

	<u>Date</u>	<u>Chronology Concerning Planned Unit Performance Plan</u>
	7/23/2019	JEA Board approval of PUPs Plan
①	8/9/2019	Questions emailed to JEA from Council Auditor's Office about PUPs Plan
②	8/14/2019	In response to Council Auditor email, JEA emailed PUPs Plan documents to Council Auditor's Office, but did not answer the questions
③	10/30/2019	Council Auditor's Office requests meeting with JEA on PUPs Plan
④	10/30/2019	Council Auditor's Office emails questions from 8/09/19 to JEA again
	10/31/2019	JEA's Chief Financial Officer, Chief of Governmental Affairs, and Chief Administrative Officer come to Council Auditor's Office and meet with Council Auditor and Council Auditor staff regarding PUPs Plan
⑤	10/31/2019	Following the meeting, the Council Auditor's Office emails questions and concerns about PUPs Plan to JEA
⑥	11/6/2019	Council Auditor's Office sends follow up email to JEA asking for status of response to questions
⑦	11/7/2019	Council Auditor's Office sends email to JEA's Chief Financial Officer with sample calculation of the value of a Performance unit asking for agreement on methodology and calculation
⑧	11/13/2019	Council Auditor receives email from JEA's Chief Financial Officer stating "We have decided to not move forward with the implementation of the performance units at this time". Attached was a letter from Aaron Zahn to Jason Gabriel dated 11/12/19 about postponing indefinitely the implementation of the plan.
⑨	11/13/2019	Council Auditor's Office sends email to JEA again asking for confirmation that the sample calculation methodology is correct in the email we sent previously.
⑩	11/13/2019	JEA CFO responds with updated spreadsheet stating methodology is correct. JEA inserts numbers into spreadsheet and points out a formula error in a cell
⑪	11/14/2019	Council Auditor's Office responds to JEA CFO email with additional question and calculation
⑫	11/14/2019	JEA CFO responds to Council Auditor's Office email that this was a DRAFT plan that is not being finalized or implemented. (Includes Aaron Zahn letter to Jason Gabriel)
⑬	11/18/2019	Council Auditor releases Memorandum on JEA Performance Unit Plan
⑭	11/18/2019	Email from JEA to Council Auditor with letter attached from April Green stating we were already planning to address the indefinite postponement of the Plan at the 12/17/19 Board Meeting

123

Billy, Kyle

② From: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>
Sent: Wednesday, August 14, 2019 5:19 PM
To: Rodda, Jeffrey; Crawford, Juli E. - Director Financial Planning & Analysis; Orfano, Joseph E. - Treasurer
Cc: Peterson, Phillip; Billy, Kyle
Subject: RE: Performance Unit Plan (PUP) Questions
Attachments: scan_rhodlc_2019-08-14-13-24-00.pdf; scan_rhodlc_2019-08-14-13-21-11.pdf

Attachment is on left page.

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Jeff,

Attached are the latest drafts of the plan documents and award agreement that was approved by the board. This will answer many of these questions.

As we are still working on a number of other pressing items, can we circle up in a few weeks on any additional questions you may have after reviewing these documents?

I appreciate it.

Thank you,
Ryan

① From: Rodda, Jeffrey <JRodda@coj.net>
Sent: Friday, August 9, 2019 12:38 PM
To: Crawford, Juli E. - Director Financial Planning & Analysis <crawje@jea.com>; Orfano, Joseph E. - Treasurer <orfaje@jea.com>
Cc: Wannemacher, Ryan F. - Chief Financial Officer <wannrf@jea.com>; Peterson, Phillip <PhillipP@coj.net>; Billy, Kyle <KBilly@coj.net>
Subject: Performance Unit Plan (PUP) Questions

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

Hi Juli,

I have been reviewing resolution 2019-10 and Exhibits 1 and 2 and now have a request and a list of questions. I would like to get a copy of the Performance Unit Plan Agreement that employees have to sign. I would appreciate it if it could be sent right away rather than waiting for the list of questions to be answered. Is that possible?

Here are my questions:

over

① Council Auditor Questions

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

As always, I appreciate your time, assistance, and patience.

Please call or email if you need clarification.

Regards,

Jeff Rodda

Public Accounts Auditor
Office of the Council Auditor
117 West Duval Street
Suite 200
Jacksonville, Florida 32202
Office: 904-255-5477
Direct: 904-255-5487
Fax: 904-255-5478
E-Mail: jrodda@coj.net

Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Any email sent to or from JEA's system may be considered a public record and subject to disclosure under Florida's Public Records Laws. Any information deemed confidential and exempt from Florida's Public Records Laws should be clearly marked. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact JEA by phone or in writing.

JEA LONG-TERM PERFORMANCE UNIT PLAN

RECITALS:

WHEREAS, all Employees of JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Employees obtaining performance standards that shall be individually determined and evaluated based on the Employees' proportionate contribution to JEA, JEA desires to allow Employees to participate in a long-term performance unit plan on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the plan.

SECTION 1 PURPOSE

(a) The purpose of this JEA Long-Term Performance Unit Plan (this "Plan") is to provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville.

(b) JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville.

