
From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Tuesday, July 23, 2019 8:50 AM
To: Vinyard, Herschel T. - Chief Administrative Officer
Subject: Fwd: ELs

Get [Outlook for iOS](#)

----- Forwarded message -----

From: "**Powers, Ted**" <ted.powers@pillsburylaw.com>
Date: Tue, Jul 23, 2019 at 12:04 AM -0400
Subject: ELs
To: "Wannemacher, Ryan F. - Chief Financial Officer" <wannrf@jea.com>
Cc: "Amdur, Stephen B." <stephen.amdur@pillsburylaw.com>

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

Ryan,

Attached please find revised drafts of both ELs, each in tracked changes showing changes against the draft previously reviewed internally. We have had some back and forth over the course of today and believe both letters are close. The JPM letter has a bit more work to do, namely:

- Tail Period – bid/ask of 15/18 months
- Governing law – bid/ask of Florida/NY law generally, FL for authorization

There are also some slight opinion mechanics we should discuss.

MS letter will follow JPM letter on above two points, but otherwise appears in final form.

Please let us know if you have further comments or want to discuss.

Best,
Ted

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



[\[pillsburylaw.com\]](http://pillsburylaw.com)

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.

July [23], 2019

PERSONAL AND CONFIDENTIAL

Mr. Aaron Zahn
Managing Director and Chief Executive Officer
Mr. Ryan Wannemacher, Chief Financial Officer
JEA
21 West Church Street
Jacksonville, FL 32202

Dear Aaron and Ryan:

Pursuant to our recent discussions, I am pleased to confirm the arrangements under which Morgan Stanley & Co. LLC ("Morgan Stanley") ~~has been~~ engaged ~~since~~ as of the date hereof (the "Effective Date") by JEA (the "Company", "JEA" or "you") as your financial advisor in connection with the Company's Invitation to Negotiate Various Strategic Alternatives and Partnerships (the "ITN") as well as its analysis and consideration of various potential Transactions (as defined below) that may result from the ITN.

For purposes hereof, the term "Company Group" shall mean the Company, together with the (i) Electric System, which shall include the Bulk Power Supply System and JEA's interest in the Power Park (the "Electric Enterprise Fund"), and/or (ii) the Water and Sewer System, which shall include the District Energy System (the "Water and Sewer Enterprise Fund"), and including, for the avoidance of doubt, any subsidiary which owns or operates the Electric Enterprise Fund and/or the Water and Sewer Enterprise Fund or any entity to which any of the foregoing is transferred. The term "Strategic Transaction" shall mean, whether in one or a series of transactions, (a) any merger, consolidation, joint venture, or other business combination pursuant to which the business of any member of the Company Group is combined with that of any other person (any such person, together with its subsidiaries and affiliates, a "Strategic Partner"); or (b) the acquisition by a Strategic Partner, directly or indirectly, of substantially all of the assets, properties and/or businesses of any member of the Company Group, by way of a direct or indirect purchase, lease, license, exchange, joint venture or other means; the term "Recapitalization Transaction" shall mean, whether in one or a series of transactions, (a) a public-private partnership between a Strategic Partner and the business of any member of the Company Group by way of a direct or indirect purchase, investment, lease, license, concession agreement, or other means; or (b) the reorganization or transfer of assets of any member of the Company Group to another member of the Company Group or to an entity established by the Company for the sole purpose thereof; and the term "Transaction" shall mean any one or more of a Strategic Transaction or a Recapitalization Transaction.

We understand that the Company intends to engage J.P. Morgan Securities LLC ("J.P. Morgan") to act as its financial advisor in connection with the Company's ITN as well as its analysis and consideration of various potential Transactions (as defined below) that may result from the ITN. The terms of J.P. Morgan's engagement by you will be set out

in a separate letter between you and J.P. Morgan, a copy of which will be provided to Morgan Stanley.

During the term of our engagement, Morgan Stanley will

- (a) familiarize itself with the financial condition and business of the Company, including the Electric Enterprise Fund and the Water and Sewer Enterprise Fund, and assist the Company in reviewing the forecast of the Electric Enterprise Fund's and the Water and Sewer Enterprise Fund's projected operating performance prepared by the Company;
- (b) together with the Company's legal counsel and tax and accounting advisors, advise and assist the Company in the management and administration of the ITN process;
- (c) together with the Company's legal counsel and tax and accounting advisors, assist the Company in isits evaluation of the ITN responses and development of recommendations related to the optimal course of action;
- (d) assist the Company in familiarizing any prospective Strategic Partner with the financial condition and business of the Company, including the Electric Enterprise Fund's and the Water and Sewer Enterprise Fund's business, as applicable, familiarize itself with the financial condition and business of any Strategic Partner, and advise and assist the Company in considering the relative financial and operational merits and feasibility of one or more potential Transactions and the desirability of effecting a Transaction;
- (e) assist the Company in preparing confidential information memorandums and supporting marketing materials for distribution to potential Strategic Partners, which will describe the business and financial condition of the Company, including the Electric Enterprise Fund and the Water and Sewer Enterprise Fund, as applicable;
- (f) assist the Company in identifying and contacting potential Strategic Partners to ascertain their interest in a Transaction;
- (g) provide financial advice on the appropriate structure, purchase price, and terms and conditions of a Transaction;
- (h) advise and assist the Company with respect to the financial aspects of a Transaction;
- (i) advise and assist the Company in its negotiation of the financial aspects of a Transaction;
- (j) assist the Company in coordinating site visits, meetings, negotiation and discussion sessions, due diligence sessions, management presentations and similar matters with potential Strategic Partners, and assist the Company in populating, and administering, a data room to be used in connection with a Transaction; and

(k) if requested by the Company, provide such other financial advisory services in connection with any proposed transaction as may be agreed between the Company and Morgan Stanley.-

Please be advised that Morgan Stanley does not provide accounting, tax or legal advice. Morgan Stanley may provide its services through or in conjunction with one or more of its affiliates and references in this letter agreement to “Morgan Stanley”, “we” and “us” shall, except where the context otherwise requires, include any such affiliates.

As you know, our fees for services depend on the outcome of the assignment and are designed to reflect our contribution to a major corporate objective. It is our practice to charge a “Retainer Fee,” which is intended to reimburse us for our time and efforts expended in connection with this assignment. The Retainer Fee for this assignment is a quarterly fee of \$100,000 to be paid in ~~advance of each quarter, and the first installment of which is payable~~ arrears commencing upon execution of this letter agreement.

We will charge a fee of \$3,000,000 for an Opinion (as defined below) by Morgan Stanley in the event an Opinion is requested by the Company. To the extent the Company requests more than one Opinion (and such additional Opinion(s) are in accordance with Morgan Stanley’s customary practice), the Opinion Fee for each Opinion (including the first Opinion) shall be \$2,250,000. Any fee payable pursuant to this paragraph is the “Opinion Fee”. The Opinion Fee will be payable at the time Morgan Stanley delivers an Opinion, but shall be paid upon the earlier of closing of a Transaction or termination or abandonment of a Transaction.

Payable upon the closing of a Strategic Transaction, we will charge a “Transaction Fee” in an amount equal to the applicable percentage of the Net Consideration (as defined below) set forth below, against which any related Opinion Fee paid will be credited, to the extent not previously credited:

If the Net Consideration (as defined below) is: Applicable % of Net Consideration

Less than or equal to \$3.5 billion	0.200%
Greater than \$3.5 billion, but less than or equal to \$4.5 billion	0.275%
Greater than \$4.5 billion, but less than or equal to \$5.5 billion	0.350%
Greater than \$5.5 billion, but less than or equal to \$6.5 billion	0.425%
Greater than \$6.5 billion	0.500%

The term “Net Consideration” shall mean the total amount of cash and the fair market value of other property paid or payable in connection with a Transaction (including amounts paid into escrow) to any member of the Company Group, its customers or the City of Jacksonville, less, without duplication, ~~in the event of a Strategic Transaction structured under clause (a) of the definition of “Strategic Transaction”, (a) the fees and expenses of Morgan Stanley under this Agreement, (b) \$300 million, and (c) the principal amount of all indebtedness for borrowed money (including related defeasance costs, on~~

