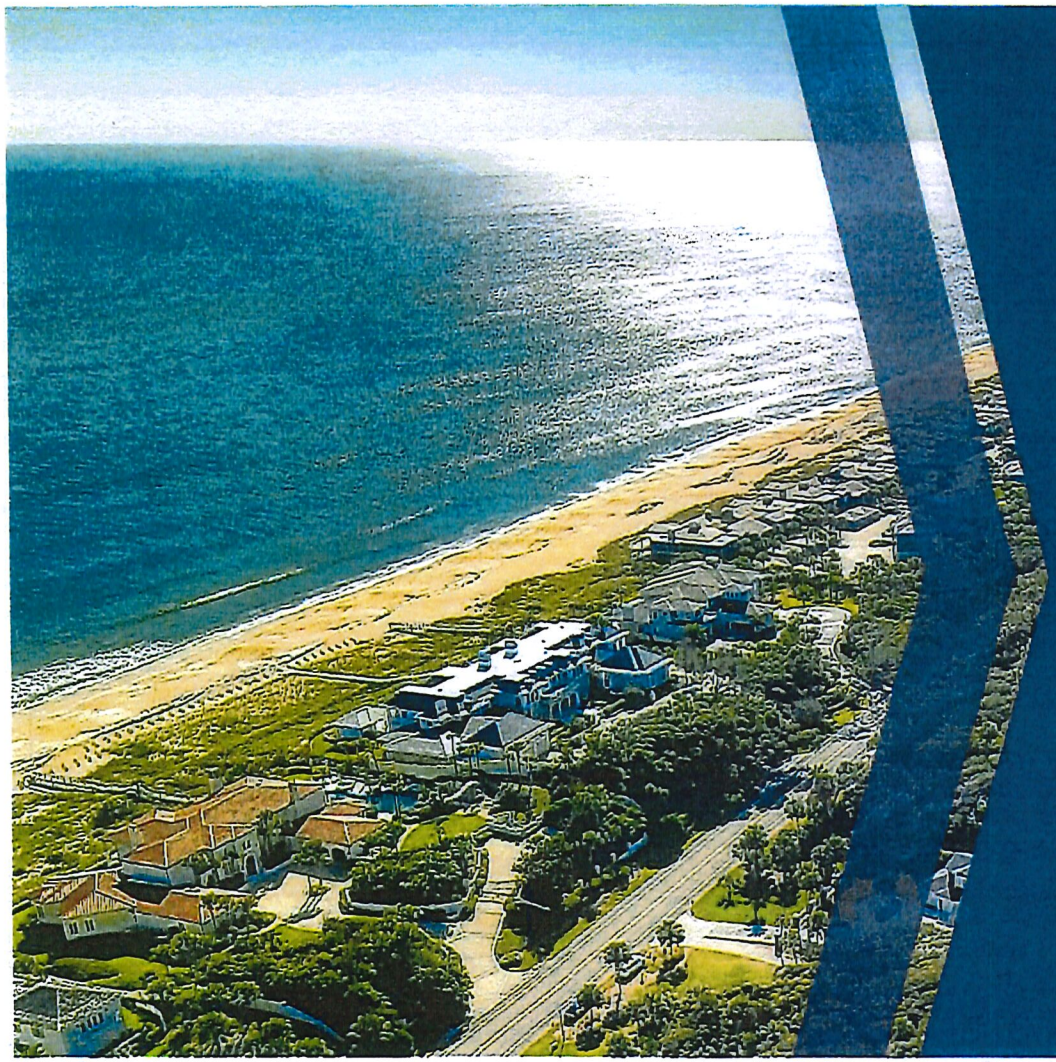
Please contact me if you have any questions.

Very truly yours,

Herschel T. Vinyard Jr.
Chief Administrative Officer

Enclosure

cc: St. Johns County Board of County Commissioners
Hon. Hunter S. Conrad, St. Johns County Clerk



COST-BENEFIT FOR
ST. JOHNS COUNTY

JEA®

WHY CONTINUE TO PARTNER WITH JEA?

Overview of Pros and Cons

BENEFITS of Remaining with JEA/ITN

- Strengthen overall financial health of the County
- No increase in County debt and debt service
- Immediate increase to tax base and revenue
- The County would participate in the potential benefits of the ITN, e.g. customer rebates, rate stability, environmental protections

Potential Financial Gain with JEA: $91,300,000

COSTS to SJC for Purchasing Water/Wastewater System

- County would need to raise customer rates
- County's debt would double
- County's debt service would triple
- County's revenues would go down with loss of new tax base, ad valorem tax revenue and revenue share
- Elimination of potential benefits of the ITN
- Risk would increase, with potential impact on County's credit metrics and ratings

