

**From:** [Hodges, Lawsikia](#)  
**To:** [Lopez, Staci](#)  
**Subject:** Fwd: Revised Conflicts Screening Memoranda  
**Date:** Friday, October 25, 2019 4:17:26 PM  
**Attachments:** [ATT00001.htm](#)  
[JP NT Conflicts analysis DRAFT.DOCX](#)  
[ATT00002.htm](#)  
[MD NT Conflicts analysis DRAFT.DOCX](#)  
[ATT00003.htm](#)  
[HV NT Conflicts analysis DRAFT.docx](#)  
[ATT00004.htm](#)

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Please print and place in chair

Sent from my iPhone

Begin forwarded message:

**From:** "Rhode, Lynne C. (City of Jacksonville)" <[rhodlc@jea.com](mailto:rhodlc@jea.com)>  
**Date:** October 23, 2019 at 9:50:07 PM EDT  
**To:** "Hodges, Lawsikia" <[LHodges@coj.net](mailto:LHodges@coj.net)>, "Miller, Carla" <[CarlaM@coj.net](mailto:CarlaM@coj.net)>  
**Cc:** "Gabriel, Jason" <[JGabriel@coj.net](mailto:JGabriel@coj.net)>, "Oberdorfer, Kirby" <[KOberdorfer@coj.net](mailto:KOberdorfer@coj.net)>  
**Subject: Revised Conflicts Screening Memoranda**

**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.

Good evening Lawsikia and Carla,  
Please find attached potential JEA ITN negotiation team member disclosures revised memoranda for Herschel Vinyard, Melissa Dykes, and Jordan Pope. The revisions reflect comments received today. I believe the analyses are comprehensive. If at all possible, I would like to schedule a call tomorrow at 10am or 11am to discuss any outstanding concerns and hopefully sign off on the initial conflicts screening. I appreciate your time and assistance.  
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](mailto:rhodlc@jea.com)



## MEMORANDUM

TO: Procurement File

FROM: Lynne C. Rhode

DATE: October 23, 2019

RE: Jordan Pope - Disclosures of Interactions With Respondents

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In connection with the appointment of members of the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), in order to ensure that JEA conducts the most fair and competitive process possible, we have been asked to conduct a proactive review of each of the individuals under consideration for appointment to the team to ensure that such individuals are free of any potential conflicts of interest. As part of this analysis, we have reviewed the past and present interactions of individuals under consideration for appointment to the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), with Respondents to the ITN for purposes of determining whether any ethical concerns would arise if such individuals were to be appointed to the Negotiation Team.

For purposes of conducting this analysis, we have reviewed, relied upon, and summarized in relevant part herein statements from the potential Negotiation Team member regarding their past and/or present interactions with Respondents to the ITN. This analysis has been prepared in consultation with, and with the direct assistance of, the City of Jacksonville Office of Ethics, Compliance, and Oversight.

### **Question**

Would any interactions that Jordan Pope, JEA’s Director of Economic Development and Real Estate, may presently have or have had in the past with Respondents to the ITN present a conflict if he were to be appointed to serve on the Negotiation Team for the ITN?

### **Brief Answer**

No, Mr. Pope does not appear to have any interest or relationship, past or present, with any Respondents that would give rise to a conflict if he were to be appointed to serve on the Negotiation Team for the ITN.

### **Analysis**

## **I. Summary of Interactions with Respondents**

Mr. Pope has prepared a statement of his interactions and relationships that may have involved one or more Respondents to the ITN. Where necessary, we have also interviewed and asked appropriate follow-up questions to Mr. Pope. Mr. Pope has been advised that, should any change in circumstances during his potential service as a member of the Negotiation Team change the facts upon which this analysis is based, he should promptly bring such change in circumstances to the attention of the Office of General Counsel. Based upon the facts provided by Mr. Pope in his statement and in response to our questions, Mr. Pope's interactions with the Respondents may be summarized as follows:

During the course of his employment with JEA, in carrying out certain of his duties relating to real estate, economic development, and government relations, Mr. Pope has had occasion to conduct various discussions and business matters with staff of subsidiaries of two of the Respondents, Florida Power & Light Company (a subsidiary of Respondent, NextEra Energy) and TECO-Peoples Gas (a subsidiary of Respondent, Emera).

