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Subject: COJ/JEA - Document Summary

I trust this finds you in good health in isolation. We want to report on where we are to date in collecting documents for the Committee, and our witness interviews. The documents referenced below are in a Dropbox link which Chris Dix of our office will forward to you shortly.

Document Production:

We have obtained approximately 32.3 GB of documents relating to the Committee's investigation. They include:

- All minutes and presentation materials from JEA's Board, Compensation Committee and Awards Committee meetings from December 2017 to the present (available in the "JEA Meetings" folder.) These documents detail SLT efforts to (i) consolidate power authority Aaron Zahn with respect to the PUP, JEA's scenario-based strategic planning and other investigatory matters; (ii) convince JEA's Board that the City Charter and other legal constraints would cause JEA to suffer severe consequences in the near future, including substantial rate increases and employee layoffs, if JEA remained a municipal utility; and (iii) foster a profit-driven culture at JEA by, among other things, implementing a performance-based long-term incentive plan similar to those in private enterprise.

  Some pertinent JEA meetings include:

  - The Board's "Workshop on the Subject of Privatization" on March 20, 2018 at which *Board Member* Aaron Zahn discussed threats posed to JEA by alternative energy and recommended developing a strategic plan to run JEA's business over the next ten years. Zahn's statements are strikingly similar to those made by Mayor Lenny Curry on April 26, 2018 (available here). Zahn frequently repeated these themes during his tenure at JEA.

  - The June 19, 2018 Board meeting at which the Board rejected a "Shareholder Framework" proposed by Aaron Zahn that included submitting a JEA-drafted resolution to the City

Council that may have, whether intended or not, resulted in the City Council pre-approving the outcome of JEA's strategic planning (e.g., privatization). The JEA Board rejected Zahn's proposal after Board Member Husein Cumber characterized it as "weird."

- The August 21, 2018 JEA Board meeting at which Aaron Zahn proposed a timeline to achieve "alignment" around a "Strategic Planning Framework" by October 5, 2019. Zahn claimed JEA's success depended on alignment among JEA's (i) "Stakeholders" (customers, employees, union and community), "Shareholders" (Mayor Curry and the City Council), and (iii) Board. The Board unanimously approved the Strategic Planning initiative. A proposed letter from Board Chairman G. Alan Howard identified its ultimate goal as "[m]aximiz[ing] the value of JEA both now and in the future." The letter went on to identify four "Corporate Measures" to assess JEA's "value:" value to our customer, financial value, community impact value, and environmental value. The nebulous concepts of "aligning" people with JEA's goals and measuring JEA "value" through the four Corporate Measures became central pillars in the push for a long-term incentive plan and the recapitalization of JEA.

- The October 16, 2018 Board meeting where Aaron Zahn identified a number of "guiding principles" for JEA's strategic planning, including adaptability, innovation and evolution. Zahn also identified "points of concern" for JEA, including "competitive and market pressures" and "City Council engagement on future Charter changes necessary to migrate business." Zahn identified paying down JEA's debt as the "natural next step" to transition from "more of a government-run utility to more of a . . . profitability-driven utility." Whether intended or not, improving JEA's balance sheet would result in JEA being a more enticing asset for prospective buyers.

- The November 27, 2018 meeting at which the JEA Board interviewed potential CEO candidates. During his opening statement, Aaron Zahn said, among other things, (i) "the era of our future is much different than the era of our past"; (ii) the "inevitability" of JEA's "infrastructure transitioning"; and (iii) he promised to "continue to drive alignment on a pervasive commitment to value and profitability" by using the strategic framework. The Board unanimously elected Zahn as JEA's next CEO after these comments.

- The December 11, 2018 Board meeting at which (i) Ryan Wannemacher stated the STAR Plan would allow JEA to repay nearly $1 billion in debt, which Aaron Zahn noted would "well position" JEA for a "strategic pivot"; (ii) Zahn intermingled concepts like "accelerating innovation," "the changing utility industry" and "market trends" with the Guiding Principles and Corporate Measures governing JEA's strategic planning; and (iii) Zahn stated he would work with Jody Brooks to create a "governance guideline" to "establish a Board-Management Delegation Policy that would specify how JEA's enumerated Chartered powers are delegated."