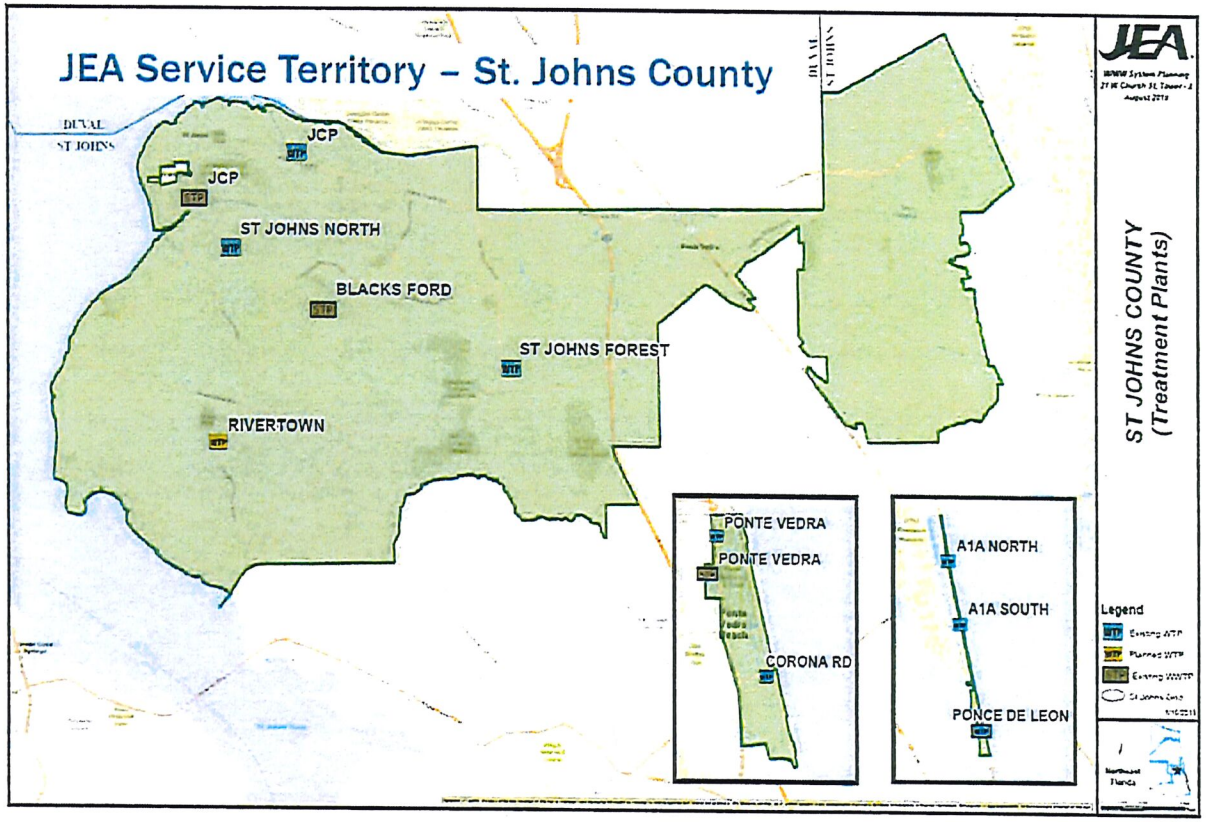
Total Cost of Ownership: $1,311,000,000

ESTIMATED NET BENEFIT TO REMAIN WITH JEA: $1,402,300,000

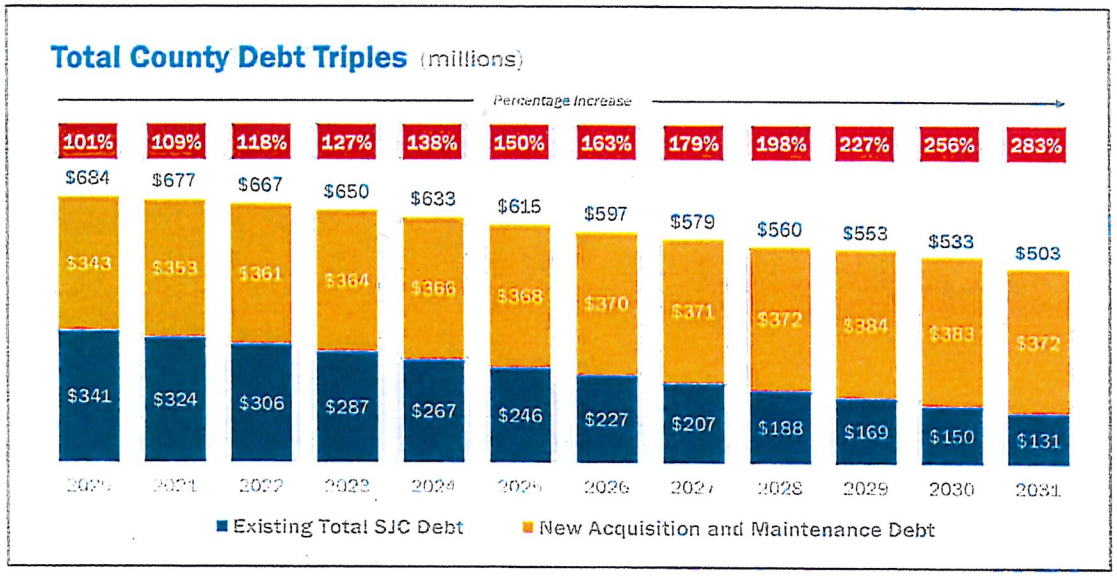
SYSTEM OVERVIEW

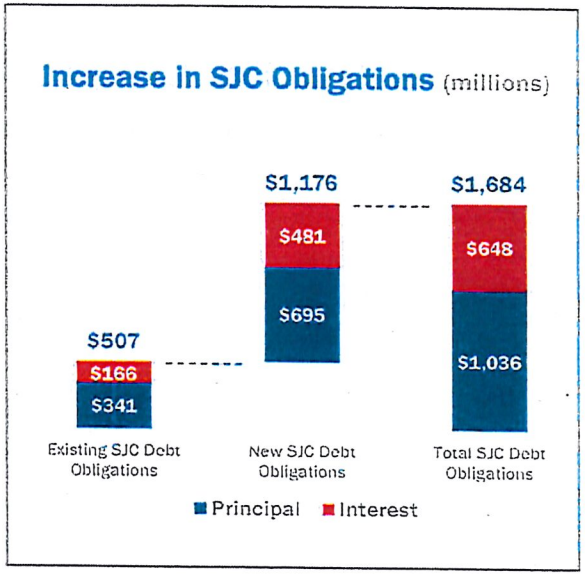
JEA System in St. Johns County:

- 77,600 Customers
- 1,521 Miles of Pipe
- 4 Wastewater Treatment Plants
- 9 Water Treatment Plants
- 2 self-contained systems – Ponte Vedra & Ponce de Leon



EXERCISING PURCHASE OPTION *DOUBLES* SJC DEBT AND *TRIPLES* SJC DEBT SERVICE



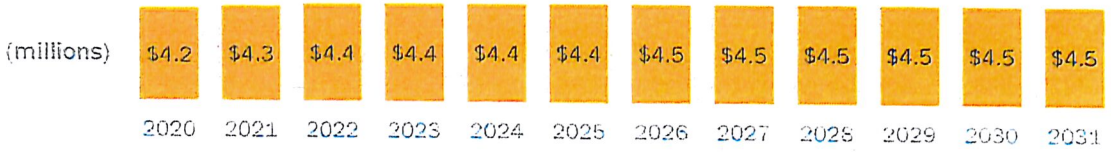


- New acquisition financing would be a minimum of $340 million
- Total debt for the County would increase by more than $350 million
- Annual debt service could increase by more than $25 million
- Debt service would triple with total obligations increasing from $507 million to more than $1.6 billion