SECTION 2 CERTAIN DEFINITIONS

As used in this Plan, the following terms shall have the meanings given to them in this Section 2. Certain other terms are defined elsewhere in this Plan.

(a) "Administrator" means the Chair of the Compensation Committee of the Board and, following a Recapitalization Event, the entity designated in the definitive agreement entered into in connection with such Recapitalization Event to act as the representative of JEA's interests under such agreement (and, in the absence of such a designation, the Chair of the Board).

(b) "Agreement" means a Long-Term Performance Unit Agreement in the form prescribed by the Administrator for the purchase of Performance Units under this Plan.

(c) "Applicable Law" means any constitution, law, statute, ordinance, rule, regulation, regulatory requirement, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision.

(d) "Board" means the Board of Directors of JEA.

(e) "Cause" means (x) in the case where a Participant has an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units that defines a termination for "cause" (or words of like import). "cause" as defined in such agreement or (y) in the case where a Participant does not have an employment agreement, consulting agreement or similar agreement in effect with JEA at the time of purchase of the Performance Units or where there is such an agreement but it does not define "cause" (or words of like import):

(i) the Participant has been convicted of, pled guilty or no contest to or entered into a plea agreement with respect to, (A) any felony under Applicable Law or (B) any crime involving dishonesty or moral turpitude;

(ii) the Participant has engaged in (A) any willful misconduct or gross negligence or (B) any act of dishonesty, violence or threat of violence, in each case with respect to this clause (B), that would reasonably be expected to result in a material injury to the JEA Group;

(iii) the Participant willfully fails to perform the Participant's duties to the JEA Group and/or willfully fails to comply with lawful directives of the Board;

(iv) the Participant materially breaches any term of any contract to which the Participant and any member of the JEA Group is a party; or

(v) the Participant materially breaches any term of this Plan and/or his or her Agreement;

provided that, with respect to clauses (iii), (iv) and (v) and if the event giving rise to the claim of Cause is curable, JEA provides written notice to the Participant of the event within thirty (30) days of JEA learning of the occurrence of such event, and such Cause event remains uncured fifteen (15) days after JEA has provided such written notice; provided further that any termination

of the Participant's employment for "Cause" with respect to clause (iii), (iv) or (v) occurs no later than thirty (30) days following the expiration of such cure period.

Notwithstanding the foregoing, to the extent that this definition of "Cause" is inconsistent with a definition of "cause" (or words of like import) in any applicable and lawful collective bargaining agreement or the applicable and lawful Civil Service and Personnel Rules and Regulations of the City of Jacksonville (the "Civil Service Rules"), the definition of "cause" (or words of like import) in such collective bargaining agreement or the Civil Service Rules shall control.

(f) "Closing Date" means the date on which the Recapitalization Event occurs.

(g) "Code" means the Internal Revenue Code of 1986, as amended, and the rules, regulations and guidance issued thereunder.

(h) "Deferral Election" means an election by an Employee under the Agreement to defer pay to purchase Performance Units under this Plan, payable for services to be performed in calendar years beginning after the date the Election Notice becomes irrevocable. An Employee shall make a new Deferral Election with respect to each Performance Period to the extent that such Employee is eligible to participate in this Plan for such Performance Year.

(i) "Disability" means (i) if JEA provides long-term disability insurance to its employees generally and if JEA's long-term disability plan defines the term "disability," then the same meaning as in JEA's long-term disability plan or (ii) if JEA does not provide long-term disability insurance to its employees generally, a condition that renders a Participant unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment as determined by JEA's absence management vendor; provided, however, that the absence management vendor has no obligation to investigate whether Disability exists, unless the Participant or representative thereof puts JEA on notice within ninety (90) days after the Participant's termination of employment.

(j) "Election Notice" means the notice or notices established from time to time by the Administrator for making Deferral Elections under this Plan. The Election Notice shall include the amount of compensation to be deferred and the number of Performance Units to be purchased (subject to any minimum or maximum amounts set forth herein). Each Election Notice shall become irrevocable as of December 31st of the calendar year immediately preceding the calendar year in which the Purchase Date occurs (or such earlier date as determined by the Administrator).

(k) "Employee" means, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, any full-time employee of the JEA Group who has been employed by any member of the JEA Group for at least three (3) months prior to the Purchase Date or any full-time attorney from the Office of the General Counsel of the City of Jacksonville who is dedicated exclusively to JEA for at least three (3) months prior to the Purchase Date.

(l) "Involuntary Termination" means, with respect to a Participant, a termination of the Participant's employment by any member of the JEA Group without Cause or due to such Participant's death or Disability.

