

Special Committee on the Potential Sale of JEA

AGENDA

Thursday, March 15, 2018
3:30 PM
Council Chambers 1st Floor, City Hall

Tape No. _____

Carol Owens, Chief of Legislative Services

John R. Crescimbeni, Chair

Danny Becton
Anna Lopez Brosche
Garrett Dennis
Joyce Morgan

Legislative Assistant: Staci Lopez
Legislative Assistant: Mia Richardson
Research Asst.: Jeff Clements
Council Auditors Office: Kyle Billy
Council Auditors Office: Phillip Peterson
Office of General Counsel: Peggy Sidman

Meeting Convened:
Meeting Adjourned:

-
1. **Call Meeting to Order**
 2. **Introductions**
 3. **Report on Current Status of December 20, 2017, RFP to provide Strategic Initiatives Financial Advisory Services – Sam Mousa**
 4. **Review of General Counsel memoranda – Jason Gabriel**
 - **March 12, 2018 memorandum on Ordinance Code Section 126.313 – Financial Related Services**
 - **February 13, 2018 memorandum on Process for the evaluation of a potential JEA privatization**
 5. **JEA's strategic plan to offset recent revenue decline trend – Paul McElroy**
 6. **Reports from the Council Auditor – Kyle Billy, Philip Peterson**
 - **Franchisee fee and utility service tax components**
 - **Schedule of future JEA contributions to the City of Jacksonville**
 7. **Report from Subcommittee on selection of independent advisor: scope of services/qualifications – Council President Anna Lopez Brosche**
 8. **Update on Council authority regarding administering oaths and subpoena power – Peggy Sidman**



Committee On: Transportation, Energy & Utilities

9. Public Comment

10. Announcements

11. Adjourn

*Note: RULE 4.505 **DISRUPTION OF MEETING** No member of the audience shall applaud nor make any noise or remarks that are audible to the Committee that would indicate approval or disapproval of anything being discussed.*

****Note: Other Items may be added at the discretion of the chair.**
The next special committee meeting date will be March 22, 2018.**



Building Community

PUBLIC NOTICE OF MEETING

Notice is hereby given that the JEA Board will meet on **Tuesday, March 20, 2018**, on the **19th** floor of the JEA Tower, **21 W. Church Street, Jacksonville, Florida**.

All interested persons are invited to attend.

Times and locations of JEA Board meetings to be held on **Tuesday, March 20, 2018**, are as follows:

1:00 PM **Board Workshop on the Subject of Privatization**
19th Floor, JEA Tower

Please contact Melissa Charleroy at 665-7313 or Cheryl Mock at 665-4202 if you need additional information.



OFFICE OF MAYOR LENNY CURRY

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March 14, 2018

Mr. Alan Howard
Chair, Board of Directors
JEA
21 West Church Street
Jacksonville, FL 32202-3139

To the employees of the JEA,

In late 2017, an outgoing JEA Board Chairman encouraged fellow board members to exercise their fiduciary responsibility by assessing the value of JEA and considering the implications of trends in the utility marketplace. Asked by media if I supported such an inquiry, I said it was important and worthy research.

Since consolidation 50 years ago, JEA has served as a countywide, municipal utility operating as an independent authority. Your board is nominated by the mayor and approved by the City Council. Your CEO and other senior leaders are selected and approved by that board. The operations of the utility are managed by that leadership team.

Our Jacksonville City Charter and ordinances give the Mayor and City Council the responsibility to make certain the value of city assets, including those of JEA, are known and maintained in an appropriate manner.

With that mandate, I have encouraged reviews not only of the value of JEA assets, but of a variety of assets owned by the City of Jacksonville, or better stated owned by the people of our great city; that includes each and every one of you who work hard serving our citizens.

There has been a lot of wild speculation that has unfortunately misrepresented these responsibilities so I wanted to communicate some facts directly to you:

1. I HAVE NEVER stated opposition or support, in public or private, for privatizing JEA or any other asset of the people of this city. And, in order to make any decisions about the strategic future of any asset requires more information than we have today.
2. Since becoming mayor, I HAVE continued to seek current valuations and research that helps your government know and protect the value of taxpayer-owned assets. Doing so is one of my responsibilities as your mayor.
3. I NEVER approved retention letters or special compensation for more than 60 members of JEA's leadership, and I have been told the JEA Board never approved such letters. In fact, upon learning that such retention letters were offered, I sought legal advice from the City's General Counsel on my authority to rescind the letters and advised leadership of JEA that I was not supportive of this action.

Mr. Alan Howard
March 14, 2018
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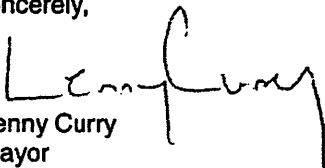
As discussions happen about the value or future of JEA assets, or any other city assets, I am guided by the following 3 principles:

1. It is appropriate and legal for my administration to protect taxpayers' hard earned money. I will not support anything that doesn't first protect taxpayers.
2. A large part of the value of JEA is the important work and dedication of JEA employees. I will not support any policy that doesn't respect the promises made regarding employment and retirement planning for JEA employees.
3. The residents and businesses of our community deserve and rely upon consistent and efficient access to the utility services that power our homes and provide access to clean water.

No future plans for our city or for JEA will have my support unless they meet these principles. Since first becoming mayor, I meet with public employees and their representatives, the leadership of independent authorities, taxpayers, business leaders and my fellow elected officials to ensure a strong plan for our city's future. I will continue to do so.

As always, on behalf of a grateful city, thank you for all that you do to help our city succeed.

Sincerely,


Lenny Curry
Mayor

Independent Consultant Qualifications and Scope of Services Subcommittee
Special Committee on the Potential Sale of JEA (the "Special Committee")
March 13, 2018
REVISED: March 15, 2018 per Subcommittee Meeting comments

Scope of Services

1. Advise the Special Committee during public meetings regarding the testimony being offered by experts, guest speakers, witnesses, or any parties to a potential sale of JEA.
2. Review relevant documents and information considered and/or received by the Special Committee and provide expert opinions regarding such relevant documents and information.
3. Advise the Special Committee as to the process of a potential sale of JEA, identifying parties involved to such process, and including information or factors the City Council should consider in such process.
4. Provide expert analysis of matters related to the potential sale of JEA, at the direction of the Special Committee. Such analysis may include, although not limited to:
 - a. The value of the JEA, both financial and non-financial, to the City of Jacksonville.
 - b. The effectiveness of JEA operations and JEA management.
 - c. The relative position of JEA in the utility industry as it relates to size, operational effectiveness, lines of business, fiscal health, customer service, and nature of ownership.
 - d. The future of the utility industry.
 - e. The benefits and consequences of a change in ownership of the JEA.
 - f. An analysis of market risk and how market risk may impact JEA.
 - g. An analysis of the various JEA liabilities and their impact.
5. Any other services the Special Committee may deem appropriate and relevant.