$90 MILLION HIGHER REVENUES FOR SJC BY REMAINING WITH JEA

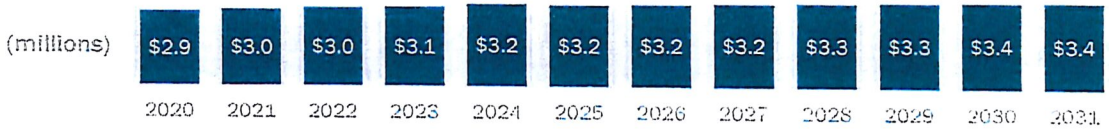
Annual Ad Valorem Tax Revenue

$53 million revenue potential



Revenue Share

$38 million protection of revenue share



Net Gain to St. Johns County

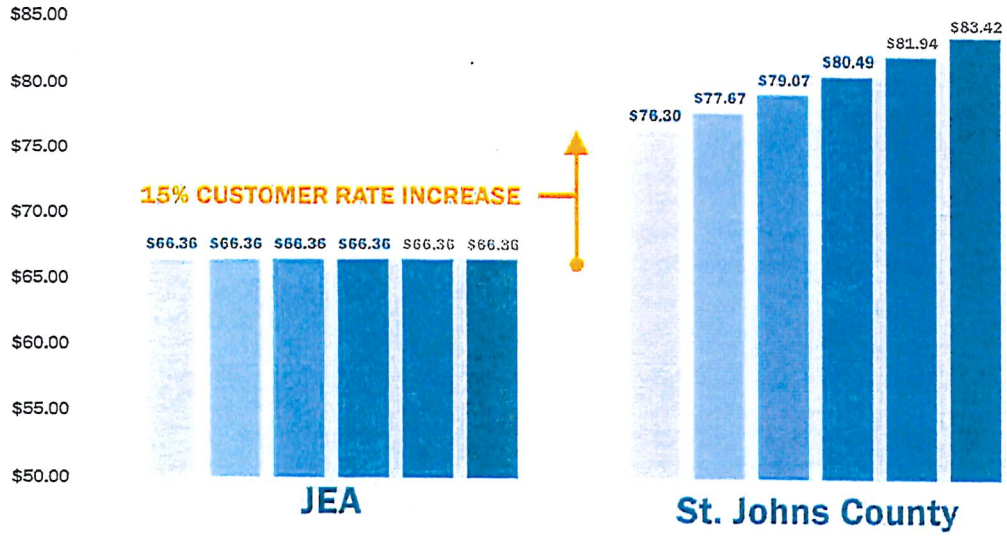
$90 million total protected and new revenue for the County through 2031 (Interlocal period)

AN ACQUISITION BY SJC MEANS CUSTOMERS WILL PAY MORE

Moving away from JEA makes service immediately more expensive for SJC customers, both in monthly customer bills as well as customers not receiving rebates

Water & Sewer Bill Comparison Outlook

(Estimate, 6kgal consumption)



JEA has no planned rate increases in Water or Wastewater for the next 5 years

St. Johns County indexes rates to the CPI-U from July to July *(Utilized FY20 increase 1.8% to forecast)*