- (m) “JEA Group” means JEA and its affiliates, assigns, subsidiaries and successors.
- (n) “Participant” means any Employee who makes a Deferral Election to purchase Performance Units under this Plan.
- (o) “Performance Period” means a three (3)-year period used to measure the Value Change Percentage beginning on the applicable Purchase Date and ending on the earlier of the third anniversary of the Purchase Date or Closing Date.
- (p) “Performance Unit” means a bookkeeping entry representing a potential right to receive a payment under this Plan.
- (q) “Purchase Date” means the date on which Performance Units are purchased by Participants under this Plan, which shall be each January 15th of the calendar year following the calendar year in which JEA’s annual financial statements audit is completed (or, if January 15th falls on a weekend or a holiday, the next business day thereafter). The first Purchase Date under the Plan shall be January 15, 2020.
- (r) “Purchase Price” means the price to be paid by a Participant for each Performance Unit under this Plan which shall be no less than \$10.00 per Performance Unit.
- (s) “Recapitalization Event” means the closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other Applicable Law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least fifty percent (50%) of the net depreciated property, plant and equipment value of either JEA’s electric system or JEA’s water and wastewater system being transferred, assigned, sold or otherwise disposed of.
- (t) “Redemption Price” means a price per Performance Unit payable by JEA to each Participant calculated in accordance with the redemption price schedule substantially in the form attached hereto as Schedule A (the “Redemption Price Schedule”); provided, however, that if the Threshold Value Target (as defined on Schedule A attached hereto) set forth on the Redemption Price Schedule is not attained during the applicable Performance Period, the Redemption Price for such Performance Period may be reduced to \$0. The Redemption Price shall include the Purchase Price per Performance Unit.
- (u) “Retirement Eligible Employee” means an Employee who has attained one of the retirement milestones as described in the General Employees Retirement Plan.
- (v) “Vesting Date” means the earlier to occur of (i) the first anniversary of the last day of the Performance Period and (ii) the date on which a Recapitalization Event occurs.

SECTION 3 ADMINISTRATION; CERTIFICATION

- (a) Appointment: Delegation. This Plan shall be interpreted and administered by the Administrator, whose actions shall be final and binding on all persons, including the Participants.

The Administrator may delegate all or any of its responsibilities hereunder to the Board, a committee of the Board or any member of JEA's senior executive management.

(b) Powers. The Administrator, in its sole but reasonable discretion, shall have the power, subject to, and within the limitations of, the express provisions of this Plan:

(i) to determine whether any individual has status as a Participant, the number of Performance Units that may be purchased by a Participant, and whether a Participant is entitled to payment hereunder;

(ii) to determine for a Participant any additional terms and conditions of participation in this Plan not inconsistent with the terms of this Plan, which such additional terms and conditions shall be set forth in the Agreement;

(iii) to certify whether or not the performance metrics set forth on the Redemption Price Schedule for the applicable Performance Period have been attained, including whether or not the Value Target for the applicable Performance Period has been attained;

(iv) to establish procedures to allow Employees to make deferral elections (provided that such procedures shall be designed to comply with requirements of Applicable Law);

(v) to take all other action as may be required hereunder; and

(vi) to interpret this Plan.

Notwithstanding the foregoing, JEA's Chief Financial Officer shall determine the amount of the Redemption Price.

(c) Certification. As soon as practicable following the completion of JEA's financial statements audit for the applicable Performance Period and in no event later than thirty (30) days following the end of such Performance Period, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period. Notwithstanding the foregoing, if a Recapitalization Event occurs, the Administrator shall certify in writing the Value Change Percentage as set forth on the applicable Redemption Price Schedule for such Performance Period no later than thirty (30) days following such Recapitalization Event.

SECTION 4 EFFECTIVE DATE; NUMBER OF PERFORMANCE UNITS

(a) Effective Date. This Plan is effective as of July 23, 2019 (the "Effective Date").

(b) Performance Unit Limit. The aggregate number of Performance Units which may be purchased by Participants under this Plan is one hundred thousand (100,000) Performance Units.

SECTION 5 VESTING; REDEMPTION PRICE

(a) Agreement. Each Performance Unit purchased under this Plan by a Participant shall represent a contractual right to receive, on the terms and subject to the conditions of this Plan and the applicable Agreement evidencing such purchase, payments under this Plan on the terms and subject to the conditions of this Plan.

(b) Number of Units. The number of Performance Units purchased by each Participant shall be set forth in such Participant's Agreement.

(c) Time of Purchase. On or before the Recapitalization Event, upon the conclusion of JEA's annual financial statements audit, Employees may purchase Performance Units on an annual basis. Following the Recapitalization Event, no Performance Units may be purchased.

(d) Vesting Schedule. The Performance Units purchased by any Participant shall vest on the Vesting Date if a Participant's employment with any member of the JEA Group had not previously terminated. Notwithstanding the foregoing, in the event of a Participant's Involuntary Termination prior to the applicable Vesting Date, such Participant shall be eligible to receive all of his or her Performance Units and such Performance Units shall vest on the Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had there been no termination of employment.

(e) Forfeiture. Unvested Performance Units held by a Participant whose employment with any member of the JEA Group is terminated prior to the applicable Vesting Date shall be forfeited for no consideration (but only after giving effect to any vesting pursuant to Section 5(d)). Performance Units forfeited pursuant to the preceding sentence may be available for purchase by other Participants. If a Participant forfeits all or any of his or her Performance Units, he or she shall be refunded the Purchase Price paid by such Participant for such Performance Units; provided, however, that any forfeiture due to termination for Cause or resignation shall result in a forfeiture of unvested Performance Units and the Purchase Price paid for such Performance Units.