~~balance sheet pension deficits~~, swap unwind costs and transaction costs) (collectively, “Indebtedness”) of the Company outstanding immediately prior to consummation of the Strategic Transaction or, in the case of a sale of assets, all Indebtedness of the Company Group assumed by the Strategic Partner and, in any case, any Indebtedness of the Company Group retired or defeased by the Strategic Partner or issued to the Company Group or the City of Jacksonville in connection with the Strategic Transaction. Net Consideration shall also include, without duplication, the aggregate amount of any cash dividends or other distributions that are outside of the ordinary course and are declared and paid by the Company following the ~~closing of the Strategic Transaction~~Effective Date, amounts paid by the Company to repurchase any of its securities, or to repay any of its other Indebtedness, in each case outstanding on the date hereof, only to the extent such dividend, repurchase, or repayment is effected in connection with, in response to, or in anticipation of a Transaction or a proposal with respect thereto, plus the sum of the nominal value of any and all rate credits paid or payable to ratepayers in connection with a Transaction, plus any economic development commitments paid or payable to the ratepayers and the City of Jacksonville in connection with a Transaction, and, in the case of a sale of assets, the value of any working capital of the Company (other than cash) not acquired by the Strategic Partner. If the Net Consideration is subject to increase by contingent payments related to future events, the portion of Morgan Stanley’s Transaction Fee relating thereto shall be calculated and paid as and when such payments are made, regardless of the date on which it was made, except that amounts held in escrow shall be deemed paid at closing. For the avoidance of doubt, no element of Net Consideration shall be subject to double counting or shall otherwise be included more than once in determining Net Consideration.

In the event that a Recapitalization Transaction is consummated, the Transaction Fee payable to Morgan Stanley shall be \$7.5 million, which shall be payable upon the closing of a Recapitalization Transaction.

If any member of the Company Group receives any payment (the “Break-Up Fee”) from another person (excluding any payment as an indemnity or as reimbursement of expenses or liabilities incurred in connection with a proposed Transaction) following or in connection with the termination, abandonment, or failure to occur of any proposed Transaction, then the Company shall pay to Morgan Stanley a “Termination Fee” in an amount equal to ~~25~~12.5% of the Break-Up Fee (after deducting the Company’s out-of-pocket expenses actually incurred in connection with a proposed Transaction) ~~(which for the avoidance of doubt, shall not include the~~Termination Fee ~~shall be considered out-of-pocket expenses for purposes of this paragraph)~~ upon the receipt by such member of the Company Group of the Break-Up Fee, less any ~~fees~~Transaction Fees and Opinion Fees paid by the Company ~~[pursuant to Section 2(b) and 2(c) — IS THIS INTENDED TO REFER TO THE TRANSACTION FEE AND THE OPINION FEE?];~~ provided that in no event shall the amount payable under this paragraph, together with any such other fees previously paid hereunder, exceed an amount equal to \$7.5 million.

If in lieu of a Transaction, the Company, either directly or through any member of the Company Group, completes another transaction, other than a Transaction, with the assistance of Morgan Stanley, Morgan Stanley and the Company will negotiate in good faith appropriate compensation for Morgan Stanley, which will take into account, among

other things, the results obtained and the custom and practice among investment banking firms of comparable standing acting in similar transactions.

Notwithstanding any of the foregoing, in no event shall the compensation received by Morgan Stanley be less than the compensation of any other financial advisor, including J.P. Morgan, retained by the Company in connection with the Transaction. The Company agrees to arrange for payment of Morgan Stanley's fees set forth herein by wire transfer on or before the date(s) specified in this letter agreement.

Upon your request, we will render a financial opinion letter to the Company's Board of ~~directors~~Directors in accordance with our customary practice (an "Opinion") as to whether the consideration to be received by the Company and/or its customers in connection with a ~~Strategic~~ Transaction is fair from a financial point of view. The terms of our Opinion and the nature and scope of any analysis and investigation we undertake in order to render such Opinion shall be such as we consider appropriate in the circumstances. Any such Opinion will expressly exclude consideration of any compensation or compensation arrangements arising from the Strategic Transaction which benefit any officer, director or employee of the Company (in their capacities as such), or any class of such persons.

Morgan Stanley will rely on the accuracy and completeness, without verifying it independently, of any information we receive or review in connection with this engagement. We will not independently evaluate or appraise any assets or liabilities that may be involved in this engagement, or advise or opine on any related solvency issues. We will assume that any forecasted financial information reflects the best available estimates of future financial performance.

Notwithstanding anything herein to the contrary, Morgan Stanley and the Company agree that the Company (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the U.S. federal and state income tax treatment and tax structure of the transactions contemplated hereby, and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure. For this purpose, "tax structure" is limited to facts relevant to the U.S. federal and state income tax treatment of the Transaction and does not include information relating to the identity of the parties, their affiliates, agents or advisors.

If, within two years of the date hereof (and prior to the consummation of a Strategic Transaction that constitutes a change in control of the Company or a Recapitalization Transaction), the Company determines to issue any equity or debt securities through a public or a private placement, enter into a syndicated credit facility or other loan, or undertake any other type of investment banking transaction, other than a Transaction (including any merger, sale, acquisition, divestiture, joint venture or other business combination, any repurchase by the Company of a significant amount of its securities, any recapitalization of the Company, any spin-off, split-off or other extraordinary dividend of cash, securities or other assets of the Company, or any restructuring of debt securities of the Company (by consent, tender offer or otherwise)) (each an "Alternative Transaction"), the Company shall offer Morgan Stanley (which for purposes of this paragraph, shall include one or more of its designated affiliates) the right to make a

proposal to act as manager and bookrunner in the case of any such offering, as placement agent in the case of any such placement, as arranger and bookrunner in the case of any such syndicated credit facility, as lender in the case of any other loan, ~~as~~ and as financial advisor or dealer-manager, as applicable, in the case of any such restructuring of debt securities or other investment banking transaction. If the Company and Morgan Stanley agrees to agree that Morgan Stanley shall act in any such capacity, the Company and Morgan Stanley will enter into the appropriate form of agreement relating to the type of transaction involved and containing customary terms and conditions acceptable to the Company and Morgan Stanley, including provisions relating to the scope of Morgan Stanley's services, Morgan Stanley's compensation or other appropriate financial arrangements and an indemnification of Morgan Stanley.

The Company acknowledges that the foregoing is neither an express nor implied commitment by Morgan Stanley to act in any such capacity or to purchase or place securities, or to provide or be responsible to provide any financing or other financial services or enter into any other principal transactions, which commitment shall only be set forth in a separate written agreement in customary form for the type of services being provided. In addition, in accordance with its customary practices, Morgan Stanley's policy requires formal approval by the appropriate Morgan Stanley Commitment Committee, or other similar committee, as the case may be, prior to entering into such underwriting, placement, loan or other agreement and, in certain circumstances, ~~Derivatives Transactions-derivatives transactions.~~ Morgan Stanley acknowledges that the foregoing is neither an express nor implied commitment by the Company to engage Morgan Stanley to act in any such capacity or to issue securities or to enter into any credit facility or other loan or enter into any other transaction, which commitment shall only be set forth in a separate written agreement in customary form for the type of services being provided.

