

**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.

## TAB A

**QUESTIONS AND ANSWERS ABOUT THE  
JEA LONG-TERM PERFORMANCE UNIT PLAN**

**INTRODUCTION<sup>1</sup>**

Below are a number of frequently asked questions ("FAQs") regarding the principal features of the Plan. The Plan was adopted by the Board at its meeting on July 23, 2019.

This document is only intended to be a summary. Some provisions are described in abbreviated form and others are not mentioned at all. If there is any ambiguity in these FAQs or if there is a conflict between these FAQs and the official text of the Plan or your Long-Term Performance Unit Agreement, then the official text of the Plan or your Long-Term Performance Unit Agreement, as applicable, will govern.

Where the context so requires, references to "JEA" refer to JEA, its affiliates, assigns, subsidiaries and successors.

**THIS INVITATION BOOKLET DOES NOT PROVIDE LEGAL, FINANCIAL OR  
TAX ADVICE. JEA STRONGLY ADVISES YOU TO SEEK THE ADVICE OF A  
QUALIFIED LEGAL, FINANCIAL AND/OR TAX ADVISER REGARDING YOUR  
PARTICIPATION IN THE PLAN.**

**GENERAL PLAN PROVISIONS**

Q1: What is the purpose of the Plan?

A1: The purpose of the Plan is to provide a means by which employees of JEA may be given incentives to remain with JEA and share in the financial [health]<sup>5</sup> of JEA.

Q2: Who is eligible to participate in the Plan?

A2: Any full-time employee of JEA (including any full-time OGC attorney) who has been employed by JEA for at least three months prior to the Purchase Date (as described in Q&A 3) is eligible to participate in the Plan. Part-time and temporary employees of JEA are not eligible to participate in the Plan.

( Any exceptions to the above eligibility requirements must be recommended by JEA's Chief Executive Officer (the "CEO") and approved by the Chair of the Compensation Committee (the "Committee Chair") of the Board of Directors of JEA (the "Board"). )

<sup>1</sup> JEA to confirm whether all the references to "performance units" should be changed to "PUPs." This was not reflected in the hand mark-up received from JEA.

<sup>5</sup> JEA to confirm whether this should instead refer to "success."

Q3: How does the Plan work?

A3: Each eligible employee may purchase a specified number of performance units (the "**Performance Units**") as set forth in the employee's Long-Term Performance Unit Agreement from JEA on January 15 of each year (the "**Purchase Date**")<sup>6</sup> by electing to defer a portion of the employee's pay equal to the aggregate purchase price (the "**Purchase Price**") for the Performance Units that the employee wishes to purchase.

The Purchase Date for the Performance Units that are allocated to you now will be January 15, 2020.

Q4: Who administers the Plan?

A4: The Committee Chair administers the Plan. The Committee Chair has the full authority and discretion to take any actions the Committee Chair deems necessary or advisable for the administration of the Plan. All decisions, interpretations, and other actions of the Committee Chair will be final and binding.

Q5: How many Performance Units are reserved under the Plan?

A5: JEA has reserved an aggregate of 100,000 Performance Units for purchase by eligible employees under the Plan. However, only 30,000 Performance Units will be available for purchase by eligible employees on the Purchase Date.

## ALLOCATION OF PERFORMANCE UNITS

Q6: What is a Performance Unit?

A6: Each Performance Unit represents a right to receive a cash payment equal to the Redemption Price (as described in Q&A 14) in exchange for such Performance Unit. A Performance Unit is not, and does not represent an equity or security interest in JEA.

Q7: How are Performance Units allocated under the Plan?

A7: Under the Plan, the Committee Chair has complete discretion to determine when and to whom Performance Units will be allocated and the number of Performance Units that may be allocated. The terms and conditions of Performance Units will be set forth in your Long-Term Performance Unit Agreement.