(f) Retirement Eligible Employees. Notwithstanding Section 5(d), if a Participant becomes a Retirement Eligible Employee prior to the applicable Vesting Date and such Participant retires from employment with any member of the JEA Group prior to the Applicable Vesting Date, such Participant's Performance Units shall vest on the applicable Vesting Date. Any amount payable to a Participant pursuant to the foregoing sentence shall be paid to such Participant at the same time as the Redemption Price for the Performance Units (to the extent unpaid) would have been paid had the Participant not retired from employment. The Administrator shall determine in its sole and absolute discretion whether a Participant's termination shall qualify as a retirement for purposes of this Section 5(f).

(g) Redemption Price. On the applicable payment date, each Participant shall receive an amount equal to the number of his or her vested Performance Units multiplied by the Redemption Price per Performance Unit.

SECTION 6 PURCHASE OF PERFORMANCE UNITS; PAYMENT AND DISTRIBUTIONS

(a) Purchase of Performance Units. To receive a Purchase Price under this Plan, a Participant must pay to JEA a Purchase Price for each Performance Unit that he or she would like to purchase. To pay the Purchase Price for a Performance Unit, an Employee must elect to defer a portion of his or her pay by completing an Election Notice and filing it with the Administrator no later than December 31st of the calendar year immediately preceding the calendar year to which the Deferral Election relates. The Election Notice must specify the amount of pay that the Employee would like to defer (such pay must be payable for services rendered in a calendar year beginning after the date the Election Notice becomes irrevocable) and the number of Performance Units that such Employee would like to purchase. The Administrator shall notify each Employee of the maximum number of Performance Units that the Employee is eligible to purchase (it being understood that an Employee may not defer an amount of pay in excess of the aggregate Purchase Price for the maximum number of Performance Units that may be purchased by such Employee).

(b) Payments. On the terms and subject to the conditions set forth in this Plan and any Agreement, a Participant who holds vested Performance Units as of the applicable Vesting Date shall be entitled to receive the Redemption Price for such Performance Units. Payments shall be made to the Participants no later than thirty (30) days following the date on which performance is certified pursuant to Section 3(c).

SECTION 7 CONDITIONS TO RECEIPT OF PAYMENT

A Participant's right to receive a payment in consideration for his or her Performance Units is conditioned on his or her execution of an Agreement and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth herein), (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group ("Release") in a form reasonably satisfactory to JEA, (c) the Employee's compliance with the covenants set forth in the Agreement, and (d) satisfaction of the conditions set forth in Section 215.425(3), Florida Statutes. Within sixty (60) days prior to the anticipated payment date, JEA shall deliver the Releases to the Participants and, to the extent required by Applicable Law, the Participants shall have twenty-one (21) or forty-five (45) days from the date of the Releases are delivered to the Participants to review the Releases and an additional seven (7) days to revoke the Releases. Each Participant must have executed an irrevocable Release prior to the applicable payment date to receive any payment in respect of his or her Performance Units (it being understood that a Participant shall only be required to execute one Release prior to the first payment date for payments outside of a Recapitalization Event).

SECTION 8 AMENDMENT AND TERMINATION OF PLAN

(a) General. This Plan (including the template Redemption Price Schedule attached hereto and any Redemption Price Schedule created for specific Performance Periods) may be amended or terminated at any time or from time to time by the Board; provided, however, that no

such amendment or termination shall impair the then-existing rights of a Participant with regard to this Plan without such Participant's written consent.

(b) Final Distribution. This Plan shall automatically terminate upon the payment or distribution of all amounts owed to all Participants under this Plan following a Recapitalization Event.

SECTION 9 MISCELLANEOUS

(a) Rounding. All payments provided under this Plan shall be rounded down to the nearest whole cent.

(b) Tax Withholding. The JEA Group shall be entitled to make deductions from the payments hereunder in respect of any applicable income and employment tax, up to the maximum amount permitted by Applicable Law, subject to the JEA Group's normal withholding procedures.

(c) Unfunded Plan. This Plan is intended to constitute an "unfunded" program, and no amounts shall be set aside to fund any payments hereunder prior to the end of the Performance Period. JEA's obligations under this Plan are unfunded and unsecured, and the Participants have no rights other than those of general unsecured creditors of the JEA Group with respect to any payment hereunder.

(d) Sections 409A and 457(f). This Plan and any Agreement are intended to provide payments that are exempt from Sections 409A and 457(f) of the Code ("Code Sections 409A and 457(f)"), or alternatively that comply with Code Sections 409A and 457(f), and the terms of this Plan and any Agreements shall be construed and administered in a manner that is exempt from or in compliance with Code Sections 409A and 457(f), as appropriate. Each payment hereunder is intended to be treated as one of a series of separate payments for purposes of Code Sections 409A and 457(f). Notwithstanding anything herein to the contrary, no amendment may be made to this Plan or any Agreement if it would cause this Plan, any Agreement or any payment hereunder or thereunder not to be in compliance with Code Sections 409A and 457(f).