Without limiting the foregoing, the Company and Morgan Stanley acknowledges and agrees that, if requested in writing by the Company, Morgan Stanley shall consider arranging and / or providing new financing to potential Strategic Partners in connection with a Transaction (the "Financing Package"). Strategic Partners will be informed that Morgan Stanley has been retained as the Company's financial advisor and that there will be no requirement of any type that any Strategic Partner avails itself of the Financing Package being provided by Morgan Stanley, unless and until such Strategic Partner accepts such Financing Package in accordance with its terms. Each of the Company and Morgan Stanley agrees that bids will be considered fully on their merits whether or not such Financing Package is used. During the term of the engagement under the Engagement Letter, unless and until such Strategic Partner executes a financing commitment letter with Morgan Stanley as a financing provider, Morgan Stanley shall not enter into any agreement with any Strategic Partner pursuant to which Morgan Stanley agrees to (i) be the exclusive financing source for such Strategic Partner in connection with the Transactions, or (ii) not provide a Financing Package or other financing to any other Strategic Partner in connection with the Transactions. In the event that Strategic Partners seek, and Morgan Stanley agrees, to negotiate the terms of such Financing Package prior to submission of their respective bids, the Company understands that Morgan Stanley will establish separate financing teams to work with each of the Strategic Partners that elected to pursue such Financing Package, and each such financing team will conduct due diligence with such Strategic Partner, including, without

limitation, with respect to such Strategic Partner's plan and model for the Company. We will instruct the members of each such financing team (i) not to communicate about the Transactions with other firm personnel who are not staffed on their team (other than certain common resources, such as our senior business leaders, which may include, without limitation, heads of or senior members of bank loan and high yield capital markets and leveraged finance, equity and high yield research professionals, bank loan and high yield syndicate professionals, senior investment bankers with industry expertise (other than members of the Advisory Team), credit and credit ratings professionals, internal committee members, and legal, compliance and conflicts clearance departments); (ii) to save information in a drive or folder that only their Morgan Stanley team may access; (iii) to be careful about where they conduct conversations and access materials, particularly if they sit in close proximity to other firm personnel who are not staffed on their team; and (iv) in general, to safeguard confidential information and share such information exclusively with those that need to know such information. No person who is a member of the Advisory Team (as defined below) will become a member of a financing team, except with your prior written consent. None of the Morgan Stanley professionals that are part of any separate financing team working with Strategic Partners as described above will be members of the team of Morgan Stanley professionals providing advisory services to the Company (the "Advisory Team"). We will instruct the members of the Advisory Team (i) except as set forth in the following paragraph, not to communicate about the Transactions with the financing teams (other than certain common resources, such as our senior business leaders, which may include, without limitation, heads of or senior members of bank loan and high yield capital markets and leveraged finance, equity and high yield research professionals, bank loan and high yield syndicate professionals, senior investment bankers with industry expertise, credit and credit ratings professionals, internal committee members, and legal, compliance and conflicts clearance departments; provided that in no event shall any member of the Advisory Team share confidential information of the Company or strategic information regarding the Transaction with any member of any financing team); (ii) to save information in a drive or folder that the financing teams may not access; (iii) to be careful about where they conduct conversations and access materials, particularly if they sit in close proximity to firm personnel who are staffed on a financing team; and (iv) in general, to safeguard confidential information and share such information exclusively with those that need to know such information. Notwithstanding anything contained herein, during the term of this letter agreement, Morgan Stanley shall not act as M&A financial advisor to any party (other than the Company) in connection with a Transaction. In nor shall Morgan Stanley otherwise advise any party (other than the Company) specifically in connection with a Transaction without the Company's prior written consent. For the avoidance of doubt, the foregoing restriction does not apply to any activities on the "public" side of Morgan Stanley, such as investment management or wealth management services or other related services. In addition, in the event that, during the Tail Period, Morgan Stanley accepts any engagement to act as financial advisor to any party, other than the Company, or to arrange or provide financing to potential Strategic ~~Parties~~Partners in respect of a Transaction specifically in connection with such Transaction, then Morgan Stanley shall be deemed to have waived its rights to receive compensation under this letter agreement during the Tail Period.

Notwithstanding anything herein to the contrary, Morgan Stanley agrees to comply with all restrictions and limitations applicable to it under FINRA Rule 5110(f) relating to any

termination fees or rights of first refusal set forth herein, including that (a) any right of first refusal granted to Morgan Stanley hereunder to underwrite or participate in any future public offerings, private placements or any other financings that occur subsequent to the execution date of this letter agreement (a “ROFR”) shall in no event (i) have a duration of more than ~~three~~two years from (x) the date of commencement of sales of the first public offering contemplated by the ROFR granted in this letter agreement or (y) the date this letter agreement is terminated, or (ii) provide for more than one opportunity to waive or terminate the ROFR in consideration of any payment or fee, and (b) in the event that you terminate this letter agreement and our services hereunder for Cause, you shall have no obligation with respect to such ROFR. In addition, the parties hereto mutually acknowledge and agree that any fees arising from underwriting services provided under a ROFR shall be customary for those types of services. In addition, notwithstanding anything herein to the contrary and for the avoidance of doubt, no termination fee is payable pursuant to this letter agreement with respect to any future public offerings of securities by you or any of your affiliates. For purposes hereof, the term “Cause” shall mean Morgan Stanley’s or any of its affiliate’s gross negligence, bad faith, or willful misconduct in the performance of its services hereunder.

In addition to any of the foregoing fees for professional services, we will separately bill our reasonable fees of outside counsel relating to the Transaction incurred from time to time, which fees shall not exceed \$200,000 in the aggregate without the Company’s prior written consent, which written consent shall not be unreasonably withheld. Except with respect to such fees of outside counsel, Morgan Stanley and the Company have mutually agreed that Morgan Stanley will not seek expense reimbursement in connection with this engagement.

As you know, Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading, hedging and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of the Company, or any other company, or any currency or commodity, or instrument that may be involved in any of the transactions contemplated herein, or any related derivative instrument. Morgan Stanley and its affiliates may have provided, and may in the future seek to provide, financial advisory and financing services, in each case unrelated to the Transaction, for and may have received compensation from other parties now or that may become involved in any of the transactions contemplated herein. The Company acknowledges that the interests of Morgan Stanley and its affiliates engaged in providing such financial advisory and financing services may differ from those of the Company. Although Morgan Stanley in the course of its other activities and relationships may acquire information about the Transaction or other entities and persons which may be the subject of the engagement contemplated by this letter agreement, Morgan Stanley shall have no obligation to disclose such information, or the fact that Morgan Stanley is in possession of such information, to the Company or to use such information on the Company’s behalf.

The Company agrees that no claim shall be made by the Company (or by any of its subsidiaries or controlled affiliates or any of its or their respective directors, officers or employees) against Morgan Stanley and its affiliates and Morgan Stanley's and each affiliate's respective directors, officers, agents and employees and each other person, if any, controlling Morgan Stanley or its affiliates (each such entity or person being referred to as an "Exculpated Party") to recover, except to the extent that any losses, claims, demands or liabilities of any kind ("Liabilities") or expenses incurred in connection with, relating to or arising out of this letter agreement, the Transaction or any such person's role or services in connection therewith, are finally judicially determined to have resulted primarily from such person's bad faith, gross negligence or willful misconduct, and agrees that neither Morgan Stanley nor any other Exculpated Party shall have any liability (whether direct or indirect, in contract, in tort or otherwise) for, any Liabilities or expenses incurred in connection with, relating to or arising out of this letter agreement, the Transaction or any such person's role or services in connection therewith, except to the extent that any such Liabilities or expenses are finally judicially determined to have resulted primarily from such person's bad faith, gross negligence or willful misconduct.

The Company agrees, and represents to Morgan Stanley that, except to the extent inconsistent with applicable law or governmental or stock exchange regulation, or as may be otherwise waived in writing by Morgan Stanley, (a) if the Company enters into any agreement or arrangement with respect to confidentiality with any potential Strategic Partner, the Company shall require that any such agreement or arrangement shall provide for exculpation and indemnification of Morgan Stanley, in the form attached hereto as Exhibit A, (b) if the Company enters into any agreement or arrangement with respect to, or effects, any Transaction, the Company shall require that any such agreement or arrangement with respect to any Transaction will provide that the Strategic Partner or another party reasonably satisfactory to Morgan Stanley will provide indemnification and contribution in a form reasonably satisfactory to and for the benefit of Morgan Stanley and its affiliates, and Morgan Stanley's and each affiliate's respective directors, officers, agents and employees and each other person, if any, controlling Morgan Stanley or its affiliates with respect to this letter agreement, any Transaction and Morgan Stanley's role in connection therewith, and (c) the Company is responsible for responding to and defending any challenge by any party relating to the Company's authority to enter into, carry out or consummate any aspect of the Transaction.