- The January 15, 2019 Compensation Committee meeting at which Aaron Zahn presented Willis Towers Watson's "Total Market Compensation Strategy" report. It indicates that "JEA's total compensation structure does not reward value creation" because JEA does not have a long-term incentive plan (*id*. at p. 13). The report also insinuated JEA's declining annual growth rate between 2006 and 2017 resulted from the lack of a long-term incentive (*id*. at p. 14). As noted in the Nelson Mullins report (available in the "Nelson Mullins" folder), the referenced figure is similar to a figure presented at the April 2018 JEA Board Workshop on Privatization that projected JEA's electric sales *increasing* after 2017 (id. at pp. 4-5). That omitted information would have undermined the narrative that JEA's purported growth problems were linked to the lack of long-term compensation plan.

- The January 22, 2019 Board meeting at which Aaron Zahn and Anton Derkach of McKinsey & Company gave a presentation on JEA's ten-year strategic plan to increase JEA's value in light of "significant trends" in the utility sector. The Board approved a revision to Policy 2.7 of the JEA Board Policy Manual that contained two notable changes: (i) employee compensation expanded from "salary/wages" to "total compensation," including "Base Salary, Short Term Incentives and Long Term Incentives"; and (ii) the metric for measuring "market (50% percentile)" employee compensation shifted from JEA's "geographical area" to "the industry and geographical area." The Board then approved extending Zahn's interim CEO contract to July 2019 while JEA's compensation policy is finalized. Thus, Zahn helped align JEA employee compensation with private companies and then waited to execute his CEO employment agreement until the JEA Board authorized a long-term compensation plan.

- The March 26, 2019 Board meeting at which Melissa Dykes stated that JEA "[m]aintained excellent financial and operational metrics" and Ryan Wannemacher reported JEA's "strong performance across all key financial metrics." Aaron Zahn, on the other hand, played a video clip to analogize JEA to a battleship commander foolishly demanding a stationary lighthouse move out of the battleship's path of travel. He analogized the clip to JEA and argued that JEA should "pivot," "develop an adaptive culture," and "align to a pervasive commitment to profitability and value[.]"

- The May 28, 2019 Board meeting at which Aaron Zahn, Melissa Dykes, and Ryan Wannemacher argued that, due to technology disruption, JEA could only maintain the "status quo" or "business as usual" scenario by (i) raising electricity base rates by 52% or (ii) raising electricity base rates by 40% and making no contribution to the City after 2023. Chairperson April Green moved to authorize the management team to develop *non-status quo* scenarios. The Board approved the motion despite the issue not being identified on the Board's approved agenda.

- The June 18, 2019 Compensation Committee meeting assessing Willis Towers Watson's "Total Market Compensation Strategy" report and a "Compensation Program Appendix for the Compensation Committee." The appendix differed from its May 28, 2019 predecessor in several respects. As an example, it removed footnotes from the Market Practices Summary stating that Willis Towers Watson based its long-term incentive plan design on "anecdotal consulting evidence" about public utilities (*id*. at pp. 24-25). Moreover, the appendix described the performance unit plan as "Self Funded based on Contribution to the City" with a total cost of $3.4 million (*id*. at pp. 26-27). Willis Tower Watson proposed that JEA's executives receive substantial compensation increases (*id*. at pp. 31-32). Curiously, Willis Towers Watson's proposed adjustments relied on market data provided by JEA (*id*.). JEA has not provided that data to our firm. Nevertheless, the Committee approved a motion "direct[ing] JEA management to start the process of finalizing the long term compensation framework . . . ."