REBATES FOR SJC CUSTOMERS

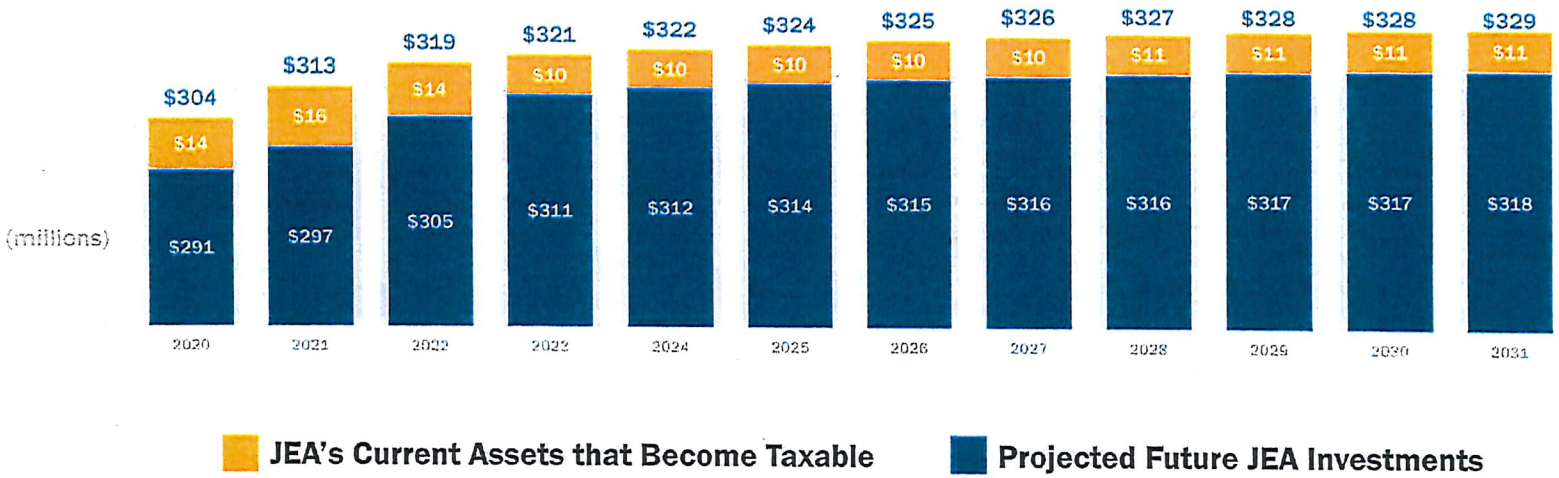
Proposed $350 customer rebate per JEA account in event of a transaction

TOTAL SJC Customer Value:

≈ $34.4 million

PRIVATE OWNERSHIP WOULD CREATE MORE THAN A $300 MILLION NEW TAX BASE

Increase in Tax Base and Net Investment



SJC WILL NEED TO INVEST SIGNIFICANTLY TO ACCOMMODATE ECONOMIC GROWTH

- SJC imports 65% of potable water from outside the County (currently 8 MGD) to serve their service area
- SJC Consumptive Use Permit (CUP) expires in 2024 and will need to be increased in a difficult water-withdrawal permitting environment
- By 2035, SJC will be required to get an additional allocation of 5 MGD (if available) and build considerable capacity to serve the area
- SJC would not receive from JEA the approximately $40 million planned in capital water projects over the next 5 years.

From: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Sent: Tuesday, November 12, 2019 4:57 PM EST
To: Alan Howard <ahoward@milamhoward.com>
Subject: scan
Attachment(s): "scan_mcdonm_2019-11-12-16-56-21.pdf"

I can't remember if we discussed.

HTV

Herschel T. Vinyard Jr.
Chief Administrative Officer
Direct: (904) 665-8303
Mobile: (904) 504-0510

From: McDonald, Nancy M - Executive Assistant <mcdonm@jea.com>
Sent: Tuesday, November 12, 2019 4:57 PM
To: Vinyard, Herschel T. - Chief Administrative Officer <vinyht@jea.com>
Subject: FW: Your scan (Scan to My Email)

Nancy McDonald
Executive Assistant to
Herschel Vinyard, Chief Administrative Officer
Sherry Hall, VP & Chief Government Affairs Officer
Direct: (904) 665-4290
Mobile: (904) 626-5989
Fax: (904) 665-4238

From: McDonald, Nancy M - Executive Assistant <mcdonm@jea.com>
Sent: Tuesday, November 12, 2019 4:57 PM
To: McDonald, Nancy M - Executive Assistant <mcdonm@jea.com>
Subject: Your scan (Scan to My Email)

Let's discuss after you review. HOS

MILAM HOWARD NICANDRI GILLAM & RENNER P.A.