Except as otherwise required by applicable law or governmental or stock exchange regulation (as reasonably determined by outside counsel to the Company), the Company will treat Morgan Stanley's advice, any material prepared by Morgan Stanley and the terms of the Agreement as confidential and will not disclose them to any third party (other than, on a confidential basis, to its counsel and other advisors in connection with a Transaction, subject always to the terms of the preceding sentence, it being understood that the Company will be responsible for any breach by such counsel or advisors of the provisions of this sentence) in any manner without Morgan Stanley's prior written approval; provided that the Company shall be entitled to utilize the Opinion in connection with its defense of any action, suit or proceeding relating to any ~~Strategic~~ Transaction; provided, further, that the Company may reproduce the Opinion in full in any information statement which the Company must, under any applicable law, file with any government agency, distribute to its stakeholders, or disclose to any local or state government agency and where such filing or disclosure must include the Opinion, or as may reasonably be

requested by, or deemed advisable by outside counsel to the Company in connection with a submission to, any governmental, regulatory or legislative body with oversight over a ~~Strategic~~-Transaction. In such event, the Company may also include references to Morgan Stanley and summarize the Opinion (in each case in such form as Morgan Stanley shall provide or pre-approve in writing, such approval not to be unreasonably withheld, conditioned, or delayed) in any such document. Morgan Stanley acknowledges that materials provided to the Company by Morgan Stanley in connection with this engagement may be released in response to a public records request pursuant to Florida law; provided that Morgan Stanley, in consultation with counsel to the Company, will be permitted to redact any information not subject to release (such as trade secrets), as permitted by Florida law, and may include appropriate language on all such materials limiting third party reliance with respect to such materials.

Morgan Stanley's financial advice and any material prepared by Morgan Stanley are intended solely for the benefit and use of the senior management and the Board of Directors of the Company (acting in their capacities as such) in considering any Transaction, is not on behalf of, and shall not confer rights or remedies upon, any employee, stakeholder (including without limitation, rate payers, tax payers and the City of Jacksonville) or creditor of the Company or any other person, and may not be used or relied upon for any other purpose (including, for the avoidance of doubt, for purposes of obtaining any approval that may be required in connection with a transaction). Morgan Stanley will act under this letter agreement as an independent contractor with duties and obligations solely to the Company and only as set forth in this letter agreement and not in any other capacity, including as a fiduciary.

It is understood that Morgan Stanley shall have no responsibility or liability to the Company, its affiliates or any other party involved in the Transaction in connection with the advice, opinions or actions of J.P. Morgan in connection with the Transaction and, further, neither Morgan Stanley nor J.P. Morgan shall have any responsibility or liability to the other in connection with the advice or opinions rendered by such party in connection with the Transaction.

Morgan Stanley and the Company each waives any right to trial by jury in any action, claim, suit or proceeding with respect to Morgan Stanley's engagement as financial advisor or its role in connection therewith.

The parties agree that any dispute concerning this letter agreement, the engagement or the confidentiality agreement (including any claim against any Morgan Stanley affiliate) will be resolved in the courts located in ~~the~~ Duval County, Florida, and the Company submits to the exclusive jurisdiction of that Duval County for purposes of any such dispute and waives any objections to personal jurisdiction. Both parties agree that FloridaNew York law applies to any dispute concerning this letter agreement or the engagement (including any claim against any Morgan Stanley affiliate), without regard to principles of conflicts of laws. [SUBJECT TO FURTHER REVIEW], except that the capacity, power and authority of the Company to enter into this Agreement shall be governed by the laws of the State of Florida.

Our services hereunder may be terminated with or without Cause by you or by Morgan Stanley at any time upon express written notice and without liability or continuing

Commented [1]: [Client to comment.](#)

obligation to you or to us (except for any compensation earned and expenses incurred by us to the date of termination and except, in the case of termination by you, for (i) our right to fees pursuant to this letter with respect to the Transaction, if a definitive agreement is executed within ~~45~~¹⁸ months of such termination (the "Tail Period") that subsequently results in a consummated Transaction or payment of a Break-Up Fee, unless the Company terminates this letter agreement for Cause, and (ii) our right to offer to be engaged in connection with any Alternative Transaction that the Company determines to effect, in each case within the Tail Period) and provided that the non-disclosure, governing law and jury trial waiver provisions will remain operative regardless of any such termination.

Commented [2]: [Client to comment.](#)

The parties hereto agree that the terms of this letter agreement shall cover any advice and services provided by Morgan Stanley to the Company prior to the Effective Date to the extent that such advice and services related to any of the matters addressed herein. This letter agreement and the related indemnity and confidentiality agreement represent the entire agreement between the Company and Morgan Stanley with respect to this engagement and may only be amended in writing. This letter agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. A signed copy of this letter agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this letter agreement.

If the terms of our engagement as set forth in this letter agreement are satisfactory, kindly sign the enclosed copy of this letter agreement and return them to us.

We look forward to working with the Company on this very important assignment.

Very truly yours,

MORGAN STANLEY & CO. LLC

By: _____
Name: R. Todd Giardinelli
Title: Managing Director

Accepted and agreed to:

JEA

By: _____
Name: Aaron Zahn
Title: Managing Director and Chief Executive Officer

Date: _____

Exhibit A

Language for Third-Party NDAs:

The [Third Party] agrees that no claim shall be made by the [Third Party] (or by any of its subsidiaries or controlled affiliates or any of its or their respective directors, officers or employees) against the Company or any of its ~~[Representatives]~~~~[Note: subject to review of definition]~~, (each such entity or person being referred to as an “Exculpated Party”) to recover, and agrees that no Exculpated Party shall have any liability (whether direct or indirect, in contract, in tort or otherwise) for, any losses, claims, demands or liabilities of any kind (“Liabilities”) or expenses incurred in connection with, relating to or arising out of this Agreement, the Transaction or any such person’s role or services in connection therewith, except to the extent that any such Liabilities or expenses are finally judicially determined to have resulted primarily from such person’s bad faith, gross negligence or willful misconduct. The [Third Party] further agrees to indemnify and hold harmless each of the Exculpated Parties (each such entity or person being referred to as an “Indemnified Person”) from and against any Liabilities or expenses incurred in connection with, relating to or arising out of a breach of this Agreement by the [Third Party].

July ~~24~~23, 2019

STRICTLY CONFIDENTIAL

JEA
21 W. Church Street
Jacksonville, Florida
32202

Attention: Mr. Aaron Zahn, Managing Director and Chief Executive Officer
~~Attention:~~ Mr. Ryan F. Wannemacher, Chief Financial Officer

Ladies and Gentlemen:

Pursuant to our recent discussions, we are pleased to confirm the arrangements under which J.P. Morgan Securities LLC ("J.P. Morgan") is engaged, together with the Co-Advisor (as defined below), by JEA (the "Company") to act as its financial advisor in connection with the Company's Invitation to Negotiate Various Strategic Alternatives and Partnerships (the "ITN") as well as its analysis and consideration of various potential Transactions (as defined below) that may result from the ITN. For purposes hereof, the term "Company Group" shall mean the Company, together with the (i) Electric System, which shall include the Bulk Power Supply System and JEA's interest in the Power Park (the "Electric Enterprise Fund"), and/or (ii) the Water and Sewer System, which shall include the District Energy System (the "Water and Sewer Enterprise Fund"), and including, for the avoidance of doubt, any subsidiary which owns or operates the Electric Enterprise Fund and/or the Water and Sewer Enterprise Fund or any entity to which any of the foregoing is transferred. The term "Strategic Transaction" shall mean, whether in one or a series of transactions, (a) any merger, consolidation, joint venture, or other business combination pursuant to which the business of any member of the Company Group is combined with that of any other person (any such person, together with its subsidiaries and affiliates, a "Strategic Partner"); or (b) the acquisition by a Strategic Partner, directly or indirectly, of substantially all of the assets, properties and/or businesses of any member of the Company Group, by way of a direct or indirect purchase, lease, license, exchange, joint venture, or other means; the term "Recapitalization Transaction" shall mean, whether in one or a series of transactions, (a) a public-private partnership between a Strategic Partner and the business of any member of the Company Group by way of a direct or indirect purchase, investment, lease, license, concession agreement, or other means; or (b) the reorganization or transfer of assets of any member of the Company Group to another member of the Company Group or to an entity established by the Company for the sole purpose thereof; and the term "Transaction" shall mean any one or more of a Strategic Transaction or a Recapitalization Transaction.