Qualifications

1. Proven experience in utility valuation.
2. Experience with utility finance, municipal budgets, changes of ownership of utilities.
3. Understanding of the human resource, legal, pension liability, contract liability, environmental, and economic development implications of privatization of a municipally-owned utility.
4. Free of conflicts with any parties connected to the potential sale of JEA, which includes current or recent association with an investor-owned utility.

Responses to Council Auditor questions dated February 22, 2018

1. Has the City selected a financial advisor(s) from the pool of respondents as indicated in the RFP by 1/31/18?

As was the goal of the RFP, the City selected a “pool of qualified firms” that could serve in an advisory capacity at some point in the future when/if the City decides to analyze a relevant opportunity. The selected firms were: JP Morgan, Goldman Sachs, Morgan Stanley, and KPMG. Both the selected and non-selected firms were notified by PFM of the results of the RFP on February 1, 2018. The timeline in the RFP was clearly labeled as “tentative.”

2. Please provide any questions and the associated responses to those questions that would have been provided by PFM to all potential bidders.

Please see attached.

3. What institutions were provided the RFP for possible consideration in responding?

The RFP was provided to 37 firms, including: Bank of America Merrill Lynch, Bank of Montreal, Barclays Capital, BMO Capital Markets, Cabrera Capital Markets, Citigroup, Deloitte, E&Y, Estrada Hinojosa, First Southwest Company, Frasca, Goldman Sachs, Grant Thornton, Janney Montgomery Scott LLC, Jefferies, JP Morgan, KPMG, Loop Capital Markets, M.R. Beal & Company, Macquarie, Mesirow Financial, Morgan Stanley, Oppenheimer, PFM, PNC, PRAG, Ramirez & Co., Raymond James, RBC Capital Markets, Rice Financial, Siebert Brandford Shank & Co., Stifel Financial Corp., Stern Brothers & Co., SunTrust, UMB Bank, Wells Fargo, and US Bank.

4. Was the response date for the RFP extended since the proposal due date was 1/15/18 and all but two of the responses are dated 1/16/18?

Yes. After the RFP was sent out, one potential respondent pointed out that January 15, 2018, was a holiday. The City instructed PFM to communicate to potential respondents that the City would accept responses received by January 16, 2018.

5. Are funds budgeted to pay for any work that a potential “winner” of the RFP will perform?

No. The clear intention of this RFP was to create a “pool of qualified firms” that could serve in an advisory capacity at some point in the future when/if the City decides to analyze a relevant opportunity. The RFP creates no contractual obligation of the City, so there is no need for budgeted funds.

6. If a “winner” has been selected, please provide a copy of the contract.

There is no contract. The clear intention of this RFP was to create a “pool of qualified firms” that could serve in an advisory capacity at some point in the future when/if the City decides to analyze a relevant opportunity. The RFP creates no contractual obligation of the City.

7. Please provide any scoring sheets that were used to grade the proposals.

Please see attached.

8. Reading through the RFP proposals, it appears that two of the respondents did not provide specific fees. How were they evaluated against the other respondents?

Understanding that fees for advisory services like the ones contemplated by this RFP are very transaction-specific, the City requested in the RFP that firms discuss their "fee approach" rather than a specific fee. The goal was to get a feel for how each firm would look to structure their fee and indications of generally what fees would be should their services be utilized. All responses were scored based on the information provided.

9. Why were the responses directed to be sent to PFM? Why would our City relationship with PFM have anything to do with PFM receiving the responses on this initiative?

The City chose PFM, as the City's long-time municipal advisor, to coordinate the RFP process and summarize the results. PFM, due to their familiarity with the types of advisory services contemplated by this RFP, was well-suited to research and develop a list of potential respondents to the RFP and coordinate the RFP process. In addition, the City Finance staff was responsible for scoring the RFP responses and selecting the firms who would be a part of the pool. In being consistent with Section VI, paragraph 3 of the RFP, which is designed to stop proposers from attempting to influence the selection process, the City felt it made sense to have all communications and responses go through PFM.

10. Is the language contained in Section VI, paragraph 3 of the RFP standard language that is included in every RFP? Please provide other examples that contain this language.

The same language was included in the City's RFP for Underwriting Services from June 2016 (attached). That RFP was similar in nature in that it formed a team of underwriters from which the City could choose when/if it decides to do a bond offering. The purpose of the language is to inform potential respondents a) that any response submitted is part of the public domain, and b) that they are not allowed to contact anyone affiliated with the City during the solicitation/selection process so that they do not (and do not appear to) influence the selection process.

11. Why would Goldman Sachs and RBC Capital Markets address their RFP response to yourself and Joey Greive, respectively, if PFM was conducting this RFP on behalf of the City?

The RFP is quite clear that it is for the City of Jacksonville. Because of the nature of their business, representatives at many of the firms already have relationships with City Finance Staff. It is possible those particular firms were trying to show familiarity by addressing the responses as they did. However, since the responses were delivered to PFM, how the firms addressed the RFP responses is inconsequential.

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PHONE: (904) 630-1700**



MEMORANDUM

TO: Honorable Mayor Lenny Curry
Honorable Members of the Jacksonville City Council
JEA Board of Directors

CC: Chief Administrative Officer, Sam Mousa
Chief of Staff, Brian Hughes
Chief Financial Officer, Mike Weinstein

FROM: Jason Gabriel, General Counsel
Jody Brooks, Chief Legal Officer, JEA
Gayle Petrie, Chief Financial Officer for OGC

RE: Process for the evaluation of a potential JEA privatization

DATE: February 13, 2018

I. Background and Purpose

In November 2017, former JEA Board Chair Mr. Tom Petway posed questions to the JEA Board which included whether the services and financial benefits derived from the privatization of JEA would better serve the customers of the JEA and the citizens of Jacksonville and the region at large.

In an effort to respond to these inquiries, the current JEA Board Chair, Mr. Alan Howard, requested that JEA management engage a qualified firm "to appraise the value of JEA's constituent utilities: electric, water/wastewater, and district cooling." Public Financial Management (PFM) was engaged by JEA to prepare such a report and is working to finalize and deliver the report to the JEA Board, City Council and members of the Administration on or around February 14, 2018. A draft of the PFM report dated February 2, 2018 was provided to City Council members, JEA Board members, and members of the Administration.

The JEA and City Council members have inquired as to the process for exploring and considering the potential privatization of JEA utility operations which include water and

sewer, chilled water, and electric systems. The purpose of this memo is to provide the basic process for such exploration and consideration, including, without limitation to identify local, state and federal regulatory processes that would be necessary to complete.

Please note that this memo provides basic procedural information on a comprehensively large first-of-its-kind transaction and accordingly is subject to further modification, amendment, elaboration and analysis as the evaluation, exploration and consideration process is undertaken.