- o The June 25, 2019 Board meeting at which Aaron Zahn, Ryan Wannemacher, and Melissa Dykes gave presentations on strategic planning scenario 1 (status quo) and 2 (traditional utility response). Wannemacher stated that if JEA continued scenario 1, it would have to increase electric base rates 52% and water base rates 15%. Zahn similarly warned that JEA could become "the next Blockbuster Video" because existing legal constraints, including the City Charter, prevented JEA from adapting to technology disruption. Afterwards, Dykes warned that JEA would experience, among other things, the following under scenario 2 by 2030: (i) a 29% headcount reduction, (ii) reductions in reliability and customer service, and (iii) a 26% rate increase. Several Board members expressed an eagerness to reject scenarios 1 and 2 at the conclusion of the presentations. However, Zahn urged the Board to let SLT finish its analysis of scenario 2 because "[a] non-traditional response will require 19 City Council Members to vote in a certain direction." The Board at the same time approved a "market-based compensation program" consisting of base salary, short-term incentives, and long-term incentives aligned with the Total Compensation Philosophy.

- o The July 23, 2019 Board meeting at which SLT provided additional information about scenarios 1 and 2. The Board then adopted Aaron Zahn's recommendation and approved (i) Resolution 2019-07, which authorized JEA's CEO "or his designee to take any and all action to maximize the four core values JEA . . . through a competitive solicitation process regarding JEA assets . . ." (*id.* at p. 1); (ii) Resolution 2019-09, which approved Zahn's employment agreement and stated that JEA's CEO "or his designee shall have the authority to execute with each full-time employee . . . an employee retention program agreement . . . and to take any and all action . . . that the CEO or his designee deems necessary or advisable to carry out the intent of this resolution" (*id.* at p. 1); and (iii) Resolution 2019-10, which states that JEA's CEO "or his designee shall have authority to . . . implement a long-term performance unit plan" and "take, or cause to be taken, any and all action . . . deem[ed] necessary or advisable to carry out the intent of this resolution" (*id.* at p. 1).

We combined the meetings' minutes and converted them into searchable PDFs. (Available in the "JEA Meetings" folder). They allow you to search each instance a name or phrase occurs (e.g., "ITN 127-19").

- A "Miscellaneous Files" folder that includes JEA's Board Policy Manual dated February 16, 2010, which limits the authority of JEA's Board and SLT. As an example, it prohibits JEA's CEO from (i) allowing "any organization, practice, activity, decision, or circumstance that is either unlawful, imprudent, or in violation of commonly accepted business and professional ethics and practices" (Policy 2.0); (ii) jeopardizing the "financial integrity or public image" (Policy 2.7); and (iii) "allow[ing] the Board to be uninformed or unsupported in its work" (Policy 2.8).

- Billing statements and invoices from JEA's consultants. (Available in the "Billing Statements and Invoices" folder.) We combined the invoices received to date into a single, searchable file for ease of reference. We are working with OGC to obtain the remaining consultant agreements, engagement letters, scopes of work, and invoices, including McKinsey & Company, Morgan

Stanley & Co. LLC, J.P. Morgan Securities LLC, and the consultants recently identified in JEA's "preliminary" answers to the Committee's interrogatories. JEA's counsel told us we will receive supplemental answers by month's end.

- Select contracts, procurement documents, and invoices relating to McKinsey & Company, Inc. Washington D.C.'s involvement in JEA's strategic planning. (Available in the "McKinsey" folder.) Those documents indicate that McKinsey began providing "strategic planning" services to JEA pursuant to a September 2018 contract awarded in connection with ITN 124-18. The contract capped JEA's maximum indebtedness at $308,000. However, McKinsey ultimately entered into a strategic planning subcontract with Pillsbury in September 2019. The subcontract contemplated payments for services "McKinsey may have provided in the past," together with $3,000,000 in expenses payable before March 2020 and unspecified expenses for "optional" future services.

  We will investigate, among other things, (i) when and why McKinsey began providing strategic planning services to JEA and/or SLT, (ii) who authorized McKinsey's retention and payments under its evolving contract scheme, (iii) the amount McKinsey has been paid or is owed by JEA, (iv) whether McKinsey violated the JEA Board's May 15, 2018 directive to put "any activities tied to privatization" on hold, and (v) whether McKinsey provided an evenhanded assessment of JEA or advocated for SLT's predetermined conclusions. As an example, we have received no underlying data, assumptions, or methodologies for McKinsey's reports.