Section 1. Financial Advisory Services. During the term of this Agreement (as defined below), J.P. Morgan will:

(a) familiarize itself with the financial condition and business of the Company, including the Electric Enterprise Fund and the Water and Sewer Enterprise Fund, and assist the Company in reviewing the forecast of the Electric Enterprise Fund's and the Water and Sewer Enterprise Fund's projected operating performance prepared by the Company;

(b) together with the Company's legal counsel and tax and accounting advisors, advise and assist the Company in the management and administration of the ITN process;

JEA
July 24, 2019

(c) together with the Company's legal counsel and tax and accounting advisors, assist the Company in its evaluation of the ITN responses and development of recommendations related to the optimal course of action;

(d) assist the Company in familiarizing any prospective Strategic Partner with the financial condition and business of the Company, including the Electric Enterprise Fund's and the Water and Sewer Enterprise Fund's business, as applicable, familiarize itself with the financial condition and business of any Strategic Partner, and advise and assist the Company in considering the relative merits and feasibility of one or more potential Transactions and the desirability of effecting a Transaction;

(e) assist the Company in preparing confidential information memorandums and supporting marketing materials for distribution to potential Strategic Partners, describing the business and financial condition of the Company, including the Electric Enterprise Fund and the Water and Sewer Enterprise Fund, as applicable;

(f) assist the Company in identifying and contacting potential Strategic Partners to ascertain their interest in a Transaction;

(g) provide recommendation on the appropriate structure, purchase price, and terms and conditions of a Transaction;

(h) advise and assist the Company with respect to the financial aspects of a Transaction;

(i) advise and assist the Company in its negotiation of the financial aspects of a Transaction;

(j) if requested, and if J.P. Morgan determines, in its judgment and consistent with its customary practice, that there are facts to support such materials, following public announcement of any Transaction, assist the Company in preparing materials to be shared with the Company's outside legal counsel on a confidential basis, setting forth the financial factors comprising the Company's underlying business purpose for the Transaction and describing the financial and strategic advantages of effecting the Transaction in comparison to the Company not pursuing a Transaction;

(k) assist the Company in coordinating site visits, meetings, negotiation and discussion sessions, due diligence sessions, management presentations and similar matters with potential Strategic Partners, including, if requested, assisting the Company in populating and administering a data room (containing information entirely provided by the Company) to be used in connection with a Transaction; and

(l) if requested by the Company, provide such other M&A financial advisory services in connection with the Transaction as may be agreed in writing between the Company and J.P. Morgan during the term hereof.

In addition, at the Company's request and subject to Section 3 of the attached Standard Terms and Conditions, J.P. Morgan will render an opinion (in writing if so requested) to the Company's Board of Directors (the "Opinion") as to the fairness to the Company, from a financial point of view, of the consideration to be paid to the Company in connection with a Strategic Transaction. The nature and scope of J.P. Morgan's investigation, as well as the scope, form and substance of the Opinion, shall be such as J.P. Morgan considers appropriate.

JEA
July 24, 2019

The Company and J.P. Morgan agree that the Standard Terms and Conditions attached hereto form an integral part of this Agreement and are hereby incorporated herein by reference in their entirety. The Company further understands and agrees that J.P. Morgan shall provide its services independently from Morgan Stanley & Co. LLC (the "Co-Advisor") and that J.P. Morgan will not rely upon any services or work performed by the Co-Advisor. Accordingly, the Company agrees that J.P. Morgan shall have no liability to the Company for any actions or omissions of the Co-Advisor.

Section 2. Compensation. The fees payable to J.P. Morgan for the foregoing services shall be as follows:

(a) a retainer fee of \$100,000 per quarter, payable quarterly in arrears for each three-month period or portion thereof during the term of this Agreement, commencing on the Effective Date (as defined below);

(b) a fee of \$3.0 million ~~(the "Opinion Fee")~~, which becomes payable at the time J.P. Morgan delivers an Opinion, but which shall be paid upon the earlier of closing of a Transaction or termination or abandonment of a Transaction. To the extent that J.P. Morgan delivers more than one Opinion, the fee shall be \$2.25 million per Opinion. Any fee payable pursuant to this Section 2(b) is the "Opinion Fee". Fees related to delivery of an Opinion(s) shall be credited against any Transaction Fee (as defined below) or against any Break-up Fee (as defined below) ~~as provided in the paragraph next following Section 2(d) hereof;~~

(c) a fee (the "Transaction Fee"), (i) payable upon the closing of a Strategic Transaction, in an amount equal to the applicable percentage of the Net Consideration (as defined below) set forth below, against which any related Opinion Fee paid will be credited, to the extent not previously credited:

<u>If the Net Consideration (as defined below) is:</u>	<u>Applicable % of Net Consideration</u>
Less than or equal to \$3.5 billion	0.200%
Greater than \$3.5 billion, but less than or equal to \$4.5 billion	0.275%
Greater than \$4.5 billion, but less than or equal to \$5.5 billion	0.350%
Greater than \$5.5 billion, but less than or equal to \$6.5 billion	0.425%
Greater than \$6.5 billion;	0.500%

; or (ii) payable upon the closing of a Recapitalization Transaction, in an amount equal to \$7.5 million; provided, further, that, if, in lieu of a Transaction, the Company, either directly or through any member of the Company Group, completes another transaction, other than a Transaction, with the assistance of J.P. Morgan, J.P. Morgan and the Company will negotiate in good faith appropriate compensation for J.P. Morgan, which will take into account, among other things, the results obtained and the custom and practice among investment banking firms of comparable standing acting in similar transactions;

(d) if any member of the Company Group receives any payment (the "Break-Up Fee") from another person (excluding any payment as an indemnity or as reimbursement of expenses or liabilities incurred in connection with a proposed Transaction) following or in connection with the termination, abandonment, or failure to occur of any proposed Transaction, then the Company shall pay to J.P. Morgan a fee in an amount equal to ~~25~~12.5% of the Break-Up Fee (after deducting the Company's out-of-pocket expenses actually incurred in connection with a proposed Transaction; provided that no

Formatted: Bullets and Numbering

JEA
July ~~24~~23, 2019

Transaction Fee or Break-Up Fee shall be considered out-of-pocket expenses for purposes hereof) upon the receipt by such member of the Company Group of the Break-Up Fee, less any fees paid by the Company pursuant to Section 2(b) and 2(c); provided that in no event shall the amount payable under this paragraph, together with any such other fees previously paid hereunder, exceed an amount equal to \$7.5 million.

J.P. Morgan will be entitled to receive the compensation provided for above if the events specified above occur (or, in the case of (c) or (d) above, an agreement is entered into which subsequently results in a consummated Strategic Transaction or payment of a Break-Up Fee) during the term of this Agreement or at any time within ~~24~~18 months after expiration or termination of this Agreement, as the case may be (the "Tail Period"), unless J.P. Morgan terminates this Agreement or the Company terminates this Agreement for Cause (as defined herein). All fees payable hereunder are nonrefundable, but interim fees payable prior to closing of a Transaction, to the extent actually paid, except any fees paid or payable under Section 2(a), shall be credited towards the Transaction Fee. For purposes hereof, the term "Cause" shall mean J.P. Morgan's or any Designated Affiliate's (as defined below) gross negligence, bad faith, or willful misconduct in the performance of its services hereunder or a material breach of its obligations under this Agreement.

Commented [1]: [Client to comment](#)

The term "Net Consideration" shall mean the total amount of cash and the fair market value of other property paid or payable in connection with a Transaction (including amounts paid into escrow) to any member of the Company Group, its customers or the City of Jacksonville, less, without duplication, ~~in the event of a Strategic Transaction structured under clause (a) of the definition of "Strategic Transaction",~~(a) the fees and expenses of J.P. Morgan under this Agreement, (b) \$300 million, and (c) the principal amount of all indebtedness for borrowed money (including related defeasance costs, ~~on balance sheet pension deficits~~, swap unwind costs and transaction costs) (collectively, "Indebtedness") of the Company outstanding immediately prior to consummation of the Strategic Transaction or, in the case of a sale of assets, all Indebtedness of the Company Group assumed by the Strategic Partner and, in any case, any Indebtedness of the Company Group retired or defeased by the Strategic Partner or issued to the Company Group or the City of Jacksonville in connection with the Strategic Transaction. Net Consideration shall also include, without duplication, the aggregate amount of any cash dividends or other distributions that are outside of the ordinary course and are declared and paid by the Company following the Effective Date, amounts paid by the Company to repurchase any of its securities, or to repay any of its other Indebtedness, in each case outstanding on the date hereof, only to the extent such dividend, repurchase, or repayment is effected in connection with, in response to, or in anticipation of a Transaction or a proposal with respect thereto ~~or otherwise within 1 year prior to consummation of a Transaction~~, plus the sum of the nominal value of any and all rate credits paid or payable to ratepayers in connection with a Transaction, plus any economic development commitments paid or payable to the ratepayers and the City of Jacksonville in connection with a Transaction, and, in the case of a sale of assets, the value of any working capital of the Company (other than cash) not acquired by the Strategic Partner. For the avoidance of doubt, no element of Net Consideration shall be subject to double counting or shall otherwise be included more than once in determining Net Consideration.