II. Authority and Responsibilities of JEA

JEA is the largest municipally-owned electric, water and sewer utility in Florida and the 8th largest in the nation. JEA serves Duval County and portions of three adjacent counties including St. Johns County, Nassau County and Clay County. In 1967 upon consolidation, Jacksonville Electric Authority became an independent authority of the City of Jacksonville authorized to own, manage and operate an electric utility system. In 1997, the City amended the Charter to expand this authority to include water, sewer and natural gas, and the City transferred the water and wastewater responsibilities from a City department to Jacksonville Electric Authority and renamed the independent authority to simply JEA.

A. JEA Charter

Article 21 of the City of Jacksonville Charter creates the JEA, defining its responsibilities, authority and power. JEA is authorized to own, manage and operate utility systems within and without the City of Jacksonville and was created for the express purpose of acquiring, constructing, operating, financing and otherwise having plenary authority with respect to electric, water, sewer, natural gas and such other utility systems as may be under its control now or in the future. Such utilities may be owned, operated or managed by JEA separately or in such combined or consolidated manner as JEA may determine. Section 21.01, City Charter.

The JEA's powers are listed in Section 21.04 of the Charter. Specifically, Section 21.04(p), in part, limits JEA's ability 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."

Any transaction that comprises more than ten percent of the total utilities system would require approval of City Council. Upon receipt of the PFM final report, the JEA Board could make a recommendation to City Council on pursuing a potential privatization opportunity and exploring the market to do so, however the JEA ultimately does not have the power to complete such a transaction without City Council approval.

B. JEA Charter Amendment Process

Any transaction that would modify the authority or powers of JEA would require an amendment to or repeal of Article 21. Section 21.11 provides the following legislative authority of City Council:

Notwithstanding any provision of this charter to the contrary, the council may repeal or amend any portion of this article, by two-thirds vote of the membership of the council. A public hearing on the adoption of the ordinance shall be advertised in substantially the same manner as the council is required to advertise its intention pursuant to s. 200.065, Florida Statutes, and held not earlier than 30 days after the introduction of the ordinance into the council. The council shall take final action on the ordinance only after the expiration of 60 days after the advertised public hearing, and no ordinance shall be enacted except by a two-thirds vote of the entire council. If the mayor disapproves the ordinance, the council may enact it notwithstanding such disapproval only by a four-fifths vote of the entire council.

Section 21.11 authorizes the City Council to repeal or amend any portion of the JEA Charter. Because this amendment and repeal section (coupled with the sale/transfer provision set forth in Section 21.04(p)) was specifically authorized by the State Legislature, no referendum would be required to amend or repeal the JEA Charter to affect a privatization transaction. Furthermore, any effort to require such a transaction to be subject to a voter referendum would require an amendment to Article 21 of the City Charter.

C. Interlocal and Franchise Agreements

JEA provides utility services to surrounding communities under certain interlocal or franchise agreements. The electric system provides service to the Town of Orange Park, Town of Baldwin, Atlantic Beach and a portion of St. Johns County. The water/wastewater system provides service to parts of Nassau and St. Johns Counties. Each of these agreements will need to be reviewed for the provision of service to these surrounding communities and the transferability of the agreements.

Those agreements are referenced as provided below:

1. Electric:

a. Ordinance No. 305 (Town of Orange Park) Franchise Fee Agreement effective September 1, 1969, between JEA and Town of Orange Park

- b. Assignment and Assumption of Franchise Agreement (FPL) dated January 1, 2000, between JEA and Town of Baldwin

Franchise Agreement between JEA and Atlantic Beach

- c. Territorial Agreement (FPL) dated December 14, 1998, between JEA and St. Johns County

2. Water/Wastewater:

- a. Nassau County/JEA Water and Wastewater Interlocal Agreement dated December 17, 2001

- b. St. Johns County/JEA Water and Wastewater Interlocal Agreement dated July 1, 1999

A purchaser would also need to negotiate a franchise agreement with the City of Jacksonville.

3. All Applicable Agreements:

Agreements with governments outside of Jacksonville would need approval for a transfer or will need to be renegotiated with the local governmental units. Those agreements include the agreements listed above. The Office of General Counsel is currently examining all known applicable agreements, and is researching JEA files to ensure that all necessary agreements are identified and reviewed. Accordingly other agreements may be added to the list of agreements that necessitate review.

D. Real Estate / Asset Inventory Review

All governmentally owned, leased, managed, operated or controlled property interests and other assets associated with JEA utilities need to be reviewed, along with the instruments and documents which govern them. The purpose of such examination is to assess the rights, obligations, benefits and burdens contained within them which affect the various utility systems. This is an undertaking conducted by the JEA with assistance from the City, Office of General Counsel, and specialized outside legal counsel.

III. Applicable State and Federal Agencies

A. Regulatory Approvals

As a municipal utility, JEA is exempt from certain federal and state regulatory laws that would be applicable to a non-municipal, investor-owned purchaser. Approval by the Federal Energy Regulatory Commission (FERC) (with respect to the entire transaction of the electric system) and the Florida Public Service Commission (PSC) (with respect to

the approval of utility rates and related matters) of a privatization transaction to a private entity would be required as part of a conversion from a municipal-owned utility to an investor-owned utility.

B. Public Interest Determination for Water/Wastewater System

Pursuant to Florida Statutes, no county, municipality, special district or community development district may sell a water, sewer or wastewater reuse utility or enter into a wastewater facility privatization contract for a wastewater facility until the governing body has held a public hearing and made a determination that the sale or wastewater facility privatization contract is in the public interest (§125.3401 - Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by county, §180.301 - Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by municipality, §189.054 - Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by special district, and §190.0125 - Purchase, privatization, or sale of water, sewer, or wastewater reuse utility by district, Florida Statutes). The public interest determination shall consider at a minimum the specific items required by statute.

IV. Exploration and the Transaction Process

Should the valuation conducted by PFM provide justification for further exploration by the Consolidated Government for examining and considering further action toward privatization, the draft PFM report dated February 2, 2018, outlines a six-phased approach for a utility asset sale:

- Phase 1 – Commitment to the Process
- Phase 2 – Documentation and Disclosure
- Phase 3 – Preparing for the Sale
- Phase 4 – Indications of Interest
- Phase 5 – Due Diligence and Final Bids
- Phase 6 – Regulatory Approvals

Because of the complexity of a multi-faceted privatization transaction of this nature and magnitude and the integral involvement of various parts of the Consolidated Government, the City and JEA will have to craft a process in collaboration with an investment advisor which adequately tests the market, seeks suitable investors and forges a path to evaluating the best value proposition of the asset for the City. The City and JEA have the ability and authority to create a fair and effective process for a privatization transaction that mirrors standard merger and acquisition processes that are tailored for achieving the best result for the City.

Incorporating the six phases from the PFM draft report, the following is an outline of process for the benefit of the City Council and JEA:

A. City Council and JEA evaluate the PFM final report and decide whether to support further exploratory consideration and action. This can be accomplished through a Council resolution. A cohesive, collaborative and cooperative approach by the entire Consolidated Government is highly recommended while the market is tested for such a comprehensive transaction in order to achieve the highest and best potential valuation by interested entities on behalf of the taxpayers.