In addition, Mr. Pope is affiliated with various community organizations and agencies, including the JAXUSA Partnership, JAX Chamber, and Leadership Florida. Through these affiliations, Mr. Pope has interactions with staff of the same two subsidiaries of Respondents.

In addition, Mr. Pope has confirmed that neither he nor any spouse or child of his has any current or past business relationship with any Respondent other than as described herein.

Finally, Mr. Pope's statements confirm that he has no financial interest in any of the Respondents beyond what may be included in retirement funds that he holds. Mr. Pope states that he participates in the JEA 401(a) retirement program, and that certain retirement funds may maintain investments in Respondents, although he has no direct knowledge of any investments in specific Respondents through such retirement funds. In the event the ITN 127-19 process results in a sale, Mr. Pope will realize no pecuniary gain other than compensation to which he may be entitled under employment contracts and benefits authorized by the JEA Board of Directors and available to him and other JEA employees incident to his current employment with JEA. In addition, Mr. Pope has confirmed that he has no outside knowledge from his activities regarding any of the Respondents that would cause him to favor or disfavor any Respondent.

## **II. Analysis of Relevant Conflict Concepts**

Mr. Pope, if appointed to the Negotiation Team for the ITN, would be serving on JEA's Negotiation Team in his capacity as a JEA employee. No circumstances have been brought to our attention with respect to Mr. Pope that would implicate or potentially implicate any of the provisions of section 112.313, as Mr. Pope would be acting only in his capacity as a JEA employee and is not an officer, partner, director, or owner of any Respondent, is not employed by any Respondent, and has no contractual relationship with any Respondent. Mr. Pope would not be seeking to do business with JEA within the meaning of section 112.313(3), and would not

be holding any conflicting employment or contractual relationship. Simply stated, Mr. Pope is not employed by or an officer of an entity doing business with JEA, does not own a business that is doing business with JEA (aside from potential *de minimis* indirect interests that may arise as a result of retirement plan holdings), and is not consulting or performing contract work with a business that is doing business with JEA.

Similarly, assuming *arguendo* that section 112.3143(3)(a), Florida Statutes, were applicable to the Negotiation Team, the facts disclosed by Mr. Pope would not present a voting conflict prohibited by that statutory scheme. Mr. Pope does not have any financial interest in any of the Respondents that could potentially give rise to a special private gain or loss. Nor do any of the Respondents constitute a “principal” within the meaning of that section who may obtain a special private gain or loss. A “principal” is defined by section 112.3143(1)(a), Florida Statutes, as “an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, or the parent, subsidiary, or sibling organization of one’s client or employer.” Moreover, as the Florida Commission on Ethics has consistently held, in order for an entity to constitute a “principal” within the meaning of the statute, there must be a *present, i.e.*, “at-the-time-of-the-vote” connection, and “past or possible future relationships do not trigger the statute.” Florida CEO 09-12 (law firm that formerly employed board member was not “principal” within meaning of statute); *see also* Florida CEO 06-5 (no voting conflict where affected entity seasonally employed commissioner but did not employ him at time of the vote; “Our decisions construe the statute as applying only ‘in the present tense.’ That is, a public officer must be employed by the public-measure-affected person or entity at the time of the vote; past relationships or possible future relationships do not satisfy the requirements of the statute.”). Nothing about the facts disclosed by Mr. Pope would suggest that any Respondent is now, or has ever been, a “principal” of Mr. Pope. Nor would any of the Respondents be “business associates” of Mr. Pope within the meaning of the statute. Section 112.312(4), Florida Statutes, defines a “business associate” as “any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.” None of Mr. Pope’s interactions with Respondents would rise to the level of constituting “business associates,” and, in any event, the prohibition with respect to business associates, like that with respect to principals, applies only to *current* rather than past relationships. *See, e.g.*, Florida CEO 09-12 (“the statutory definition of the relationship, like the statutory reference concerning the relationship of a principal by whom a public officer is retained, encompasses a present, not a past or possible future, relationship.”); *In re: David Berrones*, Case No. 13-1752EC, 2014 Fla. Div. Adm. Hear. LEXIS 83 at ¶¶ 25-28 (Fla. DOAH Feb. 28, 2014) (recognizing that “The Commission has consistently recognized that section 112.3143(3)(a) is ‘phrased in the present tense’ requiring a current (an at-the-time-of-the-vote) relationship between the officer and the affected persons or entities.” and that the relationship must be examined to determine whether the supposed business associate “was a business associate of the Respondent *at the time Respondent cast the subject vote.*”) (emphasis added). Finally, while Mr. Pope’s affiliation with community organizations may entail