Section 3. Other Assignments. In the event that, within two years of the date hereof (and prior to the consummation of a Strategic Transaction which constitutes a change in control of the Company or Recapitalization Transaction), the Company determines to issue any equity or debt securities through a public or a private placement, enter into a syndicated credit facility or other loan, or undertake any other type of investment banking transaction, other than a Transaction (including any merger, sale, acquisition, divestiture, joint venture or other business combination, any repurchase by the Company of a significant amount of its securities, any recapitalization of the Company, any spin-off, split-off or other extraordinary dividend of cash, securities or other assets of the Company, or any restructuring of debt securities of the Company (by consent, tender offer or otherwise)), the Company shall offer J.P. Morgan (which for purposes of this Section 3, shall include one or more of its Designated

JEA
July 24~~24~~23, 2019

Affiliates) the right to make a proposal to act as manager and bookrunner in the case of any such offering, as placement agent in the case of any such placement, as arranger and bookrunner in the case of any such syndicated credit facility, as lender in the case of any other loan, ~~as~~ and as financial advisor or dealer-manager, as applicable, in the case of any such restructuring of debt securities or other investment banking transaction. If J.P. Morgan agrees to act in any such capacity, the Company and J.P. Morgan will enter into the appropriate form of agreement relating to the type of transaction involved and containing customary terms and conditions acceptable to the Company and J.P. Morgan, including provisions relating to the scope of J.P. Morgan's services, J.P. Morgan's compensation or other appropriate financial arrangements and an indemnification of J.P. Morgan. Unless specifically covered by a separate agreement setting forth such arrangement, the provisions of Section 1 of the Standard Terms and Conditions shall apply to each such transaction. The Company acknowledges that the foregoing is neither an express nor implied commitment by J.P. Morgan to act in any such capacity or to purchase or place securities, or to provide or be responsible to provide any financing or other financial services or enter into any other principal transactions, which commitment shall only be set forth in a separate written agreement in customary form for the type of services being provided.

Section 4. Expenses and Payments. In addition to J.P. Morgan's fees for professional services, the Company agrees to reimburse J.P. Morgan for, and J.P. Morgan will separately bill its reasonable counsel fees and expenses associated with legal review of Florida statutes and any required administrative legal work related to the Transaction; provided that, if the Company requests J.P. Morgan to deliver an Opinion, the Company agrees to reimburse J.P. Morgan for, and J.P. Morgan will separately bill the fees and expenses of counsel to J.P. Morgan incurred in connection with the preparation and delivery of the Opinion and the preparation or review of any disclosure of the Opinion contemplated by Section 2(d) of the Standard Terms and Conditions; provided, however, that such reasonable fees and expenses of counsel retained by J.P. Morgan (including, but not limited to, in connection with the preparation and delivery of the Opinion and the preparation or review of any public disclosure of the Opinion contemplated by Section 2(d) of the Standard Terms and Conditions) shall not exceed \$200,000 in the aggregate without the Company's consent (such written consent not to be unreasonably withheld). At the Company's request, J.P. Morgan shall provide appropriate supporting documentation in connection with any expenses whose reimbursement is sought hereunder in a form customarily provided by J.P. Morgan for such purposes. For avoidance of doubt, it is understood that, if the Company requests J.P. Morgan to deliver more than one Opinion or the initial version of such public disclosure must be updated with respect to sections which mention J.P. Morgan, then the Company shall be responsible for reimbursing J.P. Morgan for external counsel expenses incurred in connection therewith. All amounts payable under this Agreement are quoted exclusive of value added or similar tax and shall be paid in immediately available funds in U.S. dollars, without setoff and without deduction for any withholding, value-added or other similar taxes, charges, fees or assessments. If the Company is obliged by law to make any deduction or withholding from any such payment or J.P. Morgan makes any payment of any taxes, fees, expenses, assessments or other charges (other than taxes imposed on or measured by net income, franchise taxes, and branch profits taxes, in each case, imposed as a result of J.P. Morgan being organized under the laws of, having its principal office in or branch out of which work is being performed with respect to this Agreement in, the jurisdiction imposing such tax), the amount due from the Company in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding or payment by J.P. Morgan, J.P. Morgan receives a net amount equal to the amount J.P. Morgan would have received had no such deduction or withholding or payment by J.P. Morgan been made. In the event of such deduction or withholding, the Company will deliver promptly to J.P. Morgan such tax receipts or other documentation as it may require.

Section 5. Term. This Agreement will be effective as of July 23, 2019 (the "Effective Date") and will expire on the date twenty-four months after the Effective Date, unless earlier terminated by either party. This Agreement may be earlier terminated with or without cause by the Company or by J.P. Morgan at any time and without liability or continuing obligation to the Company or to J.P. Morgan

JEA
July ~~24~~23, 2019

(except for any accrued fees and expenses incurred by J.P. Morgan to the date of termination or expiration); provided that the provisions of Sections 2, 3 and 4 hereof and Sections 1, 2 and 4 of the Standard Terms and Conditions shall survive any termination or expiration of this Agreement.

Section 6. Municipal Advisor Rules. The Company acknowledges that J.P. Morgan may not be able to perform some of the services the Company may request of J.P. Morgan from time to time to the extent that such services would cause J.P. Morgan to be considered a "municipal advisor" under SEC Rel. No. 34-70462 (Sept. 20, 2013) (such final rules and to the extent referenced therein, Section 975, the "Municipal Advisor Rules") implementing Section 975 ("Section 975") of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

If the terms of our engagement as set forth in this Agreement are satisfactory, kindly sign the enclosed copy of this letter and return it to the undersigned. We look forward to working with the Company on this assignment.

Very truly yours,

J.P. MORGAN SECURITIES LLC

By: _____

Managing Director

Accepted and Agreed as of
the Date First Written Above:

JEA

By: _____

Ryan Wannemacher
Chief Financial Officer

Enclosure

STANDARD TERMS AND CONDITIONS

The following standard terms and conditions shall be incorporated by reference into the engagement letter, dated July 24th, 2019, between JEA and J.P. Morgan Securities LLC to which these terms are attached (the "Engagement Letter"). Capitalized terms used below without definition shall have the meanings assigned to them in the Engagement Letter and any references herein to the "Agreement" shall mean the Engagement Letter together with these Standard Terms and Conditions.

Section 1. Exculpation and Representations.

(a) The Company agrees that no claim shall be made by the Company (or by any of its subsidiaries or controlled affiliates or any of its or their respective directors, officers or employees) against J.P. Morgan, its affiliates, directors, officers, agents and employees and each other person, if any, controlling J.P. Morgan or its affiliates (each such entity or person being referred to as an "Exculpated Party") to recover, except to the extent that any losses, claims, demands or liabilities of any kind ("Liabilities") or expenses incurred in connection with, relating to or arising out of this Agreement, the Transaction or any such person's role or services in connection therewith, are finally judicially determined to have resulted primarily from such person's bad faith, gross negligence or willful misconduct, and agrees that neither J.P. Morgan nor any other Exculpated Party shall have any liability (whether direct or indirect, in contract, in tort or otherwise) for, any Liabilities or expenses incurred in connection with, relating to or arising out of this Agreement, the Transaction or any such person's role or services in connection therewith, except to the extent that any such Liabilities or expenses are finally judicially determined to have resulted primarily from such person's bad faith, gross negligence or willful misconduct.