B. Assuming City Council support is obtained for the exploration of a potential transaction or set of transactions, arrangements are made to retain an investment advisor, merger and acquisition counsel and other necessary professional services including assistance with employee and labor matters and real estate / asset inventory review.

C. In close collaboration with the investment advisor and merger and acquisition counsel, marketing and disclosure documentation and minimum transaction parameters are prepared for potential investors, and discussions commence with such entities.

D. Prospective investors are assisted with their due diligence review / information acquisition, and the parties begin negotiating terms and conditions of associated transaction documents, including any necessary provisions regarding future rates and employee matters. The bid process is narrowed to the potential investor or investors that have provided the favored terms of acquisition.

E. Final proposals are obtained from investors, reviewed and evaluated. The parties then negotiate definitive acquisition documents that are packaged and submitted to City Council for consideration and formal action.

F. If a proposal is accepted and approved by City Council, transaction documents are executed, and work is commenced on satisfaction of closing conditions, including the regulatory approval process with governmental agencies.

V. Conclusion

If pursued, this complex transaction will require extended cooperation between JEA and the City to maximize net proceeds and clear regulatory hurdles which as noted above include FERC and PSC review and approval.

Please let us know of any further questions and if we can be of any further assistance.

GC #1188796

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MEMORANDUM

TO: The Honorable Council Member John Crescimbeni
Chair, Special Committee on the Potential Sale of JEA

FROM: Office of General Counsel

RE: Council Authority regarding Administering Oaths and Subpoena Power

DATE: March 14, 2018

I. Background and Scope

The Council President has established the Special Committee on the Potential Sale of JEA. In the initial meeting questions arose as to the power of the Committee to administer oaths to those appearing at the meeting, or if necessary to subpoena employees. The brief answer is that the Committee has the authority to administer oaths or issue subpoenas, so long as it follows Charter and Ordinance Code procedures for administering such oaths or issuing such subpoenas. This power is not without limits. The inquiry must be: (1) within the Council President's directive (and purpose) to the Committee, and (2) within the scope of inquiry permitted for the legislative branch.

Administering oaths and issuing subpoenas, particularly to employees and officers is a power which the Council has very rarely used in the past for policy related matters. In that vein such a power should be thoughtfully utilized and judiciously exercised. It is intended to be invoked within the legislative body's "investigative" role (much like a Senate Committee at the federal level) with a specified scope that is commensurate with the identified purpose. The power of administering an oath is usually reserved for purposes of obtaining or preserving evidence for potential judicial proceedings. For example, administering an oath to witnesses is routinely used in quasi-judicial hearings such as appeals of orders from the Planning Commission to the City Council, or in zoning matters that are before either body.

The boundary of inquiry is marked by the boundary of the power to legislate. The City Council does not possess the power of making inquiry into the private affairs of the witness; the inquiry ends where the jurisdiction of the body ends.

Since Consolidation (for almost 50 years) employees and officers have attended hundreds of Council or Committee meetings on their own prerogative or at the request of Council Members. Since issuing a subpoena suggests that the only way to compel testimony or provide documents is through force, such power should be reserved as a last resort, used only when requests for information or attendance have been declined or neglected. To do otherwise may create questions in any judicial proceeding instituted to enforce the subpoena.

The Committee need not issue a subpoena in order to administer an oath to any witness and may, as it has done for almost 50 years, rely on the integrity and good faith of its officers and employees. In this context, the administration of an oath very well may be perceived as a strong statement of distrust. While perhaps intended to elicit the free flow of factual evidence, administering an oath may very well have the opposite effect and in fact stymie witness testimony or information because it will almost certainly encourage witnesses to be extremely cautious, or seek legal counsel as to what they may say, fearing that any word or utterance might cost their freedom with the potential penalties of imprisonment and fines hanging in the backdrop.

II. Issue Presented

What are the processes for issuing and enforcing a subpoena?

III. Short Answer

Subpoenas may be issued by the Council or standing or special committee of the Council. Rule 2.208. The Council Rules provide that the issuance of the subpoena be in accordance with the provisions of Chapter 134, *Ordinance Code*. However, neither the Ordinance Code nor the Council Rules allow for one individual Council Member to issue subpoenas.

First, the Committee must vote to issue a subpoena. The Council Secretary then issues the subpoena (drafted by the Office of General Counsel) to be served by the Sheriff on the witness. If the witness refuses to appear, the Committee may request the Council to re-subpoena the witness through order of the Council. If the witness again refuses to appear, the Council may request the State Attorney to impose penalties against the witness.

IV. Discussion

Introduction

Section 5.09, Charter, grants power to the Council and its committees to administer oaths and issue subpoenas. This Section also provides for penalties, authorized by Council but not a committee, for refusal to comply with "lawful order[s]." Council Rules and the Ordinance Code

contain provisions that implement Section 5.09. The Charter limits penalties to refusal to comply with "lawful order[s]" of the Council.

Process for Administering the Oath

The Council or its authorized committee may request that a witness take an oath before testifying. When a witness is under oath, the witness is subject to potential penalties of perjury, which is, in this context, a Class D misdemeanor per Section 134.106, *Ordinance Code*. Any answer given must be truthful and as such should be thoughtfully conditioned. If an accurate answer is not readily known right then, the witness should notify the questioner. When in doubt, an "I don't know" or "I cannot recall" would be appropriate.

Process for Issuing Subpoenas

As a precondition to the exercise of the power, Council Rule 2.208 requires that the issuance of the subpoena and the nature of the inquiry must be within and in furtherance of carrying out the duties assigned to the committee by the Council Rules, the Council or the President. Pursuant to §134.101, *Ordinance Code*, upon majority vote of the City Council or standing or special committee, the Council Secretary shall issue the subpoena to compel attendance before Council or a standing or special committee. The notice requires service of the subpoena seven days in advance of the meeting unless a shorter time is established by majority vote of Council. Accompanying the subpoena shall be a general statement informing the individual of the subject matter of the inquiry. Additionally, notice shall be provided to the individual that he/she has the right to bring the counsel of his/ her choice with him.

Enforcement

Section 134.108, *Ordinance Code*, governs the process of enforcement of a lawful committee order to answer a particular question or refusal to produce documents pursuant to a subpoena *duces tecum*. Given that Section 5.09, Charter, only authorizes punishment for violation of a Council order and given that the Council has not created procedures specific to refusal to comply with a subpoena nor procedures specific to refusal to take an oath, the Council and the committee should follow the same procedures for enforcement of such orders.

If a witness refuses to: (i) comply with a subpoena, (ii) comply with an order to take an oath, or (iii) comply with an order to answer a particular question, the committee chair, upon vote of the committee shall report the refusal to the Council. A resolution attaching a City Council order which provides instruction to the witness shall be introduced to the City Council. Upon enactment of the legislation, the order shall be served upon the witness in accordance with Section 134.103, *Ordinance Code*.

If the witness refuses to comply with the Council's order, the Council may request that the State Attorney charge the disobedient witness with a misdemeanor under Section 5.09 of the Charter.