interactions with individuals affiliated with one or more Respondents who are members of such organizations, such Respondents do not constitute either “principals” or “business associates” of Mr. Pope within the statutory definitions by virtue of their affiliation with such organizations, as Mr. Pope does not act for such Respondents by virtue of his membership, nor does he carry on a business enterprise with such Respondents as a partner, joint venturer, corporate shareholder, or co-owner of property, by virtue of his membership. In short, none of Mr. Pope’ interactions with Respondents would give rise to a voting conflict under section 112.3143(3).

Finally, with respect to more general principles of procurement fairness, Mr. Pope has indicated that he has no recollection of any information regarding any Respondents from his prior interactions with them that would cause him to have any bias either in favor of or against any Respondent during his service as a member of the Negotiation Team. Thus, there does not appear to be any basis to view Mr. Pope as having any conflict that would impact his potential service on the Negotiation Team.

### **Conclusion**

Based upon the facts that we have reviewed, as taken from Mr. Pope’s statements regarding his interactions with Respondents to the ITN, there does not appear to be any basis to conclude that a conflict would exist with respect to Mr. Pope’s potential service as a member of the Negotiation Team with respect to the ITN. Mr. Pope is serving solely in his capacity as a JEA employee, has no conflicting business or contractual interests, and would not implicate the provisions of sections 112.313 or 112.3143(3). In addition, Mr. Pope has indicated that he does not possess outside information that would cause him to view any Respondent in a more favorable or unfavorable light. As a result, there is no apparent conflict or basis to exclude Mr. Pope from the ITN Negotiation Team if he were to be appointed.



## MEMORANDUM

**TO:** Procurement File  
**FROM:** Lynne C. Rhode  
**DATE:** October 23, 2019  
**RE:** Melissa Dykes - Disclosures of Interactions With Respondents

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In connection with the appointment of members of the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), in order to ensure that JEA conducts the most fair and competitive process possible, we have been asked to conduct a proactive review of each of the individuals under consideration for appointment to the team to ensure that such individuals are free of any potential conflicts of interest. As part of this analysis, we have reviewed the past and present interactions of individuals under consideration for appointment to the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), with Respondents to the ITN for purposes of determining whether any ethical concerns would arise if such individuals were to be appointed to the Negotiation Team.

For purposes of conducting this analysis, we have reviewed, relied upon, and summarized in relevant part herein statements from the potential Negotiation Team member regarding their past and/or present interactions and relationships with Respondents to the ITN. This analysis has been prepared in consultation with, and with the direct assistance of, the City of Jacksonville Office of Ethics, Compliance, and Oversight.

### **Question**

Would any interactions that Melissa Dykes, JEA’s President and Chief Operating Officer, may presently have or have had in the past with Respondents to the ITN present a conflict if she were to be appointed to serve on the Negotiation Team for the ITN?

### **Brief Answer**

No, Ms. Dykes does not appear to have any interest or relationship, past or present, with any Respondents that would give rise to a conflict if she were to be appointed to serve on the Negotiation Team for the ITN.

### **Analysis**

## **I. Summary of Interactions with Respondents**

Ms. Dykes has prepared a statement of her interactions and relationships that may have involved one or more Respondents to the ITN. Where necessary, we have also interviewed and asked appropriate follow-up questions to Ms. Dykes. Ms. Dykes has been advised that, should any change in circumstances during her potential service as a member of the Negotiation Team change the facts upon which this analysis is based, she should promptly bring such change in circumstances to the attention of the Office of General Counsel. Based upon the facts provided by Ms. Dykes in her statement and in response to our questions, Ms. Dykes' interactions with the Respondents may be summarized as follows:

From 2000 until 2008, Ms. Dykes was employed by JP Morgan, and served as a public power investment banker. Her clients during this employment included JEA itself, but did not include any Respondents or other participants in the ITN process. Ms. Dykes has no ongoing employment relationship with JP Morgan, and has no intention of engaging in a future employment relationship with JP Morgan.