To: JEA

ATTORNEY-CLIENT PRIVILEGED

Date: November 4, 2019

Re: Interlocal Agreements
Analysis of 90-day Notice Requirement

Background

In connection with JEA's Invitation to Negotiate #127-19 for Strategic Alternatives (the "ITN"), JEA sent notices to St. Johns County and Nassau County on September 27, 2019 (the "September 27 Notices") as follows:

St. Johns County

> *Finally, please accept this letter as formal Notice of the ninety (90) day period upon which JEA requests SJC submit its decision on whether to: i) exercise a purchase option under the Agreement; or ii) waive any purchase option under the Agreement.*

Nassau County

> *Please provide a written response (if required under your bylaws or local rules, a board resolution) either, (a) exercising the County's right of first refusal under Section 5.2 of the Agreement or (b) waiving and rejecting such right and discharging JEA of further obligations under Section 5.2 of the Agreement.*

The notices are required under the terms of the Interlocal Agreements between JEA and each of St. Johns County and Nassau County.[1] Each of those Agreements include a right of first refusal provision that is implicated by the ITN. However, St. Johns County and Nassau County have both indicated that they do not recognize the September 27 Notice as an effective notice under their respective Interlocal Agreements.

ANALYSIS

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[1] St. Johns County/JEA Water and Wastewater Interlocal Agreement dated July 20, 1999 between St. Johns County and JEA, as modified by that certain First Addendum to the St. Johns County/JEA Water and Wastewater Interlocal Agreement dated December 19, 2001 ("First Addendum"), as further modified by that certain Second Addendum to the St. Johns County/JEA Water and Wastewater Interlocal Agreement dated July 2, 2003 ("Second Addendum"), as further modified by that certain Settlement Agreement and Third Addendum to the St. Johns County/JEA Water and Wastewater Interlocal Agreement dated January 30, 2014 ("Third Addendum") (collectively, the "SJC Agreement"); and Nassau County/JEA Water and Wastewater Interlocal Agreement dated December 17, 2001 between Nassau County and JEA (the "Nassau Agreement").

OFFICE 904 357 3660 FAX 904 357 3661
FOURTEEN EAST BAY STREET · JACKSONVILLE, FL 32202

ATTORNEY-CLIENT PRIVILEGED

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1. St. Johns County Agreement

The SJC Agreement has two provisions that are implicated by the ITN, but for purposes of this memorandum only one provision is relevant: Section 5.2 which grants to St. Johns County a right of first refusal.[2]

Section 5.2 of the SJC Agreement provides that JEA has the right to sell or lease all of the Utility System.[3] Additionally, JEA has the right to sell or lease any part of the Utility System, provided that JEA does not divide or partition for sale or lease the original Service Territory (as defined in the SJC Agreement) acquired from JCP. However, prior to any such sale or lease, St. Johns County has a right of first refusal at a purchase price calculated in accordance with Section 5.6 of the SJC Agreement.

no-bifurcation term is contrary to SJC purchase option

Section 5.2 further provides that St. Johns County has "90 days from receipt of written notice from JEA of its intent to sell or lease the Utility System." Failure by St. Johns County to respond within the 90-day period shall be deemed a decision not to enter into negotiations.

The right given to St. Johns County in Section 5.2 is more correctly described as an "option" or a "right of first offer." Under Florida law, a right of first refusal is "a right to elect to take specified property at the same price and on the same terms and conditions as those contained in a good faith offer by a third person if the owner manifests a willingness to accept the offer." *Steinberg v. Sachs*, 837 So. 2d 503, 505 (Fla. 3rd DCA 2003). The *Steinberg* court held that the right was executory and that the price and other terms are not set forth in a right of first refusal because those are dictated by a third party, whose offer the holder of the right of first refusal must match.

In contrast, an "option" is defined as an agreement where a seller agrees to sell on specified terms and conditions, which creates a right for the buyer to accept and is therefore deemed an executed contract. *See Coastal Bay Golf Club, Inc. v Holbein*, 231 So. 2d 854, 857 (Fla. 3rd DCA 1970).

In the SJC Agreement, the agreement to sell is irrevocable and the pricing formula is expressly set forth in Section 5.6. There are no provisions for "matching" an offer made by a third party. Therefore, notwithstanding the incorrect use of the term "right of first

---

[2] Section 5.1 of the SJC Agreement grants St. Johns County the right to purchase the Utility System upon the occurrence of certain events which are not applicable in the instant case.

[3] The SJC Agreement and right of first refusal were originally executed in connection with JEA's purchase of JCP, a self-contained utility system, in 1999. The right of first refusal made more sense in that context than it does now after the expansion of JEA's service territory in St. Johns County with the Nocatee and Rivertown developments that cannot be easily separated from JEA's integrated water and wastewater systems.

ATTORNEY-CLIENT PRIVILEGED

refusal," the rights granted to St. Johns County in Section 5.2 of the SJC Agreement are ~~clearly an~~ option, not a right of first refusal.

The distinction is important because the option granted to St. Johns County and its rights to exercise same are not dependent on any external factors such as an offer by a third party, as would be the case with a right of first refusal. Rather, the option right is triggered by a decision by JEA ~~to sell or lease the Utility System.~~ That decision is vested exclusively in JEA and JEA therefore has sole authority to trigger the option and the 90-day clock.

In the September 27 Notice, JEA triggered the 90-day clock. St. Johns County and Nassau County lack any authority under the Interlocal Agreements or otherwise to challenge the validity of the September 27 Notices and the commencement of the option exercise period. If they choose to disregard the September 27 Notices, they do so at their own peril. Section 5.2 of the Interlocal Agreements provide that, if the County does not respond within the 90-day period, it will be deemed to have waived its right to purchase.