The State Attorney has absolute discretion to decide whether or not to prosecute any contempt of Council violations.

Penalties

On the other hand, given that penalties under Section 5.09 of the Charter include fines up to \$1000 and imprisonment of up to 60 days, separation of powers concerns, as well as statutory construction that penal laws be narrowly construed, the Charter should be interpreted no broader than its plain language. Under Section 5.09 of the Charter, penalties are imposed by Council action, not action by committees.

Limits to Subpoena Power.

The United States Supreme Court has recognized the right of legislative bodies to issue subpoenas. In a case concerning the investigative power of the Florida Legislature, the Court held:

[T]his Court's prior holdings demonstrate that there can be no question that the State has power adequately to inform itself—through legislative investigation, if it so desires—in order to act and protect its legitimate and vital interests. As this Court said in considering the propriety of the congressional inquiry challenged in *Watkins v. United States*, 354 U.S. 178, 77 S.Ct. 1173, 1 L.Ed.2d 1273: ‘The power * * * to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.’ 354 U.S., at 187, 77 S.Ct., at 1179. And, more recently, it was declared that ‘The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.’ *Barenblatt v. United States*, 360 U.S. 109, 111, 79 S.Ct. 1081, 1085, 3 L.Ed.2d 1115. It is no less obvious, however, that the legislative power to investigate, broad as it may be, is not without limit.

Gibson v. Fla. Legislative Investigation Comm., 372 U.S. 539, 544–45, 83 S. Ct. 889, 893, 9 L. Ed. 2d 929 (1963). The Florida Supreme Court recently upheld the subpoena power of local governments. *D’Agostino v. City of Miami*, 220 So. 3d 410 (Fla. 2017).

While recognizing the power to investigate, the Supreme Court has noted that such power is not unlimited, cautioning more than once that a committee’s subpoena power is limited to its charge. In *Watkins v. United States*, Chief Justice Warren cautioned that “[b]roadly drafted and loosely worded . . . resolutions can leave tremendous latitude to the discretion of the investigators. The more vague the committee’s charter is, the greater becomes the possibility that the committee’s specific actions are not in conformity with the will of the parent house of Congress.” *Watkins v. United States*, (354 U.S. 178 (1957)). In *Gojack v. United States*, the Court reversed a contempt citation because there was no showing that the parent committee had delegated to the subcommittee before whom the witness had appeared the authority to make the

inquiry and neither had the full committee specified the area of inquiry. *Gojack v. United States*, (384 US 384 U.S. 702 (1966)).

Separation of powers concerns also provide broad limits to legislative inquiry. The Office of Legal Counsel, in the United States Justice Department, has applied separation of powers principals to subpoena power:

The constitutional role of Congress is to adopt general legislation that will be implemented "executed" by the Executive Branch. "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 136 (1810). The courts have recognized that this general legislative interest gives Congress broad rein to investigate. Both Houses of Congress have broad power, "through their own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *McGrain v. Daugherty*, 273 U.S. 135, 160 (1927). The issuance of subpoenas in aid of this function "has long been held to be a legitimate use by Congress of its power to investigate," *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975), provided that the investigation is "related to, and in furtherance of, a legitimate task of the Congress." *Watkins v. United States*, 354 U.S. 178, 187 (1957). *See also, McGrain v. Daugherty*, 273 U.S. at 177 (inquiry must pertain to a subject "on which legislation could be had"). This sphere of legitimate legislative activity "is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). *See also, Watkins v. United States*, 354 U.S. at 187. The power of investigation can be delegated by either House of Congress to committees, subcommittees, or even individual legislators, *see, Eastland v. United States Servicemen's Fund*, 421 U.S. at 505; *Watkins v. United States*, 354 U.S. at 200-01, as long as "the instructions to an '74 investigating committee spell out that group's jurisdiction and purpose with sufficient particularity." *Id.* at 201. The scope of judicial inquiry on these matters is narrow, and "should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Eastland v. United States Servicemen's Fund*, 421 U.S. at 506, (quoting *Tenny v. Brandhove*, 341 U.S. 367, 378 (1951)).

Nonetheless, the investigative power of Congress is not unlimited. Congress cannot, for example, inquire into matters "which are within the exclusive province of one of the other branches of Government Neither can it supplant the Executive in what exclusively belongs to the Executive." *Barenblatt v. United States*, 360 U.S. at 111; *see also Kilbourn v. Thompson*, 103 U.S. 168, 192 (1881) (Congress cannot exercise judicial authority). Congress must be able to articulate a legitimate legislative purpose for its inquiry; if Congress lacks constitutional authority to legislate on the subject (or to authorize and appropriate funds), arguably Congress has no jurisdiction to inquire into the matter. . . .

Response to Cong. Requests for Info. Regarding Decisions Made Under the Indep. Counsel Act, 10 U.S. Op. Off. Legal Counsel 68, 73-74 (1986)

Consequently, the Council's subpoena power must be interpreted in light of Article 4 of the Charter. This Article enshrines separation of powers in the Consolidated Government. The Supreme Court of Nevada has explained the importance of separation of powers as follows: "This court has recognized that separation of powers is probably the most important single principle of government." *Commission on Ethics v. Hardy*, 125 Nev. 285, 125 Nev. 1027, 212 P.3d 1098 (2009) (internal quotation omitted). A Louisiana appellate court explained the significance of separation of powers with regard to municipal government as follows: "This separation of powers provided for in the city charter is designed to ensure an orderly process in the operations of the city government." *Plaisance v. Davis*, 868 So. 2d 711 (La.App. 1 Cir.2003), writ denied, 867 So.2d 699 (La. 2004). Separation of Powers prohibits the Council from investigations outside its sphere, i.e., adopting ordinances (1) creating public policy and (2) appropriating money. Likewise, Separation of Powers prohibits the Council from engaging in or interfering with the day to day operations of the executive branch.

This memorandum need not reach a conclusion as to the authority of the Council to itself engage in contract negotiations. Little doubt exists, however, that "[n]either the city council, nor its members, can mandate their participation in negotiations conducted by the mayor and employees under the mayor's supervision." Mississippi Attorney General Opinion 2012-00013, 2012 WL 679170, at *2 (Miss. A.G. Jan. 27, 2012). And while the Mayor may, or perhaps even should keep Council Members apprised of negotiations (being ever cognizant to avoid a violation of the Sunshine Law), "the mayor has the authority to recommend a contract for approval by the city council without interference, or input, from the city council." Mississippi Attorney General Opinion 2016-00078, 2016 WL 1566504, at *2 (Miss. A.G. Mar. 18, 2016). In other words, the Mayor has independent authority to negotiate or discuss any contract.

As the Committee proceeds, it should bear in mind these separation of powers issues.

V. Conclusion

The Charter and Ordinance Code allow the Council to investigate any matter over which it has legislative authority. In doing so, the Council may use both subpoenas and oaths. Please let me know if you have any other questions.