The Committee Chair may delegate the Committee Chair's authority under the Plan to determine the number of Performance Units that may be allocated to eligible employees

<sup>6</sup> To discuss the Purchase Date with JEA, including whether the Purchase Date should occur over multiple pay periods. Section 2(q) of the Plan specifies that the first Purchase Date will occur January 15, 2020.

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(other than to the CEO) under the Plan to the CEO. The Committee Chair retains the authority to determine the number of Performance Units that may be allocated to the CEO.

Q8: How many Performance Units must I purchase to participate in the Plan?

A8: You may purchase up to the maximum number of Performance Units allocated to you. However, you may purchase less than all of the Performance Units that you have been allocated.

If you purchase none of the Performance Units allocated to you, you will not participate in the Plan and you will not be eligible to receive the Redemption Price in exchange for your Performance Units.

Q9: How is the Purchase Price determined?

A9: Under the Plan, the Purchase Price will be no less than \$10.00 per Performance Unit. JEA has set the Purchase Price as \$10.00 per Performance Unit.

Q10: Will I be required to pay the Purchase Price for my Performance Units?

A10: Yes, to purchase Performance Units under the Plan, you must pay the aggregate Purchase Price for the Performance Units you wish to purchase. The aggregate Purchase Price is equal to \$10.00 multiplied by the number of Performance Units that you wish to purchase.

**Example:** If JEA allocates you five Performance Units and you wish to purchase four Performance Units, the aggregate Purchase Agreement will be equal to \$40.00 (\$10.00 x four Performance Units).

Q11: How do I pay the Purchase Price for my Performance Units?

A11: To pay the Purchase Price for the Performance Units that you wish to purchase, you must elect to defer a portion of your pay equal to the aggregate Purchase Price for the Performance Units you wish to purchase. You may elect to defer your pay in a lump sum or equal installments during certain payroll periods as selected by you.

To purchase Performance Units on January 15, 2020, you must elect to defer your pay by no later than December 31, 2019. If you do not make this election by December 31, 2019, you will not be eligible to purchase Performance Units on January 15, 2020.

Q12: Under what circumstances will I forfeit the Purchase Price that I pay for my Performance Units?

A12: If prior to the Vesting Date (as described in Q&A 13) your employment with JEA is terminated for cause (as described in Q&A 20) or you voluntarily terminate your employment with JEA for any reason, you will forfeit the entire amount of the Purchase

Price that you paid for the Performance Units that have not vested as of the date of your termination or voluntary termination, as applicable, of employment.

Q13: When will I receive the Redemption Price for my Performance Units?

A13: The Performance Units will vest on the earlier to occur of (a) the last day of the three-year performance period (as described in Q&A 14) and (ii) the date on which a Recapitalization Event (as described in Q&A 23) occurs (the "**Vesting Date**"). Except as otherwise described in Q&A 18, you must be employed with JEA on the Vesting Date for the Performance Units to vest. You will only receive the Redemption Price for vested Performance Units.

JEA will pay the Redemption Price to you for your vested Performance Units no later than 30 days after the Redemption Price has been certified by the Committee Chair as described in Q&A 14. The amount of the Redemption Price will be reduced by applicable withholding taxes.

Q14: How is the Redemption Price calculated?

A14: The Redemption Price is calculated as set forth below based on a three-year performance period (if a Recapitalization Event occurs, the performance period will be shortened, and the performance period will end on the closing date of such Recapitalization Event) (the "**Performance Period**").

The Performance Period will begin on January 15, 2020 and will end on January 15, 2023 (the "**2020/2023 Performance Period**"), unless a Recapitalization Event occurs before such date in which case the performance period will end on the date on which the closing of the Recapitalization Event occurs.

The 2020/2023 Performance Period will be based on the following performance metrics:

The Redemption Price will increase by \$100.00 per Performance Unit for each "Value Change Percentage" increase of 1% in excess of the "Challenge Value Target" and will decrease by \$0.50 per Performance Unit for each "Value Change Percentage" decrease of 1% below the Threshold Value Target, but the Redemption Price will not be less than \$0.00 per Performance Unit (the "**Redemption Price**").