Moreover, the Counties cannot avoid the consequences of the September 27 Notices by claiming they lack the magic words: "JEA intends to sell."[4] The SJC Agreement requires that the County respond within 90 days of receipt of written notice from JEA and the additional verbiage in Section 5.2 of the SJC Agreement is mere surplusage. JEA has expressly referenced the Section 5.2 option right in its September 27 notice to Nassau County and invoked the 90-day period in its September 27 notice to St. Johns County. That reference to the 90-day notice could have no other meaning.

The language of the Interlocal Agreements is clear and unambiguous. It is incumbent upon the Counties to respond to the September 27 Notices or forfeit their rights under the Option. The Counties cannot deny that notice has been given and at the same time enter into negotiations for the purchase as if it had been given. Nor can they wait 90 days, then exercise with the ~~express purpose of~~ protracted negotiations they could then abandon at any time, thus frustrating the intended process. Every contract in Florida contains an implied covenant of good faith and fair dealing. *See Sepe v. City of Safety Harbor*, 761 So.2d 1182, 1184 (Fla. 2d DCA 2000); RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981).

Consistent with the implied covenant of good faith, the Counties should act in accordance with the terms of Interlocal Agreements and not try to have it both ways by denying that the 90-day notice has been given while choosing to negotiate as if it has been given, thereby trying to "game" the contract and buy more time to exercise ~~its rights under~~ the option. *Ins. Concepts & Design, Inc. v. Healthplan Services, Inc.*, 785 So.2d 1232, 1234-35 (Fla. 4th DCA 2001) ("the purpose of the implied covenant of good faith is "to protect the reasonable expectations of the contracting parties."). *See also Cox v. CSX*

[4] See remarks of Mike Mullin, Nassau County Attorney and Nassau County Manager, at Nassau County Board of County Commissioners meeting, October 21, 2019.

Intermodal, Inc., 732 So.2d 1092, 1097 (Fla. 1st DCA 1999). Moreover, good faith means honesty, in fact, in the conduct of contractual relations. *Burger King Corp. v. C.R. Weaver*, 169 F.3d 1310, 1315 (11th Cir. 1999) (citing *Harrison Land Dev. Inc. v. R & H Holding Co.*, 518 So.2d 353, 355 (Fla. 4th DCA 1987)); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 205 cmt.(a) (1981).

2. Nassau County Agreement

The Nassau Agreement is substantially identical to the SJC Agreement with one notable exception: Section 5.2 of the Nassau Agreement provides that Nassau County has a right of first refusal to purchase JEA assets in the county at the purchase price set forth in Section 5.6 <u>or at the purchase price which JEA intends to sell to a third party</u>, whichever is lower. The Nassau Agreement is still an option, but with the twist of an alternative price to the Section 5.6 price.[5] Notwithstanding that alternative pricing option, Section 5.2 of the Nassau Agreement unambiguously provides that the County's rights are still triggered by the 90-day notice from JEA. The analysis above regarding the SJC Agreement applies equally to Nassau County.

Likewise, the analysis regarding the implied covenant of good faith and fair dealing remain applicable. The County cannot, as was suggested in an exchange between County Attorney Mike Mullin and County Commissioner Aaron Bell, engage in a process of waiting 90 days from the September 27 Notice, exercise the option, and later retract the exercise of option in order to "drag-out" the process of negotiating an agreement.[6] As noted above, the implied covenant of good faith means honesty in the conduct of contractual relations. *See Burger King Corp., supra.*

Conclusion

The September 27 Notices were effective as the 90-day notice required under Section 5.2 of the Interlocal Agreements. St. Johns and Nassau Counties are "on the clock" to exercise their option. They cannot engage in delay solely for the purpose of delay and strategically defer meaningful negotiation. To do so would be a breach of the implied covenant of good faith and fair dealing.

Although not set forth in detail in the Interlocal Agreements, the commercially reasonable process to be followed would be for the Counties to make a go or no-go decision during the 90-day period ending December 27, 2019. Then the County should sign a letter of intent with JEA to buy the assets, pay a deposit to JEA towards the purchase price, begin good faith negotiations of a definitive purchase agreement, and initiate the necessary bond funding process.

---

[5] The Nassau Agreement language is problematic in that the price offered by a third party may not, and in the instant case is not, known at the time the 90-day notice is given.
[6] *Ibid.*

John A. DeVault, III
Charles P. Pillans, III
Henry M. Coxe III
C. Warren Tripp, Jr.
Allan F. Brooke II
R.H. Farnell II
O David Barksdale
Brian T. Coughlin
Michael E. Lockamy
John G. Woodlee
Ashley Wells Cox
Michael E. Halkitis, Jr.
Lidija I. Barauskas

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May 18, 2020

VIA EMAIL
Mr. Sean B. Granat
Deputy General Counsel
Office of General Counsel
City of Jacksonville
117 Duval Street, Suite 480
Jacksonville, Florida 32202

Dear Mr. Granat:

During a meeting last week with our client, Herschel Vinyard, JEA CEO Paul McElroy read from a prepared script that Mr. Vinyard could either resign from JEA or the Office of General Counsel ("OGC") would commence an investigation into Mr. Vinyard's conduct as an employee. We contacted you shortly afterward and asked the basis for the investigation and you said that Mr. Vinyard was "one of the people involved with Aaron Zahn." You also said that it was "very likely" that you already knew what the conclusion of the investigation would be. You ended the conversation by saying that "once we start this investigation, it'll be a public record, and we know that Herschel is a lawyer." We can only interpret that as an inappropriate threat to resign. Since that initial conversation, we have repeatedly asked for you to identify any ground that might merit an investigation, and after consulting with JEA, you have refused.