GC-#1196417

Council Auditor's Office

Application of Franchise Fee and Public Service Tax (Utility Service Tax)

Franchise Fee - an amount equal to 3% of electric revenues (not to exceed \$2.4 million per customer per fiscal year) and all water and sewer revenues. The franchise fee is limited to revenues derived within Duval County (not including USDs 2-5) and is not applied to reclaimed water or district energy services.

Public Service Tax (Utility Service Tax) - an amount of 10% imposed and levied on each purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), and water service in the corporate limits of the City. For electric service, the tax is only applied against the portion of the fuel adjustment charge that was in place prior to October 1, 1973.

Electric Service Bill		
Bill Components	Is Franchise Fee charged on Bill Component?	Is Utility Service Tax charged on Bill Component?
Basic Monthly Charge	✓	✓
Energy Charge	✓	✓
Fuel Cost	✓	✓
Environmental Charge	✓	✓
City of Jacksonville Franchise Fee		✓
Gross Receipts Tax		✓
Public Service Tax (Utility Service Tax)		

Water Service Bill		
Bill Components	Is Franchise Fee charged on Bill Component?	Is Utility Service Tax charged on Bill Component?
Basic Monthly Charge	✓	✓
Water Consumption Charge	✓	✓
Environmental Charge	✓	✓
City of Jacksonville Franchise Fee		✓
Public Service Tax (Utility Service Tax)		

Sewer Service Bill		
Bill Components	Is Franchise Fee charged on Bill Component?	Is Utility Service Tax charged on Bill Component?
Basic Monthly Charge	✓	
Sewer Usage Charge	✓	
Environmental Charge	✓	
City of Jacksonville Franchise Fee		
Public Service Tax (Utility Service Tax)		

Reclaimed Water Service Bill		
Bill Components	Is Franchise Fee charged on Bill Component?	Is Utility Service Tax charged on Bill Component?
Basic Monthly Charge		✓
Public Service Tax (Utility Service Tax)		

District Energy Service Bill		
Bill Components	Is Franchise Fee charged on Bill Component?	Is Utility Service Tax charged on Bill Component?
Demand Charge		
Consumption Charge		

**Council Auditor's Office
JEA Contribution Information**

History of JEA Contributions to the City

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Electric Contribution	73,846,764	76,094,124	79,007,252	81,921,688	83,037,710	83,969,075	87,318,021	90,108,598	91,720,182	92,270,692
Water Contribution	20,340,780	20,593,422	20,180,276	19,765,852	21,149,828	22,718,463	21,869,517	21,578,940	22,467,356	23,552,258
Totals	94,187,544	96,687,546	99,187,528	101,687,540	104,187,538	106,687,538	109,187,538	111,687,538	114,187,538	115,822,950

Current Formula for Calculation of JEA Contributions - Article 21.07(C) JEA Charter

Effective October 1, 2016, consistent with the provisions of this section 21.07(c), JEA shall pay the city combined assessment for the electric system and the water and sewer system. The combined assessment for the electric system and the water and sewer system shall equal, but not exceed the greater of (A) the sum of (i) the amount calculated by multiplying 7.468 mills by the gross kilowatt-hours delivered by JEA to retail users of electricity in JEA's service area and to wholesale customers under firm contracts having an original term of more than one year (other than sales of energy to Florida Power and Light Company from JEA's St. Johns River Power Park System) during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable plus (ii) the amount calculated by multiplying 389.20 mills by the number of K-Gals (1=1000 gallons) potable water and sewer service, excluding reclaimed water service, provided to consumers during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable or (B) a minimum calculated amount which increases by 1% per year from fiscal year 2016-2017 through fiscal year 2020-2021 using the fiscal year 2015-16 combined assessment of \$114,187,538 as the base year. The amounts applicable to clause (B) above are: for fiscal year 2016-2017 - \$115,329,413; for fiscal year 2017-2018 - \$116,482,708; for fiscal year 2018-2019 - \$117,647,535; for fiscal year 2019-2020 - \$118,824,010; and for fiscal year 2020-2021 - \$120,012,250.

The following two pages show the detailed calculation presented at JEA's budget hearing of how the JEA contribution is determined and then compared to the identified floor from Article 21.07(C) of the JEA Charter.

**CALCULATION OF JEA ELECTRIC CONTRIBUTION
FOR FISCAL YEAR 2017-2018**

**CITY WATER/SEWER CONTRIBUTION FORMULA
FOR FISCAL YEAR 2017-2018**

	Total	Less Interchange	Net kWh
Month	kWh Sales (1)	kWh Sales (2)	Sales
May 2016	953,860,830	1,014,000	952,846,830
June	1,187,678,293	27,295,000	1,160,383,293
July	1,289,228,317	4,194,000	1,285,034,317
August	1,322,732,224	16,818,000	1,305,914,224
September	1,312,328,044	56,878,000	1,255,450,044
October	1,087,642,427	45,558,000	1,042,084,427
November	878,412,157	26,434,000	851,978,157
December	887,333,577	7,449,000	879,884,577
January 2017	957,813,362	11,339,000	946,474,362
February	815,852,726	5,813,000	810,039,726
March	863,809,753	5,719,000	858,090,753
April	918,433,823	18,115,000	900,318,823
Totals	12,475,125,533	226,626,000	12,248,499,533
		(3)	0.007468
			<u><u>\$ 91,471,795</u></u>

	Water Consumption	Sewer Consumption	Adjustments Total	Total Net Consumption
MONTH	kGals (1)	kGals (1)	kGals (2)	kGals
May 2016	3,307,729	2,167,549	(138,060)	5,337,218
June	3,663,119	2,379,591	(148,110)	5,894,600
July	3,696,744	2,371,763	(158,413)	5,910,094
August	3,781,184	2,376,493	(178,795)	5,978,883
September	3,653,920	2,339,033	(171,116)	5,821,838
October	3,131,673	2,095,904	(133,424)	5,094,153
November	3,063,516	2,023,264	(133,927)	4,952,853
December	3,281,733	2,199,082	(159,777)	5,321,038
January 2017	3,059,853	2,155,173	(121,653)	5,093,372
February	2,682,345	1,875,600	(123,646)	4,434,298
March	3,141,915	2,156,949	(143,492)	5,155,371
April	3,510,812	2,297,649	(187,533)	5,620,928
Totals	39,974,542	26,438,050	(1,797,945)	64,614,647
			(3)	0.3892000
				<u><u>\$ 25,148,020</u></u>

Notes:

- (1) kWh sales information is based on JEA's CMFTR124 monthly reports.
- (2) Interchange, the sale of electricity to other utilities, is not included in the contribution formula.
- (3) The current City contribution formula is based on multiplying 7.468 mills times total electric kWh sales less interchange sales for the twelve months (12) ending April 30th of each year.

Pursuant to Ordinance § 106.218, one quarter of a mill or \$3,062,125 has been dedicated to the JPA for port expansion.