Following her employment with JP Morgan, Ms. Dykes was employed by MAS Energy from 2009 to 2011, and was engaged in private equity energy development. Alan Howard, past Chair of the JEA Board of Directors, was the general counsel of MAS Energy at the time. Ms. Dykes confirms in her statement that there is no overlap between the Respondents to the ITN and the projects and customers she worked with while at MAS Energy, and that she has no ongoing employment relationship with MAS Energy, and has no intention of engaging in a future employment relationship with MAS Energy.

Subsequently, Ms. Dykes was employed by NTE Energy from 2011 to 2012, again engaging in private equity energy development. Ms. Dykes has confirmed in her statement that there is no overlap between the Respondents to the ITN and the projects and customers she worked with while at NTE Energy. Although there may have been interactions between other NTE Energy employees and one or more of the Respondents during the time that she was employed by NTE Energy, Ms. Dykes has no specific recollection of such interactions. Again, Ms. Dykes has confirmed that she has no ongoing employment relationship with NTE Energy, and has no intention of engaging in a future employment relationship with NTE Energy.

Lastly, while employed with JEA and as a task of such employment, Ms. Dykes served as the lead negotiator with Florida Power & Light Company ("FPL"), a subsidiary of one of the Respondents, with respect to the shutdown of the St. Johns River Power Park, which was jointly owned by JEA and FPL.

In addition to her prior employment, Ms. Dykes serves on a number of boards, including the United Way, the Association of Edison Illuminating Companies, and the Florida Reliability Coordinating Council. The Association of Edison Illuminating Companies ("AEIC") is an organization designed to bring utility executives together to share operational best practices, and its membership includes many other utility companies, including several Respondents to the

ITN. Ms. Dykes has served on the AEIC Board since 2018. The Florida Reliability Coordinating Counsel (“FRCC”) is an organization designed to ensure the reliability of the electric grid in Florida, with a secondary purpose of facilitating the exchange of operating information among member utilities. FRCC’s membership includes all Florida electric utilities, including certain of the Respondents. Ms. Dykes has served on the FRCC Board since 2018, and has served as Chair of the Corporate Compliance and Finance and Audit Committee since 2019. She is not compensated for her board service. Ms. Dykes does not believe that her board service with these organizations would impair her ability to fairly and impartially consider each of the Respondents to the ITN.

In addition, Ms. Dykes has confirmed that neither she, nor any spouse or child of hers, has any past or current business relationship with any Respondent other than as described herein.

Finally, Ms. Dykes’ statements confirm that she has no financial interest in any of the Respondents beyond what may be included in mutual funds that she holds. In the event the ITN 127-19 process results in a sale, Ms. Dykes will realize no pecuniary gain other than compensation to which she may be entitled under employment contracts and benefits authorized by the JEA Board of Directors and available to her and other JEA employees incident to her current employment with JEA. In addition, Ms. Dykes has confirmed that she has no outside knowledge from her prior employment or board service regarding any of the Respondents that would cause her to favor or disfavor any Respondent.

## **II. Analysis of Relevant Conflict Concepts**

Ms. Dykes, if appointed to the Negotiation Team for the ITN, would be serving on JEA’s Negotiation Team in her capacity as a JEA employee. No circumstances have been brought to our attention with respect to Ms. Dykes that would implicate or potentially implicate any of the provisions of section 112.313, as Ms. Dykes would be acting only in her capacity as a JEA employee and is not an officer, partner, director, or owner of any Respondent, is not employed by any Respondent, and has no contractual relationship with any Respondent. Ms. Dykes would not be seeking to do business with JEA within the meaning of section 112.313(3), and would not be holding any conflicting employment or contractual relationship. Simply stated, Ms. Dykes is not employed by or an officer of an entity doing business with JEA, does not own a business that is doing business with JEA (aside from potential *de minimis* indirect interests that may arise as a result of mutual fund holdings), and is not consulting or performing contract work with a business that is doing business with JEA.