(b) The Company agrees, and represents to J.P. Morgan that, except to the extent inconsistent with applicable law or governmental or stock exchange regulation, or as may be otherwise waived in writing by J.P. Morgan, (a) if the Company enters into any agreement or arrangement with respect to confidentiality with any potential bidder, the Company shall require that any such agreement or arrangement shall provide for exculpation and indemnification of J.P. Morgan in the form attached as Exhibit A hereto, (b) if the Company enters into any agreement or arrangement with respect to, or effects, any Transaction, the Company shall require that any such agreement or arrangement with respect to any Transaction will provide that the Strategic Partner or another party reasonably satisfactory to J.P. Morgan will provide indemnification and contribution in a form reasonably satisfactory to and for the benefit of J.P. Morgan, its affiliates, directors, officers, agents and employees and each other person, if any, controlling J.P. Morgan or its affiliates with respect to the Agreement, any Transaction and J.P. Morgan's role in connection therewith, and (c) the Company is responsible for responding to and defending any challenge by any party relating to the Company's authority to enter into, carry out or consummate any aspect of the Transaction.

Section 2. Financial Advisory Role, Information, Reliance, Confidentiality, etc.

(a) The Company understands that J.P. Morgan is acting solely as a financial advisor to the Company, is acting as an independent contractor and is not undertaking to provide any legal, accounting or tax advice in connection with its engagement under the Agreement and that J.P. Morgan's role in any due diligence will be limited solely to performing such review as it shall deem necessary to support its own advice and analysis and shall not be on behalf of the Company. The Company agrees that it shall not assert any claim that J.P. Morgan is acting as a fiduciary to the Company in connection with its engagement under the Agreement.

(b) During the term of this Agreement, the Company agrees to use commercially reasonable efforts to provide to J.P. Morgan all information reasonably requested by J.P. Morgan for the

JEA
July 24, 2019

purpose of its engagement under the Agreement and also to provide reasonable access to employees and directors of the relevant members of the Company Group. The Company also agrees that the Company shall notify J.P. Morgan, in writing, in the event it expects to treat the consummated Transaction as a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b), and the applicable category of "reportable transaction." J.P. Morgan shall be entitled to rely upon and assume, without any obligation of independent verification, the accuracy and completeness of all information that is publicly available and of all information that has been furnished to it by, or on behalf of, the Company Group or any Strategic Partner or otherwise reviewed by J.P. Morgan, and J.P. Morgan shall not assume any responsibility or have any liability therefor. In providing any financial advice as described in the Engagement Letter, J.P. Morgan will rely on the commercial assessments of the Board of Directors of the Company with respect to any Transaction. The decision as to whether or not the Company enters into a Transaction is one that can only be taken by the Company. J.P. Morgan has no obligation to conduct any appraisal of any assets or liabilities or to evaluate the solvency of any member of the Company Group or any Strategic Partner under any applicable laws relating to bankruptcy, insolvency or similar matters. It is specifically agreed that the Company shall be solely responsible for the accuracy and completeness of the memorandum referred to in Section 1(b) of the Engagement Letter.

(c) In order to enable J.P. Morgan to bring relevant expertise to bear on its engagement under the Agreement from among its global affiliates, the Company agrees that J.P. Morgan may share information obtained, directly or indirectly, from the Company Group hereunder with its affiliates who need to know such information in connection with J.P. Morgan's performance of its services hereunder, and may perform such services in conjunction with its affiliates ("Designated Affiliates"), and that any Designated Affiliates performing services hereunder shall be entitled to the benefits and subject to the terms of the Agreement, it being understood that J.P. Morgan will be responsible for any breach of this Agreement by its Designated Affiliates. The Company agrees that, following the earlier of public announcement or closing of any Transaction, J.P. Morgan may, at its option and expense, and upon the prior written approval of the Company, as to form and substance (which consent shall not be unreasonably withheld) place an advertisement or announcement in such newspapers and periodicals as it may determine describing J.P. Morgan's role as financial advisor to the Company. The Company agrees that any press release it may issue announcing a Transaction will contain a reference to J.P. Morgan's role as financial advisor to the Company in connection with such Transaction, and that J.P. Morgan shall have the right to review and pre-approve any reference to it or its role as financial advisor to the Company under the Agreement in any public statement made by any member of the Company Group (such approval not to be unreasonably withheld).

(d) J.P. Morgan's financial advice and any material prepared by J.P. Morgan are intended solely for the benefit and use of the senior management and the Board of Directors of the Company (acting in their capacities as such) in considering a Transaction, is not on behalf of, and shall not confer rights or remedies upon, any stakeholder or creditor of the Company Group or any other person, and may not be used or relied upon for any other purpose (including, for the avoidance of doubt, for purposes of obtaining any approval that may be required in connection with a Transaction). Except as otherwise required by applicable law or governmental or stock exchange regulation (as reasonably determined by outside counsel to the Company), the Company will treat J.P. Morgan's advice, any material prepared by J.P. Morgan and the terms of the Agreement as confidential and will not disclose them to any third party (other than, on a confidential basis, to its counsel and other advisors in connection with a Transaction, subject always to the terms of the preceding sentence, it being understood that the Company will be responsible for any breach by such counsel or advisors of the provisions of this sentence) in any manner without J.P. Morgan's prior written approval; provided that the Company shall be entitled to utilize the Opinion in connection with its defense of any action, suit or proceeding relating to the Transaction; provided, further, that the Company may reproduce the Opinion in full in any information statement which the Company must, under any applicable law, file with any government agency, distribute to its stakeholders, or disclose to any local or state government agency and where such

JEA
July ~~24~~23, 2019

filing or disclosure must include the Opinion, or as may reasonably be requested by, or deemed advisable by outside counsel to the Company in connection with a submission to, any governmental, regulatory or legislative body with oversight over a Transaction. In such event, the Company may also include references to J.P. Morgan and summarize the Opinion (in each case in such form as J.P. Morgan shall provide or pre-approve in writing, such approval not to be unreasonably withheld, conditioned, or delayed) in any such document. J.P. Morgan acknowledges that materials provided to the Company by J.P. Morgan in connection with this engagement may be released in response to a public records request pursuant to Florida law; provided that J.P. Morgan, in consultation with counsel to the Company, will be permitted to redact any information not subject to release (such as trade secrets), as permitted by Florida law, and may include appropriate language on all such materials limiting third party reliance with respect to such materials.

(e) Notwithstanding any other provision herein, the Company and each of its employees, representatives or other agents may disclose to any and all persons, without limitation of any kind, the U.S. income and franchise tax treatment and the U.S. income and franchise tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses, if any) that are provided to the Company relating to such tax treatment and tax structure insofar as such treatment and/or structure relates to a U.S. income or franchise tax strategy, if any, provided to the Company by J.P. Morgan or its affiliates.

Section 3. Other Business Relationships.

(a) The Company understands that J.P. Morgan and its affiliates (collectively, "Morgan") comprise a full service securities firm and a commercial bank engaged in securities trading and brokerage activities, as well as providing investment banking, asset management, financing, and financial advisory services and other commercial and investment banking products and services to a wide range of corporations and individuals. In the ordinary course of Morgan's trading, brokerage, asset management, and financing activities, Morgan may at any time hold long or short positions, and may trade or otherwise effect transactions, for its own account or the accounts of customers, in debt or equity securities, loans or other financial instruments of any Strategic Partner, the Company Group or any other entity with interests with respect to a Transaction. Morgan recognizes its responsibility for compliance with applicable securities laws in connection with such activities.