(e) Successors and Assigns. This Plan and any Agreement shall be binding on and shall inure to the benefit of JEA and its successors (including any organization that succeeds to substantially all of the assets and business of JEA) and assigns, and the term "JEA" whenever used in this Plan and any Agreement shall mean and include any such successors or assigns. Neither this Plan nor any Agreement nor any right or interest hereunder or thereunder shall be assignable or transferable by any Participants or their beneficiaries or legal representatives, except by will or by the laws of descent and distribution. Notwithstanding the foregoing, in the event of the death of a Participant, payments that otherwise would have been made to the Participant shall instead be made to the Participant's estate.

(f) Governing Law. All questions concerning the construction, validity and interpretation of this Plan and any Agreement shall be governed by the laws of the State of Florida, applicable to contracts to be executed and performed entirely therein, regardless of the laws of any other jurisdiction that might otherwise govern due to applicable conflicts of laws principles.

(g) Arbitration. Except for suits seeking injunctive relief or specific performance or as otherwise prohibited by law, the parties hereby agree that any dispute, controversy or claim arising out of, connected with and/or otherwise relating to this Plan and/or any Agreement and the arbitrability of any controversy or claim relating hereto shall be finally settled by binding arbitration. The parties hereby knowingly and voluntarily waive any rights that they may have to a jury trial for any such disputes, controversies or claim. The parties agree to resolve any dispute arising out of this Plan and/or any Agreement before the American Arbitration Association (the "AAA") in accordance with the AAA's then existing National Rules of Resolution of Employment Disputes. The arbitration shall be administered by the AAA and the hearing shall be conducted in Duval County of the State of Florida before a neutral arbitrator, who must have been admitted to the practice of law for at least the last ten (10) years (the "Arbitrator"). Each party further agrees to pay its or his own arbitration costs, attorneys' fees, and expenses, unless otherwise required by the AAA's then-existing arbitration rules. The Arbitrator shall issue an opinion within thirty (30) days of the final arbitration hearing and shall be authorized to award reasonable attorneys' fees to the prevailing party, which decision of the Arbitrator shall be final, conclusive, unappealable and binding on the parties. Subject to Applicable Law, the arbitration proceeding and any and all related awards, relief or findings shall be confidential, except that any arbitration award may be filed in a court of competent jurisdiction by either party for the purpose of enforcing the award.

(h) Survival. The provisions of this Plan and any Agreement that are intended to survive this Plan and any Agreement and to survive the Participant's termination of employment shall survive in accordance with their terms.

(i) Severability. If any provision of this Plan or any Agreement becomes or is deemed invalid, illegal or unenforceable in any applicable jurisdiction by reason of the scope, extent or duration of its coverage, then such provision shall be deemed amended to the minimum extent necessary to conform to Applicable Law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Plan or any Agreement (as applicable) shall continue in full force and effect.

(j) Collective Bargaining: Civil Service Rules. If or as required, JEA shall collectively bargain this Plan and/or any Agreement with unions representing covered bargaining unit employees of JEA. This Plan and any Agreement shall not be interpreted to be inconsistent with the Civil Service Rules, as applicable.

(k) Penalties. In the event that any payments under this Plan and/or any Agreement to any Participant are subject to any excise tax, interest or penalties under the Code (the "Penalties"), the JEA Group shall pay to such Participant an amount equal to the full amount of the Penalties. Such payment is intended to place the Participant in the same economic position such Participant would have been in if the Penalties did not apply and shall be calculated in accordance with such intent. Notwithstanding anything to the contrary contained herein, the JEA Group shall not make any Participant economically whole for Penalties caused by, relating to or arising from such Participant's breach of this Plan or any Award Agreement or such Participant's failure to comply with his or her obligations under Applicable Law.

(l) Compliance with Applicable Law. No provision of this Plan and/or any Agreement shall be deemed to violate Applicable Law and this Plan and any Agreement shall be interpreted in accordance with this intent.

(m) Determinations. All determinations regarding the Performance Units, including the amount of the Redemption Price, shall be made by JEA in its sole and absolute discretion in accordance with the terms of this Plan and any Agreement, and shall be final, conclusive and binding on all parties.

(n) Section Headings. The headings in this Plan are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

[Remainder of Page Intentionally Left Blank]

SCHEDULE A
[YEAR] REDEMPTION PRICE SCHEDULE

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

- (a) "Base Year Value" means \$[AMOUNT].¹
- (b) "Challenge Value Target" means [PERCENT].²
- (c) "Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.
- (d) "Value Change Percentage" means a percentage equal to the Current Year Value divided by the Base Year Value.
- (e) "Threshold Value Target" means [PERCENT].³

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

¹ For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

² For the first performance period, insert 110%.

³ For the first performance period, insert 100%.

THIS LONG-TERM PERFORMANCE UNIT AGREEMENT (this "Agreement") is made effective as of the [] day of [], 2019, by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville ("JEA"), and [] (the "Participant").

