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MEMORANDUM

TO: Council Member Michael T. Boylan, Chair, JEA Fact-Finding Workshops

FROM: Margaret M. Sidman, Deputy Legislative Affairs & Managing Deputy *MS*

RE: Inquiries from previous meeting

DATE: November 25, 2019

Question 1

Whether the City Council can request and receive non-confidential, non-exempt written opinions and guidance of outside special legal counsel hired by other City agencies or authorities?

Answer 1

Yes. All engaged outside special legal counsel, while hired for certain City agencies or authorities, are ultimately hired in the interests of the City as a whole. Accordingly, when desired, and subject to potential confidentiality and exemptions (depending on the circumstances), City Council can request, and receive, written opinions and guidance provided by outside special legal counsel. There are times (for example, during the pendency of litigation, during collective bargaining, or other exempt proceedings and circumstances), where communication on certain matters may be privileged, exempt or confidential. There are usually time periods during which the exemption may be in effect, after which time the information is disclosable. However, to the extent that the information requested is otherwise disclosable as provided by law, that information may be provided to City Council upon request. The same goes for access to the outside special legal counsel themselves. To the extent a Council Member desires to have a meeting or individual discussion with the applicable attorney regarding a certain subject matter, that can be arranged as well. Such requests (for either information, or meeting counsel) can be requested and coordinated through the Office of General Counsel and our office can assist the inquiring Council Member.

Question 2

Whether JEA has the authority to enter into discussions of selling JEA?

Answer 2

Yes. The sale of all or a part of JEA, is a sale of assets. Utilizing a procurement process to effectuate a recommendation to JEA's Board and City Council regarding the potential sale of one or more operations of JEA is authorized. Procurement processes are utilized by the City and other agencies to convey property and assets, in a variety of contexts.

As previously discussed with Council both during the Special Committee on the Future of JEA in 2018, and recently during multiple meetings in 2019, Section 21.04(p) provides authority, along with JEA's plenary authority granted in Section 21.05, for the independent ownership, management and operations of all utilities (along with all implied and incidental powers). Section 21.04(p) states in pertinent part:

(p) To transfer, sell, finance, lease or otherwise provide services or products, or by-products, developed or used by JEA incident to the exercise of the powers conferred by this article, including but not limited to, energy performance contracting, water, sewer and natural gas (and any other utility service hereafter provided by JEA) contracting, power marketing services, the testing and maintenance of customer-owned facilities such as transformers, capacitors, lighting, HVAC systems, water cooling and heating systems, energy management systems, etc.; the temporary leasing of JEA facilities such as oil storage tanks; the supply of steam or other thermal energy; the provision of specially conditioned power on the premises of customers and the provision of services or products to build, transfer, lease, finance, operate or sell cogeneration facilities, small power production facilities, specially conditioned power, energy conservation, energy efficiency and dispersed generation to other electric utilities both within and without the state or to any wholesale or retail customers of JEA, upon such terms and conditions as JEA shall by resolution fix and determine; and to transfer, sell, finance, lease or otherwise provide services, products or by-products developed or used by JEA incident to the exercise of the powers conferred by this article, in the delivery of water, wastewater and natural gas services, including but not limited to the financing, testing, maintenance and operation of customer owned facilities used in water, wastewater and natural gas functions; provided, however, that JEA will not enter into any activity pursuant to this section in addition to those activities listed herein without first providing written notice of such activities to the council auditor no less than 30 days before the commencement of such activity. ***Nothing in this article shall authorize or be construed to authorize JEA to transfer any function or operation which comprises more than ten percent of the total of the utilities system by sale, lease or otherwise to any other utility, public or private without approval of the council; provided, however, that no approval by the council shall become effective without subsequent referendum***

approval of the terms and conditions of the sale. So long as there are outstanding any of the city's "Capital Project Revenue Bonds" as originally authorized pursuant to Ordinance 97-1054-E, the council may approve only such transfer which does not materially adversely affect future receipts of JEA contributions as defined therein.

(emphasis added).

Importantly, no sale can be finalized without City Council approving it, and sending it to the voters in a referendum (for voter approval of sale terms and conditions) as the Charter provides.

Finally, Section 21.11, Charter (Legislative Authority of Council) authorizes City Council to amend or repeal all or a part of the entire JEA Article with a two-thirds vote of the membership of Council.

In other words, City Council has the ultimate legislative discretion to change JEA provisions in the Charter, or to approve a sale of all or a part of it, for that matter.

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