Given your comments and refusal to provide any information about why an investigation is warranted, we can only surmise that the conclusion of the investigation has been prearranged, regardless of the facts. Therefore, we offer the following for JEA's consideration:

PENGAD 800-631-6989
EXHIBIT
70
6/17/20 Vinyard

Mr. Vinyard viewed the Performance Unit Plan as a misplaced idea.

The narrative perpetuated over the last several months that the JEA Senior Leadership Team ("SLT") uncritically and unanimously supported the Performance Unit Plan ("PUP") is inaccurate. Mr. Vinyard and other SLT members told Mr. Zahn that the PUP was imprudent. On more than one occasion, Mr. Vinyard, in the presence of others, counseled Mr. Zahn that the PUP should not be pursued and that it could fatally injure any restructuring JEA's Board might pursue. Mr. Zahn nevertheless elected to move forward with developing the PUP with the input of OGC and pursuant to Board authority.

Mr. Vinyard set up "circuit breakers" to ensure any plan would be legally and ethically compliant.

Mr. Vinyard did more than just express his concerns regarding the PUP, he inserted multiple "circuit breakers" into the PUP process to ensure that the plan would be vetted and reviewed on legal and ethical grounds. He instructed JEA's outside counsel to meet with the Florida Attorney General's Office to discuss the legality of the plan, which they did in August 2019. Mr. Vinyard later insisted that OGC, with the assistance of outside counsel, request a formal opinion from the Florida Attorney General's Office. He also insisted that the Florida Commission on Ethics review the plan after the Attorney General's Office completed its review. Finally, he advised that no plan could move forward without approval of the Internal Revenue Service (IRS).[1] In sum, Mr. Vinyard questioned the prudence of the PUP and took action to have the appropriate governmental authorities review the ethics and legality of the entire plan.

---

[1] In his interview with OGC on January 6, 2020, Mr. Vinyard observed that the IRS approval of a deferred compensation plan such as the PUP was a matter of Florida law and expressed his belief that the delay created by approaching the IRS would cause the PUP election period to fall *after* any recapitalization event was triggered. In other words, a PUP payout upon recapitalization was improbable.

Mr. Vinyard and others at JEA worked closely with OGC on every significant decision made in 2019.

The suggestion that OGC was left in the dark or did not fully participate in the events of 2019 is inaccurate. Mr. Vinyard actively pursued OGC's participation and counsel in all of JEA's matters. As the OGC billing records show, the City's General Counsel and many of his deputies and assistants were closely involved in the matters taken up by JEA during 2019, including the PUP. Between June 1, 2019, and September 30, 2019, Mr. Gabriel and Deputy General Counsel Lawsikia Hodges collectively billed more than 250 hours on JEA-related work. During the same period, more than twenty OGC lawyers, excluding the two OGC lawyers assigned full-time to JEA, collectively billed JEA for more than 200 hours of work. JEA consulted OGC about every significant decision JEA made during Mr. Vinyard's tenure and relied on OGC's counsel and advice. It would be disingenuous to contend otherwise.

Mr. Gabriel has highlighted the tremendous work that went into vetting the legality of the PUP, including OGC's significant role in that process:

> I also appreciate the extensive time and effort that specialized outside counsel has dedicated to analyzing the PUP in order to achieve the Board's directive. *November 12, 2019 letter from Mr. Gabriel to Mr. Zahn*

> JEA gave OGC requisite time to research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. *December 6, 2019 email from Mr. Gabriel to Board Chair April Green*

OGC's position that the PUP could be pursued was accurately represented at the July Board meeting.

Near the end of the Board's discussion of the PUP at the July 23, 2019 meeting, Board member Alan Howard said, "I assume that this, this has been passed through by OGC. I know that we have some legal constraints over statutory plans." Ms. Rhode, an OGC lawyer, responded by saying, "yes sir."

In an effort to distance itself from the PUP, OGC has since suggested that Ms. Rhode's answer was untruthful, and that Mr. Vinyard (who was not even a participant in the discussion) had some duty to correct her. This is revisionist history and nonsense.

Before the July Board meeting, Mr. Zahn insisted that OGC sign off on all of the potential resolutions, including the resolution authorizing the PUP. Mr. Zahn said that he would not bring the resolutions to the Board without OGC's approval. OGC lawyers spent almost forty hours reviewing the Board materials and preparing for the July 23, 2019 Board meeting. This includes six hours that Ms. Hodges spent to "Review of JEA board revised meeting documents; confer with J. Gabriel and L. Rhode regarding same" as described in her July 18, 2019 billing entry. OGC's efforts culminated in a July 22, 2019 memorandum from Jason Gabriel, Lawsikia Hodges, and Lynne Rhode. That memorandum states in part:

> The Office of General Counsel, in consultation with outside counsel, has reviewed the proposed resolutions associated with each Option (Resolutions 2019-06 through 2019-10) [which includes the PUP resolution], and **we believe that the Board is authorized under its charter provisions, subject to applicable laws, to proceed ...**

Ms. Rhode's answer was accurate and truthful.