RECITALS:

WHEREAS, all Employees perform valuable services for the customers and citizens they serve;

WHEREAS, JEA provides a work environment which emphasizes safety and a positive culture;

WHEREAS, JEA operates in a rapidly evolving business climate to provide energy, water and wastewater utility services;

WHEREAS, JEA desires to recognize the past and continued service of its Employees;

WHEREAS, JEA desires to have long-term incentives, in accordance with its total compensation philosophy approved by the Board in January 2019 and the compensation framework approved by the Board in June 2019, that motivates Employees to drive the customer, community and environmental value of JEA;

WHEREAS, in recognition of the Participant obtaining performance standards that shall be individually determined and evaluated based on the Participant's proportionate contribution to JEA, JEA desires to allow the Participant, and Participant desires, to participate in JEA's Long-Term Performance Unit Plan (the "Plan") on the terms and conditions set forth herein; and

WHEREAS, except as otherwise recommended by JEA's Chief Executive Officer and approved by the Administrator, all Employees are eligible to participate in the Plan.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, JEA and the Participant agree as follows:

1. **Certain Definitions; Incorporation by Reference.** Capitalized terms used herein but not defined shall have the meanings given to such terms in the Plan. The terms of the Plan are hereby incorporated by reference.

2. **Deferral Election.** Pursuant to the terms of the Plan, the Participant hereby elects to defer the amount of his or her pay as set forth on Schedule I attached hereto in accordance with this Agreement, which shall be used to purchase the number of Performance Units set forth on Schedule I attached hereto. The Participant's pay shall be deferred in a lump sum or equal installments during the payroll periods as selected by the Participant in the foregoing sentence and the Participant's pay-for-performance pay shall be deferred at the time such pay would have otherwise been paid but for the Deferral Election. The Participant acknowledges and agrees that (a) he or she has read and understands the terms of the Plan and this Agreement and agrees to all of its terms and conditions, (b) any amounts that Participant defers hereunder are unfunded and

[ID NUMBER]

unsecured and subject to the claims of JEA's creditors in the event of JEA's insolvency, (c) the Participant may consult with his or her own tax advisor regarding the tax consequences of participating in the Plan and making this election and (d) the Participant may forfeit the entire amount of the Purchase Price with no consideration.

3. Payment of Redemption Price. The Performance Units shall vest in accordance with the terms of the Plan and JEA shall pay to the Participant a cash lump sum equal to the product of the number of vested Performance Units multiplied by the Redemption Price per Performance Unit in accordance with the terms of the Plan. For the avoidance of doubt, in no event shall the Participant be entitled to receive any amounts in excess of the value of the Redemption Price per Performance Unit (other than salary and other compensation (including any retention arrangements) approved by the Board in the normal course) under this Agreement.

4. Conditions to Receipt of the Performance Units. The Participant's right to retain the Performance Units and receive payment of the Redemption Price per Performance Unit is conditioned on his or her execution of this Agreement (including the completion and execution of Schedule I attached hereto) and all of the following: (a) the Participant's continuous employment with any member of the JEA Group through the Vesting Date (except as set forth in the Plan); (b) the Participant's execution and non-revocation of a release of claims in favor of the JEA Group in a form reasonably satisfactory to JEA; and (c) the Participant's compliance with the covenants set forth in Section 5 of this Agreement. If the Participant breaches or threatens to breach any of the covenants in Section 5, the Participant shall forfeit any Performance Units that have not vested in accordance with Section 5(d) or Section 5(f) of the Plan (except JEA shall refund to Participant the aggregate Purchase Price of such Performance Units).

5. Covenants. The Participant shall comply with the following covenants:

THIS SECTION 5 IS NOT INTENDED TO USURP THE PARTICIPANT'S RIGHTS, DUTIES OR RESPONSIBILITIES AS A CITIZEN OF THE STATE OF FLORIDA; HOWEVER, THIS SECTION 5 IS INCLUDED TO ENSURE THAT JEA AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES COMPLY WITH ITS AND THEIR CONFIDENTIALITY OBLIGATIONS UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING THE DISCLOSURE OF MATERIAL NON-PUBLIC OR CONFIDENTIAL INFORMATION.

(a) **Cooperation.** The Participant shall throughout the Performance Period: (i) devote best efforts to faithfully discharge his or her duties, obligations and responsibilities on behalf of the JEA Group as those duties, obligations and responsibilities have been performed in the past or as may be subsequently modified in writing by JEA and the Participant, (ii) provide full support and cooperation in the best interests of the JEA Group and (iii) take no action that would be considered contrary to the best interests of the JEA Group..

(b) **Confidentiality.**

(i) ***Protection of Information.*** The Participant acknowledges and agrees that the confidentiality provision contained in this Section 5(b) is essential to protect JEA's goodwill, the value of JEA's business and assets and the investor relations that JEA has

expended significant resources to develop. Subject to applicable limitations of Chapter 119 and Section 215.425(5), Florida Statutes, the Participant shall keep confidential the Plan and this Agreement and their respective terms; provided that the Participant may provide the Plan and this Agreement on a confidential basis to his or her legal counsel, accountant, and/or tax advisor. In addition, at all times during the Participant's relationship with the JEA Group and thereafter, the Participant agrees to hold in strictest confidence and not disclose Confidential Information to any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, without prior written authorization from JEA, and not to use Confidential Information, except to perform the Participant's obligations to the JEA Group, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of the Participant's or of others who were under confidentiality obligations as to the item or items involved. The Participant further agrees not to make any copies of Confidential Information, except as authorized in writing in advance by JEA.