Similarly, assuming *arguendo* that section 112.3143(3)(a), Florida Statutes, were applicable to the Negotiation Team, the facts disclosed by Ms. Dykes would not present a voting conflict prohibited by that statutory scheme. Ms. Dykes does not have any financial interest in any of the Respondents that could potentially give rise to a special private gain or loss. Nor do any of the Respondents constitute a “principal” within the meaning of that section who may obtain a special private gain or loss. A “principal” is defined by section 112.3143(1)(a), Florida Statutes, as “an individual or entity, other than an agency as defined in s. 112.312(2), that for



compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer." As the Florida Commission on Ethics has consistently held, in order for an entity to constitute a "principal" within the meaning of the statute, there must be a *present, i.e.*, "at-the-time-of-the-vote" connection, and "past or possible future relationships do not trigger the statute." Florida CEO 09-12 (law firm that formerly employed board member was not "principal" within meaning of statute); *see also* Florida CEO 09-9 (measures affecting former employer of commissioner would not trigger voting conflict); Florida CEO 77-183 (board member not prohibited from voting on permit for entity formerly retaining his engineering services); Florida CEO 80-75 (no voting conflict where board of adjustment member votes on variance request concerning project he was involved in but had no continuing client relationship at the time of the vote); Florida CEO 06-5 (no voting conflict where affected entity seasonally employed commissioner but did not employ him at time of the vote; "Our decisions construe the statute as applying only 'in the present tense.' That is, a public officer must be employed by the public-measure-affected person or entity at the time of the vote; past relationships or possible future relationships do not satisfy the requirements of the statute."). Nor would any of the Respondents be "business associates" of Ms. Dykes within the meaning of the statute. Section 112.312(4), Florida Statutes, defines a "business associate" as "any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property." None of Ms. Dykes' interactions with Respondents would rise to the level of constituting "business associates," and, in any event, the prohibition with respect to business associates, like that with respect to principals, applies only to *current* rather than past relationships. *See, e.g.*, Florida CEO 09-12 ("the statutory definition of the relationship, like the statutory reference concerning the relationship of a principal by whom a public officer is retained, encompasses a present, not a past or possible future, relationship."); *In re: David Berrones*, Case No. 13-1752EC, 2014 Fla. Div. Adm. Hear. LEXIS 83 at ¶¶ 25-28 (Fla. DOAH Feb. 28, 2014) (recognizing that "The Commission has consistently recognized that section 112.3143(3)(a) is 'phrased in the present tense' requiring a current (an at-the-time-of-the-vote) relationship between the officer and the affected persons or entities." and that the relationship must be examined to determine whether the supposed business associate "was a business associate of the Respondent *at the time Respondent cast the subject vote.*") (emphasis added). Finally, while Ms. Dykes' board service may entail interactions with one or more Respondents who are members of organizations that Ms. Dykes serves on the board of, such Respondents do not constitute either "principals" or "business associates" of Ms. Dykes within the statutory definitions by virtue of their membership in such organizations, as Ms. Dykes does not act for such Respondents by virtue of her board service nor does she carry on a business enterprise with such Respondents as a partner, joint venturer, corporate shareholder, or co-owner of property, by virtue of her board service. In short, none of Ms. Dykes' interactions with Respondents would give rise to a voting conflict under section 112.3143(3).

Finally, with respect to more general principles of procurement fairness, Ms. Dykes has indicated that she has no recollection of any information regarding any Respondents from her

prior interactions with them that would cause her to have any bias either in favor of or against any Respondent during her service as a member of the Negotiation Team. Thus, there does not appear to be any basis to view Ms. Dykes as having any conflict that would impact her potential service on the Negotiation Team.

### **Conclusion**

Based upon the facts that we have reviewed, as taken from Ms. Dykes' statements regarding her interactions with Respondents to the ITN, there does not appear to be any basis to conclude that a conflict would exist with respect to Ms. Dykes' potential service as a member of the Negotiation Team with respect to the ITN. Ms. Dykes is serving solely in her capacity as a JEA employee, has no conflicting business or contractual interests, and would not implicate the provisions of sections 112.313 or 112.3143(3). In addition, Ms. Dykes has indicated that she does not possess outside information that would cause her to view any Respondent in a more favorable or unfavorable light. As a result, there is no apparent conflict or basis to exclude Ms. Dykes from the ITN Negotiation Team if she were to be appointed.

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



## **MEMORANDUM**

**TO:** Procurement File  
**FROM:** Lynne C. Rhode  
**DATE:** October 23, 2019  
**RE:** Herschel Vinyard - Disclosures of Interactions With Respondents

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In connection with the appointment of members of the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), in order to ensure that JEA conducts the most fair and competitive process possible, we have been asked to conduct a proactive review of each of the individuals under consideration for appointment to the team to ensure that such individuals are free of any potential conflicts of interest. As part of this analysis, we have reviewed the past and present interactions and relationships of individuals under consideration for appointment to the Negotiation Team for JEA Invitation to Negotiate #127-19 entitled “Strategic Alternatives” (the “ITN”), with Respondents to the ITN for purposes of determining whether any ethical concerns would arise if such individuals were to be appointed to the Negotiation Team.