- All JEA productions received by us through OGC to date. (Available in folders named "OGC ______".) They include:

  - A January 2020 production of JEA emails, including a number of emails with Willis Towers Watson that explain the genesis and intent behind the SLT push for a long-term incentive plan. (Available in the "OGC Production 01-24-2020 – Emails" folder). As an example, Patricia Maillis sent an email to David Wathen of Willis Towers Watson dated March 27, 2019 that explained, "Ryan and Aaron's goal is to reach provide market on all levels [of compensation] and include components that make the company on par with IOUs of similar revenues, output and customers." (Available at PDF p. 1080 of 1780.)

  - JEA responses to public records requests relating to SLT privatization efforts, the PUP, and other investigatory matters. (Available in the "OGC Production 03-09-2020 - Flash Drive" folder.) As an example, in response to a request for the 2019 Integrated Resource Plan ("IRP"), Steve McInall responded, "We don't have a draft or a final – I tapped the brakes on it to try to get some alignment with the McKinsey [strategic planning] work." (Available in the "32731_20191220" subfolder.)

  - JEA's March 17 production of documents regarding JEA's "What's Next for JEA" website (available here). That website replaced www.JustTheFactsJax.com, the website by which JEA defended controversial programs prior to the Council meeting on December 16, 2019. We have concerns about JEA removing the representations it made to the public through its initial website. In any event, JEA has published information relating to the ITN on its new website, including the identities of the ITN respondents. Article 21.04(p) of the City Charter requires the Council to approve the sale of JEA assets under specified conditions. However, it may only apply to sales to a "utility." Gary Hartman indicated in his PowerPoint presentation dated February 24, 2020 (available here) that at least 4 respondents selected to participate in ITN negotiations were not utilities (*id.* at p. 13). More specifically, Hartman characterized 3 respondents as "investors" and one as a "joint venture" (*id.*). Therefore, Article 21.04(p) may not have required JEA to obtain Council approval before a sale to those entities.

- A March 18 production of six documents from Jody Brooks, including an email from Aaron Zahn's former executive assistant, Melissa Charleroy, requesting SLT input for proposed minutes from an SLT meeting at Ponte Vedra. (The file named "REMINDER - FW ASSISTANCE NEEDED - Off-site Workshop Notes - Competition for Electric Revenue" in the "OGC Production 03-18-2020 - Jody Brooks Docs" folder.) The minutes reveal that SLT discussed "Competition For Electric Revenue." The potential solutions to the problem were: (i) "Begin to define charter and state changes"; (ii) "Re-think structure of JEA and how it fits into COJ"; (iii) "Engage in a political process to change structures"; and (iv) "Construct a campaign to educate to educate employees about the benefits to them from changing employment structure."

- A production of documents relating to off-site SLT meetings. (Available in the "OGC Production 03-19-2020 - Offsite JEA Meetings" folder.) The minutes from the SLT meeting at White Oak Conservation on May 31, 2018 contain a number questions and answers. ("JEAOFFSITE00639" in the "001" subfolder of the "Images" folder.) Question 2.A asks, "What are the three conditions that limit the effectiveness of JEA?" The answer or "Truth" identifies "Sunshine law," "Charter/independent" and "Political intrusion." Similarly, Question 3.B asked, "What things are never discussed openly but need to be discussed?" The answer or "Truth" identifies "Profits," "Performance accountability" and "Culture of retribution for ideas and/or stepping out." It goes on to identify three trends, including "JEA independence" and "City reliance on money." The minutes concluded with a request that SLT commit to "examine the Charter and create a list of effective changes" and "[g]row profitability."