Notes:

- (1) Consumption information taken from JEA's CMFTR124 monthly reports.
- (2) Total Adjustments include Summer Discount, Water Large (large industrial customer), Sewer LTD (wholesale sewer rate) and Water Reuse Consumption.
- (3) The current City contribution is based on multiplying 389.20 mills times total water/sewer kGal sales less reuse sales for the twelve (12) months ending April 30th of the prior year.

JEA Contribution Calculation

A Millage Calculation

Electric	\$	91,471,795	78.44%
Water		<u>25,148,020</u>	21.56%
	\$	116,619,815	

B Floor (per Ordinance plus 1%)

FY 2015/16	\$	114,187,538	Base Year
FY 2016/17	\$	115,329,413	
FY 2017/18	\$	116,482,708	

Conclusion

The millage calculation of \$116,619,815 is greater than the minimum payment of \$116,482,708 therefore, the millage in the amount of \$116,619,815 is the JEA contribution for FY17/18.

Recommended Budget FY 17/18

Electric	\$	91,471,795	78.44%
Water		<u>25,148,020</u>	21.56%
	\$	<u>116,619,815</u>	

Notes:
A = Calculated as 7.468 mills times gross kilowatt-hours delivered by JEA to users of electricity in JEA's service area (less interchange sales) plus the amount calculated by multiplying 389.20 mills by the number of kGals (1,000 gallons) of potable water and sewer service (excluding reclaimed water sales) provided to consumers during the twelve (12) month period ending April 30th of the previous year.
B = Notwithstanding the contribution cap calculated in Part A above, JEA shall pay the City each fiscal year, from 2016/2017 through 2020/2021, an additional amount if necessary, to ensure a minimum annual increase of 1% using the fiscal year 2015-2016 combined assessment of \$114,187,538 as the base year.
Although the annual transfer of available revenue from JEA to the City is based upon formulas that are applied specifically to the respective utility systems operated by JEA, JEA's Charter allows it to utilize any of its revenues regardless of source to satisfy its total annual obligation to the City.

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 630-1700**

MEMORANDUM

**TO: The Honorable Council Member Crescimbeni
 The Honorable Council Member Boyer**

**FROM: Jason Gabriel, General Counsel
 Gayle Petrie, Chief Financial Officer, OGC**

RE: Ordinance Code Section 126.313 – Financial Related Services

DATE: March 12, 2018

Background:

Section 126.313 of the Ordinance Code directs the Director of Finance and the City Treasurer, in cooperation with the Chief to develop written criteria and procedures to evaluate and procure financially related services. This direction has resulted in the development of criteria and procedures regarding financial related services, with the most recent process and procedures having been adopted by the Director of Finance, Treasurer and Chief of Procurement on October 17, 2016 (the "10/17/16 Process and Procedures"). Pursuant to the 10/17/16 Process and Procedures, Public Financial Management, Inc. ("PFM"), which has served as the City's Financial Advisor since 1995, and currently serves as Financial Adviser under a contract dated June 21, 2016, was requested to assist the City in preparing, and evaluating responses to, an RFP for Strategic Initiative Financial Advisory Services dated December 12, 2017. This was the same process used by the City and PFM to assemble a team of underwriters for potential issuance of City bonds pursuant to a previously issued RFP.

After responses to the Strategic Initiative RFP were received from several firms, the City evaluated the firms, on February 1, 2018, and selected J. P. Morgan, Goldman Sachs, Morgan Stanley and KPMG to be members of the Strategic Initiative team. As was the case with the underwriter team that was previously assembled, no volume of work was promised, no obligation to the team members was created, and no funds were paid to team members. Any future work will be on a case-by-case basis and terms of engagement will be negotiated at the time of a specific engagement.

Questions and Answers:

In response to the questions raised in emails dated February 22, 2018 (questions 8 and 9), and February 23, 2018 (questions 1-7), I am pleased to provide the following information.

Question 1. Does Section 126.313 of the Ordinance Code allow an unrelated third party to issue and evaluate responses to an RFP?

Yes. The City is authorized to utilize the services of PFM, its unrelated Financial Advisor, to assist in the process of preparing and issuing and evaluating responses to a RFP. The ultimate selection is to be made by the City and this was done in case of the Strategic Initiative team (as was the case with the Underwriter team in 2016).

Question 2. Is authorization implied by the reference in Section 126.313 to the use of the City's Pension and Treasury Procurement Process?

Yes. As discussed above in the Background paragraph, the 10/17/16 Process and Procedures were adopted pursuant to 126.313 on October 17, 2016.

Question 3. Who is the Chief as referenced in Section 126.313?

The Chief of Procurement.

Question 4. Do all three of the Director of Finance, Treasurer and Chief have to participate in the Section 126.313 process?

No. The Director of Finance, with any requested input from the Treasurer, has the authority to develop criteria, processes and procedures, without the consent of the Chief. However, Section 126.313 provides for cooperation with the Chief, and in the case of the 10/17/16 Process and Procedures, this provision was followed as evidenced by the approval of all three referenced individuals (i.e, the Director of Finance, Treasurer and Chief of Procurement).

Question 5. Are the written criteria and procedures blanket procedures or individual to each separate procurement?

The 10/17/16 Process and Procedures referenced above are procedures that are applied to all procurement transactions under Section 126.313.

Question 6. Can you provide a copy of the process?

Yes. See attached Exhibit A.

Question 7. Can you provide a copy of the criteria and procedures?

Yes. See Part C of Exhibit A.

Question 8. Can an award be made under Section 126.313 without City Council approval?

Yes. Procurement awards in general are made without City Council action and a Section 126.313 award can likewise be made without City Council action.

Question 9.

a. Where would funds come from to pay a member of the Strategic Initiative team?

Funds would come from existing budgeted funds or from funds specifically appropriated by City Council action with respect to a particular project.

b. Are funds currently in the approved budget?

Yes, funds for professional services are available, but none are committed to this purpose as described earlier in this memorandum.

c. Can a Strategic Initiative team member be hired and paid without further appropriation by City Council?

Yes.

GC-#1192288

EXHIBIT A

City of Jacksonville Treasury and Pension Procurement Procedures of Financial Instruments and Services Amended October 2016

Part A – Authorizing Ordinance

Sec. 126.313. - Financial related services.

Pursuant to Chapter 110 Part 2 of the Jacksonville Ordinance Code, as the same may be revised from time to time, all deposits and investments of City capital, including the General Employee Pension Fund, and other applicable financially related services, including, without limitation, credit enhancement, liquidity support, investment managers, financial and/or investment advisors, issuing, paying and/or tender agents, rating agencies, printing of preliminary and/or final official statements, offering memorandum, bonds, notes and/or commercial paper, and similar services that are offered in a limited market, that involve complex negotiations, or that require a limited time frame as necessary for a financial transaction involving bonds, notes, commercial paper or other similar transactions, may be procured in accordance with the City's Pension and Treasury Procurement Procedures. Notwithstanding the requirements of the City's Pension and Treasury Procurement Procedures, the Director of Finance and the City Treasurer, in cooperation with the Chief, shall develop written criteria and procedures necessary to evaluate and procure financially related services under this Section 126.313, which shall include, without limitation, such factors as historic investment performance, fee structure, professional staff, size of firm, research capabilities, area of specialization, strategic fit with the overall financial service goals and objectives. Any procurement under this Section shall include as much competition as practically possible under the circumstances, and shall include procedures necessary to insure compliance with the requirement to procure the highest quality in financial services at the greatest economic value to the City.