For purposes of conducting this analysis, we have reviewed, relied upon, and summarized in relevant part herein statements from the potential Negotiation Team member regarding their past and/or present interactions with Respondents to the ITN. This analysis has been prepared in consultation with, and with the direct assistance of, the City of Jacksonville Office of Ethics, Compliance, and Oversight.

### **Question**

Would any interactions that Herschel Vinyard, JEA’s Chief Administrative Officer, may presently have or have had in the past with Respondents to the ITN present a conflict if he were to be appointed to serve on the Negotiation Team for the ITN?

### **Brief Answer**

No, Mr. Vinyard does not appear to have any interest or relationship, past or present, with any Respondents that would give rise to a conflict if he were to be appointed to serve on the Negotiation Team for the ITN.

## **Analysis**

### **I. Summary of Interactions with Respondents**

Mr. Vinyard has prepared a written statement of his interactions and relationships that may have involved one or more Respondents to the ITN. Where necessary, we have also interviewed and asked appropriate follow-up questions to Mr. Vinyard. Mr. Vinyard has been advised that should any change in circumstances during his potential service as a member of the Negotiation Team change the facts upon which this analysis is based, he should promptly bring such change in circumstances to the attention of the Office of General Counsel. Based upon the facts provided by Mr. Vinyard in his statement and in response to our questions, Mr. Vinyard's interactions with the Respondents may be summarized as follows:

From 2011 until 2014, Mr. Vinyard served as the Secretary of the State of Florida, Department of Environmental Protection ("DEP"). During this period, with Mr. Vinyard's oversight as Secretary<sup>1</sup>, DEP issued or denied permits or authorizations to one or more of the Respondents, and took customary regulatory actions against one or more of the Respondents. In addition, Mr. Vinyard states that his service as DEP Secretary required him to interact and be involved with one or more of the Respondents in relation to regulatory, legislative, ceremonial, and public-private partnership initiatives.

Following his service as DEP Secretary, from 2015 until March of 2019, Mr. Vinyard served in the role of "of counsel" with Foley & Lardner LLP, an international law firm that employs more than 1,000 attorneys. Mr. Vinyard states that, during the time period he was affiliated with Foley & Lardner, the firm represented one or more of the Respondents, and that he was personally involved with the representation of one or more of the Respondents. Mr. Vinyard further states that, based upon his recollection, his last personal involvement with the representation of any of the Respondents ended approximately two years ago, and that he has no knowledge as to whether the firm represents any Respondents at this time. The statement confirms that Mr. Vinyard has no current financial interest in Foley & Lardner LLP and has no firm files in his possession relating to any Respondents or any other clients of Foley & Lardner LLP.

In addition, Mr. Vinyard has confirmed that neither he, nor any spouse or child of his, has any current business relationship with any Respondent other than as described herein.

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<sup>1</sup> Pursuant to section 20.255(1), Florida Statutes, the Secretary is "[t]he head of the Department of Environmental Protection."

Finally, Mr. Vinyard's statement confirms that he has no financial interest in any of the Respondents beyond what may be included in mutual funds that he holds. In the event the ITN 127-19 process results in a sale, Mr. Vinyard will realize no pecuniary gain other than compensation to which he may be entitled under employment contracts and benefits authorized by the JEA Board of Directors and available to him and other JEA employees incident to his current employment with JEA. In addition, Mr. Vinyard has confirmed that he has no recollection of any information from his service as Secretary of DEP, or affiliation with Foley & Lardner LLP, regarding any of the Respondents that would cause him to favor or penalize any Respondent.

## **II. Analysis of Relevant Conflict Concepts**

Mr. Vinyard, if appointed to the Negotiation Team for the ITN, would be serving on JEA's Negotiation Team in his capacity as a current JEA employee. No circumstances have been brought to our attention with respect to Mr. Vinyard that would implicate or potentially implicate any of the provisions of section 112.313, as Mr. Vinyard would be acting only in his capacity as a JEA employee and is not an officer, partner, director, or owner of any Respondent, is not employed by any Respondent, and has no contractual relationship with any Respondent. Mr. Vinyard would not be seeking to do business with JEA within the meaning of section 112.313(3), and would not be holding any conflicting employment or contractual relationship. Simply stated, Mr. Vinyard is not employed by or an officer of an entity doing business with JEA, does not own a business that is doing business with JEA (aside from potential *de minimis* indirect interests that may arise as a result of mutual fund holdings), and is not consulting or performing contract work with a business that is doing business with JEA.