- For the 2020/2023 Performance Period, the "Challenge Value Target" will be 110% and the "Threshold Value Target" will be 90%.
- The "Value Change Percentage" means a percentage equal to the "Current Year Value" divided by the "Base Year Value."
- "Current Year Value" means, with respect to the Performance Period, the sum of (a) JEA's Net Position, as shown on JEA's audited financial statements for the Performance Period (or, in the case of a Recapitalization Event, JEA's Net Position as shown on JEA's audited financial statements immediately following the closing date



of the Recapitalization Event), (b) the aggregate consideration paid directly or otherwise transferred to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period, and (c) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA's customers during the 12-month period prior to the end of the Performance Period. Any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event will be taken into account for purposes of calculating the amounts in (a) – (c).

- For the 2020/2023 Performance Period, "Base Year Value" is the amount equal to the Current Year Value for fiscal year 2019 as reflected on JEA's audited financial statements when available.

The Redemption Price that you receive for your vested Performance Units will include the Purchase Price that you paid for each Performance Unit.<sup>7</sup>

**Example:** [To come]<sup>8</sup>

Q15: Is it possible that I may not receive any Redemption Price for my Performance Units?

A15: Yes, as described in Q&A 14, the Redemption Price will be decreased by \$0.50 per Performance Unit for each "Value Change Percentage" decrease of 1% below the Threshold Value Target up to \$0.00 per Performance Unit. However, the Redemption Price will not be less than \$0.00 per Performance Unit.

Q16: Who will calculate the Redemption Price?

A16: JEA's Chief Financial Officer will calculate the Redemption Price per Performance Unit. The Committee Chair will certify the Redemption Price as soon as practicable following the completion of JEA's audit for the applicable Performance Period, but in no event later than 30 days following the end of the Performance Period.

Q17: Are there any conditions to my receipt of the Redemption Price?

A17: Yes, you need to satisfy certain conditions in order to receive the Redemption Price for your vested Performance Units. These conditions include as follows:

- (a) you must execute your Long-Term Performance Unit Agreement enclosed with this invitation booklet on Tab F and return it to JEA by following the instructions included in Tab D;

<sup>7</sup> To discuss with JEA whether the Purchase Price will be refunded to a participant even if the performance metrics are not attained. There is a substantial risk of forfeiture on a termination for cause or a voluntary termination of employment.

<sup>8</sup> JEA to provide.

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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.



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This Plan and any Agreement shall be assigned to and assumed by any successor of JEA (including any organization that succeeds to substantially all of the assets and business of JEA). Upon such assignment and assumption, the rights and obligations of JEA under this Plan and any Agreement shall become the rights and obligations of such successor. Further, JEA shall require any successor (including any organization that succeeds to substantially all of the assets and business of JEA) to assume expressly and agree to perform this Plan and any Agreement in the same manner and to the same extent that JEA would be required to perform this Plan and any Agreement if no such succession had taken place. 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



Rhode, Lynne C. (City of Jacksonville)

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**From:** Lutrin, Jessica <jessica.lutrin@pillsburylaw.com>  
**Sent:** Friday, August 23, 2019 10:11 AM  
**To:** Wannemacher, Ryan F. - Chief Financial Officer  
**Cc:** Vinyard, Herschel T. - Chief Administrative Officer; Rhode, Lynne C. (City of Jacksonville); KHyde@foley.com; MKirwan@foley.com  
**Subject:** PUP

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

Hi Ryan,

I hope you are well.

I just spoke with Michael Kirwan at Foley and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us? It would be helpful to see your calculations (even if rough) so that we can reconcile the calculations to the formula and adjust the formula in the PUP, if necessary.