(b) In addition, Morgan may have and may in the future have investment and commercial banking, trust and other relationships with parties other than the Company, which parties may have interests with respect to the Company Group, a Strategic Partner or a Transaction. ~~Without limiting the foregoing, the Company acknowledges and agrees that, in agreeing to provide the advisory services contemplated by the Agreement, J.P. Morgan reserves the right of Morgan to pursue opportunities to arrange and/or provide new financing to potential Strategic Partners specifically in connection with a Transaction. The Company acknowledges its understanding that the interests of Morgan in its capacity as arranger and/or provider of financing to potential Strategic Partners may differ from those of the Company with respect to the timing, pricing and terms and conditions of the Transaction and otherwise, and the Company expressly waives any conflicts of interest which may result from J.P. Morgan's multiple roles as advisor to the Company hereunder and as an arranger and/or provider (or an affiliate to such an arranger or provider) of Transaction financing to potential Strategic Partners. Notwithstanding anything contained herein, during the term of the Agreement, Morgan shall not (i) act as M&A financial advisor to any party (other than the Company) in connection with a Transaction or (ii) absent the Company's consent (not to be unreasonably withheld) arrange and/or provide financing to potential Strategic Partners specifically in connection with a Transaction; provided that the foregoing shall not in any event apply to (A) any credit facilities to which Morgan is a party in effect as of the date hereof or (B) any new credit facility, amendment to an existing credit facility, or debt or equity securities offering the proceeds of which are not restricted, in each case so long as Morgan is not aware that the proceeds of any such financing will be used for the purpose of financing a Strategic Partner specifically in connection with a Transaction. In addition, nothing in this Agreement shall be deemed to restrict (C) any ordinary course sales and trading activity undertaken by employees who have not had access to the information received by J.P. Morgan under the Agreement or (D) any private banking or investment management services undertaken by employees who have not had access to the information received by J.P. Morgan under the Agreement. In addition, in the event that, during the Tail Period, Morgan accepts any engagement to act as M&A financial advisor to any party, other than the Company, or to arrange or provide financing to potential Strategic Parties in respect of a Transaction specifically in connection with such Transaction, in either case, in respect of which engagement fees are payable to J.P. Morgan, then J.P. Morgan shall be deemed to have waived its rights to receive compensation under Section 2 of the Engagement Letter during the Tail Period. Although Morgan, in the course of its other relationships, may acquire information about the Company Group, a Transaction, a Strategic Partner or such other parties, Morgan shall have no obligation to disclose such information, or the fact that Morgan is in possession of such information, to the Company or to use such information on the Company's behalf. Furthermore, Morgan may have fiduciary or other relationships whereby Morgan may exercise voting power over securities of various persons, which securities may from time to time include securities of the Company Group, a Strategic Partner, or others with interests with respect to a Transaction. The Company acknowledges that Morgan may exercise such powers and otherwise perform its functions in connection with such fiduciary or other relationships without regard to its relationship to the Company hereunder.~~

JEA
July 24, 2019

(c) Specifically, the Company acknowledges its understanding that Morgan, in its principal capacity, or portfolio companies in which Morgan has investments, or certain investment funds managed or advised by Morgan (collectively, the "Morgan Investor"), may have passive, non-controlling minority equity investments in one or more potential Strategic Partners. The Company further acknowledges and agrees that, in the event that the Morgan Investor holds such an interest in the ultimate Strategic Partner in the Transaction and, in the reasonable judgment of J.P. Morgan, the investment held by the Morgan Investor in the Strategic Partner in the Transaction is material, J.P. Morgan may not be in a position to render the Opinion referred to in the Engagement Letter or may require, as a condition to rendering the Opinion, that the Company obtain an additional Opinion from another investment banking firm and, the Transaction Fee payable to J.P. Morgan shall not be entitled to the Opinion Fee. The fee reduced by an amount not to exceed \$3,000,000. The Company acknowledges its understanding that the interests of the Morgan Investor may differ from those of the Company with respect to the timing, pricing and terms and conditions of a Transaction and otherwise, and the Company expressly waives any conflicts of interest which may result from J.P. Morgan's multiple roles as financial advisor to the Company hereunder and as the Morgan Investor or an affiliate thereof (or of its fund manager or fund advisor). In addition, the Company acknowledges its understanding that no advice or recommendation rendered by J.P. Morgan hereunder shall be deemed a representation that the Morgan Investor (or Morgan in its capacity as manager of or advisor to the Morgan Investor) would approve a Transaction structured in accordance with such advice if its approval were required.

(d) Subject to applicable confidentiality obligations, J.P. Morgan agrees to disclose to the Board of Directors of the Company certain information concerning the depth and breadth of Morgan's material business relationships with the Company and certain potential Strategic Partners as described in this sub-paragraph (d) for the two years preceding the date of such disclosure. J.P. Morgan shall provide the foregoing disclosure at the time that the Board of Directors of the Company is deciding which potential Strategic Partner will be invited to final round negotiations with the Company in connection with a Strategic Transaction. Further, J.P. Morgan confirms that it maintains multiple client relationships across industries and regions and across different product groups, and has, and is required to maintain, conflicts procedures that are designed to identify, manage and monitor potential conflicts of interest. As such, J.P. Morgan has in place policies and procedures which are designed (i) to prevent disclosure of confidential client information outside the firm, (ii) to prevent confidential client information from being used for the benefit of other J.P. Morgan clients, and (iii) to identify and manage potential conflicts of interest. These policies expressly prohibit disclosure of confidential client information outside the firm. These policies also require that confidential client information be disseminated internally only on a need-to-know basis. In addition, J.P. Morgan can confirm that is it has a system designed to identify, analyze and avoid or mitigate conflicts of interest which may arise as a result of our multiple relationships with clients around the world who may have competing interests in respect of a particular transaction, including the imposition of walls and information barriers between different product groups and, where appropriate, between deal teams in the same product group. In particular, J.P. Morgan confirms that Morgan officers, directors and employees who have received confidential information and who are providing M&A financial advisory services to the Company hereunder shall not be included in, or share information with, any Morgan deal teams arranging and/or providing financing to any Strategic Partner or the Morgan Investor, save with the Company's consent or where the Company has permitted the disclosure of such information to Strategic Partners and their financing sources generally. J.P. Morgan confirms it understands no Strategic Partner will be directed to, and J.P. Morgan will not require that any Strategic Partner, use Morgan for purposes of providing financing in respect of a Transaction and, for the avoidance of doubt, each of the Company and J.P. Morgan agrees that bids will be considered fully on their merits, whether or not consent in respect of clause (b) above is granted.

Section 4. Miscellaneous.

JEA
July 24, 2019

(a) The Agreement may not be assigned by the Company or J.P. Morgan without the prior written consent of the other. The Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter thereof, supersedes all prior agreements with respect thereto, has been duly authorized and executed by each of the parties hereto and constitutes the legal, binding obligation of each such party.

(b) The Agreement may only be enforced by the parties to it and, with the prior written consent of J.P. Morgan, by any Indemnified Person (for whom the provisions of the Agreement are intended to confer a benefit). Any amendment of the Agreement shall be in writing signed by each of the parties hereto and the consent of any Indemnified Person other than J.P. Morgan to any amendment, rescission or termination of the Agreement shall not be required. The Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

(c) The Agreement, and any claim, controversy or dispute arising under or related to the Agreement, shall be governed by and construed in accordance with the laws of the State of New York without reference to principles of conflicts of law, except that the capacity, power and authority of the Company to enter into this Agreement shall be governed by the laws of the State of Florida. Each of the Company and J.P. Morgan irrevocably and unconditionally submits to the exclusive jurisdiction and venue of any State or Federal court sitting in New York City Duval County, Florida over any action, suit, proceeding, claim or controversy (including without limitation any derivative claim) arising out of or relating to this Agreement, any Transaction or any other matter contemplated hereby. Each of the Company and J.P. Morgan irrevocably and unconditionally waives any objection to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum. J.P. Morgan and the Company (on its own behalf and, to the extent permitted by law, on behalf of its shareholders) each waives any right to trial by jury in any action, claim, suit or proceeding with respect to J.P. Morgan's engagement as financial advisor to the Company under the Agreement or its role in connection herewith. Notwithstanding anything to the contrary contained in the Agreement, the Company shall have absolute discretion to refuse to discuss or negotiate a Transaction with any party, approve or reject any and all offers or terms of any offer, any and may terminate negotiations with any party at any time, all for any reason (or no reason) whatsoever.

Commented [2]: Client to comment

JEA
July ~~24~~23, 2019

Exhibit A

The Bidder agrees that no claim shall be made by the Bidder (or by any of its subsidiaries or controlled affiliates or any of its or their respective directors, officers or employees) against the Company or any of its Representatives, (each such entity or person being referred to as an "Exculpated Party"), to recover, and agrees that no Exculpated Party shall have any liability (whether direct or indirect, in contract, in tort or otherwise) for any losses, claims, demands or liabilities of any kind ("Liabilities") or expenses incurred in connection with, relating to or arising out of this Agreement, the Transaction or any such person's role or services in connection therewith, except to the extent that any such Liabilities or expenses are finally judicially determined to have resulted primarily from such person's bad faith, gross negligence or willful misconduct. The Bidder further agrees to indemnify and hold harmless each of the Exculpated Parties (each such entity or person being referred to as an "Indemnified Person") from and against any Liabilities or expenses incurred in connection with, relating to or arising out of a breach of this Agreement by the Bidder.