Part B – Services to Which This Policy Applies

Types of Procurement

This section applies to the procurement of the following financial instruments and services:

- (1) authorized investments pursuant to the City's Investment Policy, the General Employee Pension Fund Investment Policy, the current bond resolutions, and any future bond resolutions;
- (2) financial instruments and arrangements, including but not limited to interest rate swaps, caps, floors, collars, options and related hedging instruments, forward supply agreements, float contracts, Guaranteed Investment Contracts (GIC's) and related investment instruments used primarily in escrow agreements relating to debt instruments, bond insurance, surety policies, letter of credit, other credit enhancement, and liquidity support;
- (3) fuel price insurance program instruments, including, but not limited to, natural gas, crude oil, unleaded gas, diesel, heating oil, and residual oil futures and/or options contracts and commodity swaps;

- (4) investment management firms, financial advisors, investment advisors, and actuarial, recordkeeping, and custody services;
- (5) purchases in the secondary market of City debt;
- (6) debt underwriting services to underwrite bonds, notes or other financial instruments bond counsel and related legal services; trustee, registrar, paying agent, fiscal agent, tender agent, escrow agent, and other similar fiduciary services; credit rating agencies services; dealers or remarketing agents;
 - a. securities lending arrangements and commission recapture firms; financial printing services; banking services; escrow verification services, arbitrage calculations, and accounting services related to a debt issue or escrow restructuring; and letters of credit or liquidity support for operational purposes.
- (7) All other services and/or financial instruments prudent for the continued financial operation of the city, including the General Employees Pension fund as outlined by city code and applicable state statutes.

Part C – Methods of Procurement

Request for Proposals (RFP), Request for Information (RFI), Request for letters of Interest (RFLI)

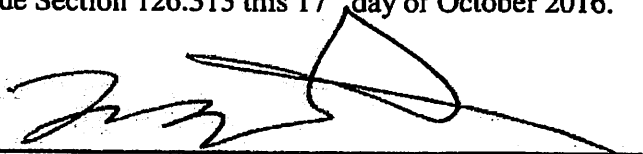
Professional services shall be obtained by RFP/RFI/RFLI which will be competitive in nature, except when authorized by the Director of Administration and Finance, or his designee, as a sole source or proprietary procurement, an emergency procurement, or as noted below. General criteria:

- (1) Under competitive proposals, the quality of competing services may be compared and trade-offs made between price and quality of the services offered (all as set forth in the Request for Proposals).
- (2) Award under competitive proposals is then made to the responsive and responsible firm(s) whose proposal is most advantageous to the City.
- (3) The competitive proposal shall describe the scope of services required, list the type of information and data required of each proposer, and list all evaluation factors.
- (4) Adequate notice of the RFP/RFI/RFLI shall be given a reasonable time prior to the date set forth as the response deadline. Such notices may include publication in a newspaper, on the City's website, advertisement by email from the City or its Financial/Investment Advisors to qualified firms or in an appropriate trade publication.
- (5) Record shall be kept by the City or its financial and investment advisors of all proposals received. Late proposals shall not be accepted.
- (6) The requesting organizational element shall designate an evaluator(s) to review and evaluate proposals received in accordance with the criteria set forth in the RFP. The evaluator may be the city's financial advisor(s), investment advisor(s), bond counsel, the city itself, or any third party approved by the city to perform the evaluation. A summary of the bids and rationale for the scoring must be provided to the City, by the evaluator. In the event that the city is the evaluator, proper due diligence records must be maintained that document the rationale behind the final

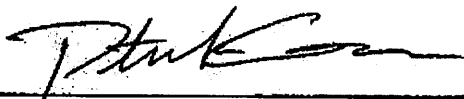
- procurement decision. The evaluator may conduct discussions with any proposer to clarify the contents of their proposal. The ultimate decision on whether to procure the item or service in question, and which vendor to use if an affirmative decision is made, must be made by the City after a thorough review of all relevant factors.
- (7) The product of the evaluation process shall be a list of qualified proposers with the relevant information to rank order the most qualified to least qualified. Tie rankings are permissible. When proposers are tied or are very similar in score for the most qualified, these proposers may be interviewed to determine the most qualified.
 - (8) The evaluator(s) shall negotiate fair and reasonable compensation and other contract terms with the most qualified proposer. If terms cannot be agreed upon with the most qualified proposer, then negotiations will be formally terminated with the selected proposer. If one or more other proposers were determined to be qualified, negotiations may be conducted with such other proposers, in the order of their respective ranking.
 - (9) Award shall be made to the proposer determined to be most qualified and in agreement with compensation and other contract terms determined to be fair and reasonable. Multiple or split awards may be made if in the best interest of the City and provided for in the solicitation document.
 - (10) For the hiring of external investment managers, the City and Pension Board may utilize its consultant to perform a thorough and in depth review of the marketplace to determine the manager which best fits the needs of the pension or operating funds. In addition, the City may perform its own analysis using its investment software/database from which it will rank managers based on the desired portfolio characteristics. The pension board and operating portfolio investment committee may interview the top ranked candidates if necessary to determine the winner of the search. The purchase of individual securities by hired external money managers is left to the discretion of the external money managers within the framework of the City's investment policy.
 - (11) In accordance with the City's investment policies, the Treasurer may take emergency action that deviates from this policy if it is deemed necessary to avoid financial loss or to secure gains. Any action taken pursuant to this authority shall be detailed in writing to the Director of Finance and Administration. Such decisions shall be presented to the Pension Board of Trustees or Investment Committee at its next regularly scheduled meeting or an emergency meeting held sooner.

The General Employee Pension Fund authorized investments are stated in City Ordinance section 120.110 , Florida Statute 215.47, and the Retirement System's Investment Policy Statement. The City's Operating Fund investments are subject to the City's Investment Policy Statement. The procurement of securities by hired external money managers is left to the discretion of the external money manager, so long as the procurement method is in the best interest of the City.

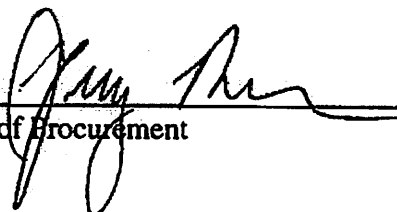
This policy has been constructed, reviewed, and approved by the Director of Finance and Administration / CFO, Treasurer, and Chief of Procurement as required by Municipal Code Section 126.313 this 17th day of October 2016.



Director of Finance and Administration / CFO



Treasurer



Chief of Procurement