(ii) *Definitions.* For purposes of this Agreement, "Confidential Information" means information not generally known or available outside the JEA Group and information entrusted to the JEA Group in confidence by third parties, including, without limitation, all technical data, trade secrets, know-how, research, product or service ideas or plans, software code and designs, developments, processes, formulas, techniques, biological materials, mask works, designs and drawings, hardware configuration information, information relating to employees and other service providers of the JEA Group (including, but not limited to, their names, contact information, jobs, compensation and expertise), information relating to suppliers and customers, information relating to lenders, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information. Notwithstanding the foregoing, the JEA Group recognizes the applicability of Chapter 119, Florida Statutes.

(iii) *Confidential Disclosure in Reporting Violations of Law or in Court Filings.* The Participant acknowledges and JEA agrees that the Participant may disclose Confidential Information in confidence directly or indirectly to federal, state, or local government officials, including, but not limited, to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. The Participant may also disclose Confidential Information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of Confidential Information that are expressly allowed by 18 U.S.C. § 1833(b).

6. **Entire Agreement; Modification.** This Agreement (including the Plan which is incorporated herein by reference) contains the entire understanding and agreement between the parties relating to the Performance Units and supersedes and replaces all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, by or among the parties with respect thereto (none of which remain of any force or effect). This Agreement, including this Section 6, may be modified only by agreement in writing signed by both JEA and the Participant.

7. **Counterparts.** This Agreement may be executed in two or more counterparts (including via facsimile or .pdf file), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

8. **Waiver.** Any failure of the Participant to comply with any of his or her obligations under the Plan and/or this Agreement may be waived only in writing signed by JEA's Vice President of Human Resources (or his or her delegate). Any failure of JEA to comply with any of its obligations under the Plan and/or this Agreement may be waived only in writing signed by the Participant. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.

9. **Right to Seek Counsel.** The Participant acknowledges that the Participant has the right to review this Agreement with legal, financial, and/or tax advisors of the Participant's choosing before signing it and that he or she was encouraged and advised to consult with such advisors prior to signing it.

10. **Non-Appropriation.** The Participant acknowledges that, so long as and to the extent such limitations are applicable, payments made by JEA pursuant to the Plan and this Agreement after the fiscal year following the year in which this Agreement is signed shall be contingent upon the existence of lawfully appropriated annual funds.

11. **Section Headings.** The section headings are included for convenience and are not intended to limit or affect the interpretation of this Agreement.

[Signature page follows]

12K

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date written below.

JEA

By _____

Name: [●]

Title: [●]

PARTICIPANT

Name: [●]

SCHEDULE I

Purchase of Performance Units and Deferral Election

Please complete the following in order to purchase Performance Units under the JEA Long-Term Performance Unit Plan and this Agreement:

Participant Last Name: [•]

Participant First Name: [•]

No. of Performance Units Available for Purchase [•]
(the "Available Performance Units"):

Purchase Price per Performance Unit: \$10.00

No. of Performance Units Participant Purchases:
(capped at the number of Available Performance Units):

Aggregate Purchase Price:

(\$10.00 x No. of Performance Units Participant Purchases)

I hereby elect to pay the Aggregate Purchase Price by deferring my pay as follows:

A. I hereby elect to defer \$_____ of my pay for services to be rendered in
[YEAR] in (check one):

Lump sum from pay to be paid during the payroll period on [DATE]

Equal installments from pay to be paid over the next [TWO] pay periods
commencing with the payroll period on [DATE]

NAME

SIGNATURE

DATE

(3)

Billy, Kyle

Subject: FW: PUP Review and Questions
Location: Council Auditor's Conference Room

Start: Thu 10/31/2019 9:00 AM
End: Thu 10/31/2019 10:00 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Rodda, Jeffrey

-----Original Appointment-----

From: Rodda, Jeffrey

Sent: Wednesday, October 30, 2019 9:24 AM

To: Billy, Kyle; Reber, Heather; Taylor, Kim; Peterson, Phillip; Wannemacher, Ryan F. (wannrf@jea.com)

Subject: PUP Review and Questions

When: Thursday, October 31, 2019 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Council Auditor's Conference Room

4

Billy, Kyle

From: Rodda, Jeffrey
Sent: Wednesday, October 30, 2019 2:43 PM
To: Wannemacher, Ryan F. (wannrf@jea.com); Hall, Sherry
Cc: Billy, Kyle; Reber, Heather; Taylor, Kim; Peterson, Phillip
Subject: Questions for PUPs.

Ryan,

You have these from before, but I am sending them again just in case.

