

From: KHyde@foley.com
To: [Rhode, Lynne C. \(City of Jacksonville\); Vinyard, Herschel T. - Chief Administrative Officer](#)
Subject: Kevin E Hyde sent you "Executive Summary of PUP document"
Date: Tuesday, December 10, 2019 7:23:59 PM
Attachments: [Executive Summary of PUP document.docx](#)

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

Please see attached for review and comment.

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

The information contained in this message, including but not limited to any attachments, may be confidential or protected by the attorney-client or work-product privileges. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

Executive Summary

The Performance Unit Plan (“PUP”) is the product of discussions begun with the JEA Board Compensation Committee on January 15, 2019. The Compensation Committee desired to utilize “employee incentives [that] drive value and teamwork”.¹ JEA reviewed available options over the course of the following months. In June, 2019, the JEA Compensation Committee authorized JEA to “start the process of finalizing a long term compensation framework.”² Also, in June, 2019, the OGC affirmed the authority of the JEA Board to create or establish a long-term employee incentive plan.³ On July 22, 2019 (prior to the JEA Board meeting on the 23rd), OGC confirmed its review of Resolution 2019-10 (which authorizes the PUP) and the authority of the JEA Board to consider, approve or deny the resolution.⁴ The JEA Board approved Resolution 2019-10 on July 23, 2019, which resolution “APPROVED LONG-TERM PERFORMANCE UNIT PLAN AND RELATED DOCUMENTATION AND AUTHORIZING THE CEO TAKE ANY AND ALL ACTION TO PURSUE THE IMPLEMENTATION OF SUCH PLAN AND RELATED DOCUMENTATION.”⁵

Based on JEA Board approval, JEA leadership team worked extensively with OGC, specialized outside counsel retained by OGC (Pillsbury and Foley & Lardner) and the Council Auditor in developing and reviewing the PUP. JEA’s CFO provided draft PUP plan documents to the Office of Council Auditor as early as August 9, 2019 who, in turn, asked a series of questions.⁶ Council Auditor again met personally with JEA senior representatives on October 31, 2019.⁷

In August, September and October JEA continued to work with specialized counsel retained by OGC and JEA employee services representatives to review and refine the PUP Plan and to prepare an Employee Brochure to explain the PUP and the option to participate or decline.⁸

Simultaneous with the above, JEA, OGC and specialized counsel retained by OGC continued their legal review and analysis. This review began in July, 2019 and continued consistently until the decision to discontinue consideration of PUP in November, 2019. The review included additional legal research, the development of legal memoranda⁹ addressing questions raised by the OGC, and meetings between outside counsel, JEA representatives and OGC in September, October and November, 2019. Some, but not all of the issues included compliance with state laws related to compensation, various Florida ethics laws, whether the PUP could allow JEA employees to benefit from growth in the net position value of JEA and what involvement, if any, by City Council was required.

In addition to the above review, and though not required to do so, on October 1, 2019, JEA sought an advisory opinion from the Florida Attorney General.¹⁰ The request stated, “while it appears

¹ Minutes of Compensation Committee dated January 15, 2019 (Tab CC Mins 1/15/19).

² Minutes of Compensation Committee dated June 18, 2019 (Tab CC Mins 6/18/19).

³ Memorandum to Lynne Rhode dated June 17, 2019 (Tab P&C OGC Memo 6/17/19).

⁴ Memorandum to File from Lawsikia Hodges, Lynne Rhode and Jason Gabriel dated July 22, 2019 (Tab P&C OGC Memo 7/22/19).

⁵ JEA Board Minutes of July 23, 2019 (BOD Mins 7/23/19).

⁶ Email from Jeffrey Rodda to Juli Crawford et. Al. dated August 9, 2019 (Tab “E-mails”).

⁷ Email from Heather Reber to Ryan Wannamker et. Al. dated October 31, 2019 (Tab “Emails”).

⁸ See Tab “Emails,” Tab LT PU Agreement, Tab Employee Brochure and Tab P&C Pills Memo 11/4/19..

⁹ See Tab Foley 9/25/19.

¹⁰ Tab “AG Request.”

clear based on our research that the PUP is permissible under Florida law, given the potential significance of the Plan to both JEA and its approximately 2000 employees, we seek guidance from your Office to confirm that the PUP is lawful.” Further, JEA had prepared an inquiry to the Florida Ethics Commission which it intended to send after a determination from the Florida Attorney General.¹¹

Based on further consultation with OGC, JEA decided to suspend consideration and implementation of the PUP.¹² In accordance with Resolution 2019-863, JEA senior leadership has requested the JEA Board at its December 17, 2019 to rescind any further consideration or implementation of the PUP.

In deciding there were outstanding legal issues preventing adoption of the PUP as then written, the OGC did not find that the JEA Board acted outside of its authority to propose the PUP. Specifically, the OGC confirmed this in an email to JEA Board Chair April Green:¹³

Per our conversation earlier this morning, it has come to my attention that a certain implication has been made that JEA did something legally wrong with regard to the preliminary adoption of the Performance Unit Plan (PUP) at the July 23, 2019 meeting. I write to address this unfortunate suggestion.

Following the Board meeting, JEA gave OGC requisite time research and review the specifics of the plan prior to its implementation. This was a collaborative process between OGC and JEA of due diligence and analysis that included an inquiry to the Florida Attorney General. In preliminarily approving the PUP, the JEA Board did not act outside of their legal authority.

OGC ultimately concluded that the PUP had outstanding legal issues and JEA ultimately concluded that they would no longer pursue the plan. At the next JEA Board meeting, the Board will have the opportunity to vote and formally withdraw the plan. I anticipate the Board will take appropriate action at that time.

¹¹ Tab “Draft EE Request.”

¹² Tab “PUP Ltr. To OGC 11/12/19”, Tab “OGC Memo 11/12/19” and Tab “PUP Ltr. To JEA 11/12/19.”

¹³ Tab “OGC Email 12/6/19”