- The Nixon Peabody memorandum emailed to Ryan Wannemacher and Herschel Vinyard on May 20, 2019 that concluded JEA's long-term incentive plan violated Florida law, including statutes governing conflicts of interest. (Available in the "OGC Production 03-10-2020 - Nixon Peabody Docs" folder.) Interestingly, documents produced by JEA in response to public records request no. 32726 indicate that Aaron Zahn met with Nixon Peabody and J.P. Morgan in New York City on April 11, 2019. (Available in the subfolder titled "other" in the "OGC Production 03-09-2020 - Flash Drive" folder.) Nixon Peabody's invoice contains the following entry for that date: "Call with D Song and B Rothchild to discuss research assignment on employee bonuses and incentive payment plans." (Available in the "Billing Statements and Invoices" folder.)

  As an aside, the authorities referenced in the Nixon Peabody memorandum may provide a basis to void some controversial SLT initiatives, including the SLT employment and retention contracts. *See also Local No. 234 of United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting Indus. of U.S. & Canada v. Henley & Beckwith, Inc.*, 66 So. 2d 818, 821 (Fla. 1953) ("[A]n agreement that is violative of a provision of a constitution or a valid statute, or an agreement which cannot be performed without violating such a constitutional or statutory provision, is illegal and void."); 11 Fla. Jur 2d Contracts § 123 (summarizing Florida cases demonstrating that contracts are "void, illegal, and unenforceable" to the extent they violate "public policy"—i.e., the community common sense and common conscience). If authorized by the Council, we can assess that option as we continue our investigation.

- Emails chronicling an attempt to outsource SLT payroll services to ADP, LLC. (Available in the "SIC Request 43 Partial Production Evidence Results 3-19-20" subfolder of the "OGC Production 03-20-2020 - RFD 3, 13, 43" folder.) JEA executed the engagement letter with ADP, LLC on October 11, 2019, just three days before JEA was scheduled to evaluate ITN bids. However, JEA abandoned the project in November 2019 after several JEA managers questioned SLT regarding the propriety of the outsourcing.

- JEA's financial advisory agreements with Morgan Stanley & Co. LLC and J.P. Morgan Securities LLC dated July 23, 2019 and July 24, 2019, respectively. (Available in the "Request 57 59" subfolder of the "OGC Production 03-23-2020 - RFD 16 17 44 46 57 and 59" folder.) The agreements contemplate payments of millions of dollars upon the occurrence of a JEA recapitalization transaction or, under certain conditions, a *failed* JEA recapitalization transaction. We will confirm the amount owed to Morgan Stanley & Co. LLC and J.P. Morgan Securities LLC for their respective services. We will also investigate, among other things, how and when their agreements were negotiated and executed. The Board prohibited "any activities tied to privatization" at its May 15, 2018 meeting. The JEA Board first authorized Aaron Zahn to engage consultants to pursue a non-traditional utility response at the July 23, 2019 Board meeting. *See* JEA Board Resolution 2019-07.

<u>Witness Interviews</u>

We interviewed Jody Brooks, the former Chief Legal Officer of JEA, on March 20 and Paul McElroy, the former Chief Executive Officer of JEA, on March 26. Some points of interest from those interviews are:

- Jody Brooks recalled Aaron Zahn telling her in December 2018 or January 2019 that he wanted a long-term compensation plan by which (i) JEA profits could be shared with employees or (ii) something like a stock option plan. Jody said Zahn told her that he expected the performance unit plan to primarily benefit high-level JEA employees.

- Paul McElroy gave a precise, detailed and compelling rebuttal to the claim that JEA will fail unless it privatizes. McElroy also called the Performance Unit Plan disgraceful, greedy and entirely inappropriate for a public utility. He also provided insight into the benefits to Jacksonville of a publically owned utility.

We will provide you our summary of Jody Brooks' interview and Paul McElroy's transcripts next week. In the interim, we will identify additional witnesses for interviews.

We have not been able to interview Melissa Dykes. Further, her counsel, Hank Coxe, informs me that she may invoke her Garrity Rights to avoid incriminating herself. The Committee may need to issue a subpoena to compel Dykes' participation.

Steve

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