Similarly, assuming *arguendo* that section 112.3143(3)(a), Florida Statutes, were applicable to the Negotiation Team, the facts disclosed by Mr. Vinyard would not present a voting conflict prohibited by that statutory scheme. Mr. Vinyard does not have any financial interest in any of the Respondents that could potentially give rise to a special private gain or loss. Nor do any of the Respondents constitute a "principal" within the meaning of that section who may obtain a special private gain or loss. A "principal" is defined by section 112.3143(1)(a), Florida Statutes, as "an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer." As the Florida Commission on Ethics has consistently held, in order for an entity to constitute a "principal" within the meaning of the statute, there must be a *present, i.e.*, "at-the-time-of-the-vote" connection, and "past or possible future relationships" do not trigger the statute. Florida CEO 09-12 (law firm that formerly employed board member was not "principal" within meaning of statute); *see also* Florida CEO 09-9 (measures affecting former employer of commissioner would not trigger voting conflict); Florida CEO 77-183 (board member not prohibited from voting on permit for entity formerly retaining his engineering services); Florida CEO 80-75 (no voting conflict where board of adjustment member votes on variance request concerning project he was involved in but had no continuing client relationship at the time of the vote); Florida CEO

06-5 (no voting conflict where affected entity seasonally employed commissioner but did not employ him at time of the vote; “Our decisions construe the statute as applying only ‘in the present tense.’ That is, a public officer must be employed by the public-measure-affected person or entity at the time of the vote; past relationships or possible future relationships do not satisfy the requirements of the statute.”). Nor would any of the Respondents be “business associates” of Mr. Vinyard within the meaning of the statute. Section 112.312(4), Florida Statutes, defines a “business associate” as “any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.” None of Mr. Vinyard’s past interactions with Respondents would rise to the level of constituting “business associates,” and, in any event, the prohibition with respect to business associates, like that with respect to principals, applies only to *current* rather than past relationships. *See, e.g.*, Florida CEO 09-12 (“the statutory definition of the relationship, like the statutory reference concerning the relationship of a principal by whom a public officer is retained, encompasses a present, not a past or possible future, relationship.”); *In re: David Berrones*, Case No. 13-1752EC, 2014 Fla. Div. Adm. Hear. LEXIS 83 at ¶¶ 25-28 (Fla. DOAH Feb. 28, 2014) (recognizing that “The Commission has consistently recognized that section 112.3143(3)(a) is ‘phrased in the present tense’ requiring a current (an at-the-time-of-the-vote) relationship between the officer and the affected persons or entities.” and that the relationship must be examined to determine whether the supposed business associate “was a business associate of the Respondent *at the time Respondent cast the subject vote.*”) (emphasis added). In short, none of Mr. Vinyard’s interactions with Respondents would give rise to a voting conflict under section 112.3143(3).

Finally, with respect to more general principles of procurement fairness, Mr. Vinyard has indicated that he has no recollection of any information regarding any Respondents from his prior interactions with him that would cause him to have any bias either in favor of or against any Respondent during his service as a member of the Negotiation Team. Thus, there does not appear to be any basis to view Mr. Vinyard as having any conflict that would impact his potential service on the Negotiation Team.

## **Conclusion**

Based upon the facts that we have reviewed, as taken from Mr. Vinyard’s statements regarding his interactions with Respondents to the ITN, there does not appear to be any basis to conclude that a conflict would exist with respect to Mr. Vinyard’s potential service as a member of the Negotiation Team with respect to the ITN. Mr. Vinyard is serving solely in his capacity as a JEA employee, has no conflicting business or contractual interests, and would not implicate the provisions of sections 112.313 or 112.3143(3). In addition, Mr. Vinyard has indicated that he does not possess outside information that would cause him to view any Respondent in a more favorable or unfavorable light. As a result, there is no apparent conflict or basis to exclude Mr. Vinyard from the ITN Negotiation Team if he were to be appointed.

