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MEMORANDUM

To: The Honorable Council Member John Crescimbeni
From: Gayle Petrie, Sr. Assistant General Counsel
Cc: Jason R. Gabriel, General Counsel
Re: JEA Retention Incentive Agreements
Date: June 26, 2018

I. Background

As requested, the Office of General Counsel has reviewed two of the JEA Retention Incentive Agreements regarding change of control that were entered into with 67 JEA employees (8 of which Agreements provided two times salary as a special payment for members of the senior leadership team and 59 of which Agreements provided one times salary as a special payment for members of the executive leadership team) to evaluate the provisions of the agreements and the manner in which they were created to determine if the agreements are valid agreements.

II. Question Presented

Does the executive director / CEO of JEA, or JEA Board Chair have the authority to enter into such Agreements?

III. Short Answer

No. First, any incentives agreement of this nature (assuming it contains provisions enforceable under Florida law) would require the approval of the entire JEA Board. Second, these agreements were not properly authorized and are not valid or enforceable against JEA with respect to a change of control event. Limited enforceability, as to a termination of employment event would in any event be limited to 20 weeks of compensation even if properly authorized.

IV. Discussion

With respect to change of control events, the payments provided for in these Agreements do not appear to be bonus or severance payments, as defined in F.S. 215.425, but instead are extra compensation prohibited under F.S. 215.425. In addition, the Agreements purport to provide CEO approved benefits to unclassified employees without proper approval by the JEA Board. Section 21.07(j) of the JEA Charter provides for unclassified employees to serve at the pleasure of JEA, and this means the JEA Board, not the CEO of JEA, would be the appropriate authority to authorize these types of agreements. In addition, Section 21.09(b) of the JEA Charter prohibits JEA employees from being a party to a contract that creates a liability of JEA. In other words, even if the Agreements provided bonuses or severance payments which are allowed by Florida Statutes, they must be approved by the JEA Board.

With respect to termination events that trigger extra compensation that constitutes severance payments, Section 215.425, Florida Statutes, limits such compensation provided for by contract to an amount not to exceed 20 weeks of compensation. Accordingly, even if the JEA Board authorized such contracts, compensation would be limited to 20 weeks.

In the opinion of the Office, these agreements are not valid or enforceable. As a final note, information currently available does not indicate that funding for these proposed agreements were included in the 17/18 JEA budget that was reviewed and approved by City Council.

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