Here are our questions:

1. What is the purpose of the PUP?
2. What makes PUPs a legal form of compensation for public employees in Florida?
3. What form of compensation are they (bonus, regular wages, etc.)?
4. How will any gains or losses be reported to the IRS?
5. Is there a limit on how many PUPs an employee can purchase? What is the maximum?
6. Is there a distribution plan that provides each employee first right of refusal to a specified number of PUPs before their allotment is made available for other employees to purchase?
7. Can PUPs be granted to an employee at no cost?
8. Can a PUP be purchased by a Board member?
9. Is there a ceiling on the redemption value of a PUP?
10. What is the reason for limiting PUP purchases to payroll deductions only?
11. Can the PUP purchase payment be deducted pre-tax?
12. What will JEA do with money paid in by employees to purchase PUPs?
13. Assuming there is not a recapitalization event, does it take 4 years for a PUP to vest?
14. How will the funds from the purchase(s) and the value of the PUPs be shown in the financial statements?
15. Are the nitrogen credits considered an in-kind contribution to the City? If so, how/when is the value determined?
16. What is the assumed likelihood that PUPs will be paid in 2022?
17. Has any modeling been done to examine what the value might be at redemption?
18. What is the maximum cost to JEA?
19. If an employee breaks the covenants do they have to repay PUP payouts from previous performance periods?
20. What other local government entities/municipal utilities use PUPs?
21. What is the JEA Group?
22. What is the reason for including COJ OGC Attorney's assigned to JEA as eligible participants?

Regards,

Jeff Rodda

Public Accounts Auditor
Office of the Council Auditor
117 West Duval Street
Suite 200

12M

Jacksonville, Florida 32202

Office: 904-255-5477

Direct: 904-255-5487

Fax: 904-255-5478

E-Mail: jrodda@coj.net

5

Billy, Kyle

From: Reber, Heather
Sent: Thursday, October 31, 2019 3:13 PM
To: wannrf@jea.com; Hall, Sherry; vinyht@jea.com
Cc: Billy, Kyle; Taylor, Kim; Peterson, Phillip; Rodda, Jeffrey; Parks, Brian
Subject: PUP Meeting
Attachments: Additional Questions and Initial Concerns on the PUP.docx

Ryan, Sherry and Herschel,

Thank you all for coming over to meet with us today to discuss the Performance Unit Plan. Attached are our additional questions. Also included on the attachment are our initial concerns regarding the Performance Unit Plan.

Thank you,
Heather Reber, C.P.A.
Council Auditor's Office
P: 255-5486

5

12N

Council Auditor's Office
Questions and Concerns on the Performance Unit Plan

Additional Questions:

1. Please provide updated copies of the Plan and Agreement.
2. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan only requires the approval of the JEA Board and does not require City Council approval.
3. Please provide a legal opinion from the Office of General Counsel on whether the Performance Unit Plan is required to be collectively bargained. If not, what distinguishes the PUP from other compensation or benefits?
4. Please provide what constitutes the 2018 "Cost to be recovered from future revenues" amount of \$808,096,000 on page 15 of the audited financial statements.
5. Have any exceptions to what is considered an eligible employee been recommended by the CEO and approved by the Administrator? If so, who and what is the reason for the exception?
6. Please provide the Towers Watson study and any materials the compensation committee reviewed which lead to the approval of the Performance Unit Plan.
7. Please provide the updated three year forecast that was mentioned in the meeting.
8. Please provide documentation regarding Florida Statute Section 215.425(3) on whether or not it applies to the plan. If it does, have the requirements been met?
9. Please provide your calculation of the cost estimates for the Performance Unit Plan.
10. How will the revenue (i.e. the \$10 from the employee) and the expense (the payout after performance period) be reflected in the financial statements and impact net position?
11. Once determined, please provide the allocation approved by the Administrator on how many units can be purchased by an employee.
12. On Schedule A of the Plan, what is the intent of the last paragraph? (regarding payment in a form other than cash)
13. Does an increase or decrease in the fuel rate/fuel revenues impact the value of a Performance Unit? Do additions or withdrawals from the fuel rate stabilization fund impact the value of a Performance Unit?
14. Does an increase or decrease in other rates charged by JEA (i.e. environmental charge, conservation etc.) impact the value of a Performance Unit?
15. During the meeting you had mentioned that you would look into the following:
 - a. Will the "In-kind" contributions be included in any of the redemption price schedule calculations?
 - b. What is the reason for including a provision that would have JEA pay any excise tax, interest or penalties for employees?
 - c. What will happen to forfeited Performance Units?
 - d. What happens if the OGC attorneys that are currently dedicated to JEA are reassigned?

Council Auditor's Office
Questions and Concerns on the Performance Unit Plan

Concerns:

1. There is no cap to the value of a Performance Unit.
2. The value of a Performance Unit can be significantly impacted by a recapitalization event, base rate changes, accounting changes, etc., which are generally not tied to employee performance.
3. There is no prohibition in the Plan to selling Performance Units after an award has been made for a recapitalization event and the value of JEA and the Performance Unit is known.
4. The Administrator has the ability to delegate all or any responsibilities to any member of JEA's senior executive management.
5. Exceptions to eligible employees are currently unlimited because the CEO can recommend and the Administrator can approve participants that are not employees. We understand that you were going to look into this further to clarify the intent.
6. The CFO who is eligible to participate in the Plan is the one who is solely responsible for calculating the Redemption Price. We understand that you were going to possibly have the external auditors verify the calculation.
7. The Performance Period is tied to a timeframe that is different from the period by which performance would be measured.
8. Select Office of General Counsel employees are allowed to participate in the Plan.