Thank you,  
Jessica

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**Council Auditor's Office**  
**Performance Unit Plan (PUP) Value in the Event of a Recapitalization of JEA**

Category	Base Year Value
Performance Period	2018-19*
Net position	2,976,663,000
City Contribution	132,802,000
Aggregate Consideration paid to customers	-
<b>Total Base Year Value</b>	<b>\$3,109,465,000</b>

Category	Recapitalization Event Calculation					
Performance Period	TBD	TBD	TBD	TBD	TBD	TBD
Net position	-	-	-	-	-	-
Net to City^	3,000,000,000	4,000,000,000	5,000,000,000	6,000,000,000	7,000,000,000	8,000,000,000
Net to Customers	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000	400,000,000
<b>Recapitalization Value</b>	<b>\$ 3,400,000,000</b>	<b>\$ 4,400,000,000</b>	<b>\$ 5,400,000,000</b>	<b>\$ 6,400,000,000</b>	<b>\$ 7,400,000,000</b>	<b>\$ 8,400,000,000</b>

Category	Value Change Percentage Calculation					
Value Change Percentage (VCP)	109.34%	141.50%	173.66%	205.82%	237.98%	270.14%
Challenge Value Target (CVT)	110.00%	110.00%	110.00%	110.00%	110.00%	110.00%
Threshold Value Target (TVT)	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
<b>Percentage Above (Below) CVT</b>	<b>(0.66%)</b>	<b>31.50%</b>	<b>63.66%</b>	<b>95.82%</b>	<b>127.98%</b>	<b>160.14%</b>

Category	Redemption Price Calculation					
\$100 per 1% Above CVT	-	3,150.00	6,366.00	9,582.00	12,798.00	16,014.00
\$10 if VCP = TVT	10.00	-	-	-	-	-
(.50) for each 1% Below TVT	-	-	-	-	-	-
<b>Redemption Price (Per PUP)</b>	<b>\$ 10.00</b>	<b>\$ 3,150.00</b>	<b>\$ 6,366.00</b>	<b>\$ 9,582.00</b>	<b>\$ 12,798.00</b>	<b>\$ 16,014.00</b>

Category	Redemption Cost to JEA					
PUPs Authorized	100,000	100,000	100,000	100,000	100,000	100,000
PUPs Issued	100,000	100,000	100,000	100,000	100,000	100,000
PUPs Issue Revenue (\$10 Issue Price)	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>PUPs Cost to JEA</b>	<b>\$ 1,000,000</b>	<b>\$ 315,000,000</b>	<b>\$ 636,600,000</b>	<b>\$ 958,200,000</b>	<b>\$ 1,279,800,000</b>	<b>\$ 1,601,400,000</b>
<b>Amount to City</b>	<b>3,000,000,000</b>	<b>4,000,000,000</b>	<b>5,000,000,000</b>	<b>6,000,000,000</b>	<b>7,000,000,000</b>	<b>8,000,000,000</b>
<b>Net Cost of PUP to JEA</b>	<b>-</b>	<b>314,000,000</b>	<b>635,600,000</b>	<b>957,200,000</b>	<b>1,278,800,000</b>	<b>1,600,400,000</b>
<b>Net to City</b>	<b>3,000,000,000</b>	<b>3,686,000,000</b>	<b>4,364,400,000</b>	<b>5,042,800,000</b>	<b>5,721,200,000</b>	<b>6,399,600,000</b>

<b>Amount to PUPs Holders for Each Additional Billion</b>	<b>-</b>	<b>315,000,000.00</b>	<b>321,600,000.00</b>	<b>321,600,000.00</b>	<b>321,600,000.00</b>	<b>321,600,000.00</b>
<b>% of Additional Billion to PUP holders</b>	<b>-</b>	<b>31.50%</b>	<b>32.16%</b>	<b>32.16%</b>	<b>32.16%</b>	<b>32.16%</b>

\*Amounts are based on JEA's Monthly Financial Statements for September 2019, which are unaudited.

^Future City contributions are not taken into account due not knowing the timing of when a Recapitalization Event will occur. This is a more conservative approach.