At the time, OGC had no problem with Ms. Rhode's answer. Ms. Hodges, who was Ms. Rhode's supervisor and one of the authors of the July 22, 2019, memorandum, watched the JEA Board meeting that day. She billed JEA 3.5 hours to, among other things, "Review

board meeting." Another OGC lawyer billed JEA 3.3 hours to "Attend JEA board of directors meeting." And the General Counsel, Mr. Gabriel, billed JEA 3.8 hours, presumably to watch the Board meeting as that was the only significant JEA event that day (Mr. Gabriel's time entries are non-descriptive). If OGC had concerns about its position not being accurately represented to the JEA Board or any other deficiencies at that meeting, Mr. Gabriel, Ms. Hodges, or the other OGC lawyers who watched the Board meeting would have said so. They did not.

OGC was timely provided a copy of the Nixon Peabody memorandum.

On April 22, 2020, the *Florida Times-Union* ran a story about the legal memorandum drafted by the Nixon Peabody law firm in May 2019.[2] The story wrongly implies that the Nixon Peabody memorandum had been ignored or concealed: "City lawyers didn't know about the existence of the Nixon Peabody memo until they recently began pulling JEA records as part of a review of outside legal work done during the utility's divisive privatization push. Why they were left out of the loop is a remarkable question."

The truly "remarkable question" is why OGC would deny that it received the May 20, 2019 Nixon Peabody memorandum and suggest it was "left out of the loop." JEA provided the Nixon Peabody memorandum to OGC within days of its receipt. The Nixon Peabody memorandum counsels that it would be "prudent for JEA to retain Florida counsel to provide additional analysis or further determinations regarding the issues we have raised in this memorandum." That is precisely what JEA did. Within two days of receiving the Nixon Peabody memorandum, Deputy General Counsel Lawsikia Hodges was contacted and asked to have OGC research the issues the Nixon Peabody memorandum identified. OGC billing records show that Ms. Hodges involved another OGC lawyer as early as May 22, 2019: "Receive and review voicemail from L. Hodges regarding assignment; Email exchange with L. Hodges; and Email exchange with L. Rhodes [sic] regarding status of project."

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[2] There is a difference between a general long-term incentive plan and the specific Performance Unit Plan. JEA had been considering implementing a long-term incentive plan since before Mr. Vinyard joined JEA. Upon joining JEA, Mr. Vinyard assisted with legal issues related to these efforts. The PUP, however, is a *specific* long-term incentive concept that Mr. Vinyard believes was first introduced at the Club Continental meeting in July 2019.

The "assignment" and "project" the OGC billing entry references was the further legal analysis recommended by Nixon Peabody. A copy of the Nixon Peabody memorandum was provided to OGC to use in that project. At least four OGC lawyers—including three of OGC's five deputy general counsels—participated in that project and collectively billed JEA for more than 50 hours of work. OGC's efforts to explore the issues identified by Nixon Peabody were memorialized in the "Compensation Plans" memorandum dated June 17, 2019.

Mr. Vinyard did not direct the retention of Mr. Hicks.

Much has been made of JEA's hiring of Mr. Deno Hicks as a subcontractor with Foley & Lardner. Mr. Vinyard does not recall whether he spoke with Mr. Hicks in July 2019 about retaining him to work for JEA or instructing him to work through Foley & Lardner as a sub-contractor. Mr. Vinyard believes that Mr. Hicks was given instructions directly by Mr. Zahn, but none of these events had any significance at the time.

What is significant, however, is that JEA ultimately retained Mr. Hicks through a public procurement process, and his eight-day sub-contract with Foley & Lardner, which JEA never made payment for, was not unprecedented or inappropriate. Before Mr. Vinyard joined JEA, JEA retained Mr. Hicks's services for years using a similar sub-contract with a Tampa-based law firm (OGC authorized and approved each of those monthly invoices).

Mr. Vinyard worked at the direction of the JEA Board.

We have reviewed OGC's findings from its investigation of Mr. Zahn and the bases it provides for firing Mr. Zahn for cause. Most of those allegations center on representations or misrepresentations that Mr. Zahn made to Board members. None of those applies to Mr. Vinyard. He had little interaction with Board members.

At its June 25, 2019 meeting, the Board authorized staff to examine, research, and make recommendations related to possible new structures for JEA. The minutes of that meeting show that the Board directed JEA staff "to present a plan for implementation of Status Quo 2 and plan for exploring ways to move beyond the constraints." As a result, the

presentation made at the July Board meeting and the work that led up to it was duly authorized. JEA was prepared to execute agreements with outside advisors immediately after the July Board meeting because of the due diligence authority the Board gave staff at the June Board meeting.

Mr. Vinyard is disappointed with Mr. McElroy's decision to place him on administrative leave, but he understands and respects that as CEO, Mr. McElroy is entitled to the team of his choice. Mr. Vinyard welcomes a chance to achieve an amicable separation from JEA, we encourage you to confer with Mr. McElroy about this information and give us a call.

Sincerely,

Henry M. Coxe III

Michael Lockamy

cc: Mr. Jason R. Gabriel (via email)