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Sent: Friday, September 25, 2020 10:18 AM
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Subject: COJ/JEA - Update to the Committee

Special Investigatory Committee Members,

This memo summarizes our efforts on behalf of the Committee since our last interim report of September 10.

1. Completed Interviews. Since the September 10 report, we have interviewed Michael Munz (The Dalton Agency), Elizabeth Columbo (Nixon Peabody), Joe Orfano (JEA), Angie Hiers (JEA), and David Wathen (Willis Towers Watson):

- a. *Michael Munz*. Mr. Munz provided us details regarding The Dalton Agency's 2019 public relations campaign to support JEA's SLT's "doom and gloom" narrative. Mr. Munz acknowledged he now questions the validity of that narrative. Mr. Munz also testified that Mr. Zahn threatened at JEA's July 10, 2019 Club Continental offsite meeting to terminate Dalton's contract when Mr. Munz said that he thought Mr. Zahn's proposed PUP was a bad idea.
- b. *Elizabeth Columbo*. Elizabeth Columbo was the lead attorney at Nixon Peabody in preparing the May 20, 2019 memorandum that concluded JEA's proposed long-term incentive plan violated Florida law. After she emailed the memorandum to Ryan Wannemacher and Herschel Vinyard, Ms. Columbo received no further communications from JEA until June 30, 2019, when Ryan Wannemacher, Aaron Zahn, and Melissa Dykes asked her to prepare bond resolutions to fund the plan. Ms. Columbo subsequently told Messrs. Wannemacher and Vinyard that she would not prepare the resolutions because of her concern about the legality of the plan. JEA stopped sending work to Nixon Peabody and retained new bond counsel.
- c. *Joe Orfano*. JEA's Treasurer, Joe Orfano, provided us more background on the City's and JEA's efforts to privatize JEA in 2017 and 2018. Among the matters Mr. Orfano told us:
 - Mr. Orfano acknowledged privatization of JEA was a "major component" of the City's December 20, 2017 request for proposals to provide financial advisory services (the "RFP"; available [here](#)). (Messrs. Weinstein and

Mousa have denied that the City's RFP related to JEA (example [one](#) and [two](#))).

- On February 1, 2018, the City announced four successful RFP respondents: Goldman Sachs, J.P. Morgan, Morgan Stanley, and KPMG. That same day, JEA provided nondisclosure agreements to three of those banks: Goldman Sachs, J.P. Morgan, and Morgan Stanley. Mr. Orfano confirmed he helped send the nondisclosure agreements to those banks for the purpose of potential JEA privatization.
 - Mr. Orfano described how representatives of Goldman Sachs, J.P. Morgan, and Morgan Stanley gave presentations about privatizing JEA to representatives of the City, JEA, and Public Financial Management, Inc. ("PFM") at the SpringHill Suites near the Jacksonville International Airport on February 15, 2018, the day after the February 14 special meeting of the City Council and JEA Board convened by Mayor Curry to discuss PFM's JEA evaluation report (available [here](#)).
 - Mr. Orfano stated he, Joey Grieve and Michael Mace (PFM) met shortly thereafter in February 2018 and selected Morgan Stanley to serve as JEA's privatization consultant. (Morgan Stanley ultimately served as one of JEA's privatization consultants in connection with the 2019 ITN.)
- d. *Angelia Hiers*. Angie Hiers (JEA's chief human resources officer) provided further information regarding both human resources and privatization issues:
- Ms. Hiers stated it was "very obvious" to her that the SLT seriously considered only one option—a sale—during the purported strategic planning process led by Aaron Zahn in 2018 and 2019. Ms. Hiers said, "Everything that we did from the moment that Aaron Zahn walked into the door was geared towards privatization."
 - Jon Kendrick, JEA's former chief human resources officer, called Ms. Hiers after she left JEA in 2019 to discuss outsourcing senior JEA payroll to ADP. Mr. Kendrick said the proposed outsourcing was an effort to shield PUP payouts from public records laws—so the PUP payouts would be "disguised." Ms. Hiers said she advised against the initiative. Mr. Kendrick claimed Kevin Hyde had approved both the PUP and the proposed movement of the senior payroll to ADP.

- Mr. Zahn hired McKinsey to help develop the doom and gloom case for privatization.
 - Mr. Zahn insisted Ms. Hiers promise long-term incentives to Herschel Vinyard and other prospective senior leadership team members in early 2019, months before the Board approved a long term incentive plan.
- e. *David Wathen.* Mr. Wathen, a managing director at Willis Towers Watson, JEA's compensation consultant, told us about JEA's efforts to enlist Willis Towers Watson in 2018 and 2019 to help develop a long-term incentive plan design. Mr. Wathen said Willis Towers ultimately did not develop or approve of the PUP as proposed to the JEA Board by the SLT. Mr. Wathen said the proposed PUP did not include numerous constraints that had been recommended by Willis Towers, including a cap on the amount of PUP payouts to employees.

The full transcripts of these interviews are posted on the Committee's City of Jacksonville website or will be in the near future.

We are working with Jody Brooks, JEA's Chief Legal Officer, to schedule her interview.

2. Additional interviews. At the request of Committee Chair Priestly Jackson, we have identified potential additional witnesses for the Committee's consideration:

a. *Tim Baker.* We reported on September 10 that we interviewed Mr. Baker on September 8, but that he objected to most of our requests for documents and our questions regarding his connections with FPL. Consequently, we do not have information regarding:

- The consulting agreement Mr. Baker's company, BCSP, LLC, entered into with FPL on December 21, 2017, the very next day after the City issued its December 20, 2017 privatization RFP for JEA.
- The services Mr. Baker and his company, BCSP, LLC, provided to FPL in connection with JEA's privatization, including public opinion polling and Mr. Baker's attendance at JEA's July 10, 2019 Club Continental offsite conference with privatization consultants.
- Other communications between FPL and Mr. Baker regarding the City's interest in and the effort to sell JEA.

The Committee may consider whether to request a subpoena to compel document production and testimony from BSCP, LLC regarding these matters. The Committee should consider the time, effort and expense required if the subpoena were contested against the likelihood of obtaining useful information regarding FPL's involvement in the privatization planning.

- b. *Brian Hughes*. During his July 20 interview, Mr. Hughes declined to answer questions about conversations he had with Mayor Curry about the appointment of Aaron Zahn to the JEA Board and his subsequent selection as JEA CEO. We are informed Mayor Curry subsequently told CM Diamond that he had instructed City employees to refrain from raising executive privilege in response to the Committee's inquiries. The Committee may determine if we should re-interview Mr. Hughes.
 - c. *Deno Hicks*. Kevin Hyde testified that Foley & Lardner engaged The Southern Group to lobby Council members effective July 23, 2019, the day the JEA Board approved privatization. The Southern Group's representatives subsequently met with City Council Members during the ITN's "cone of silence" period.
 - d. *Camille Lee-Johnson*. According to minutes of the June 18, 2019 Compensation Committee meeting, Ms. Lee-Johnson, former chair of the Committee, authorized the SLT to finalize the long-term incentive plan that evolved into the PUP (and inconsistent with Willis Towers' recommendations). Ms. Lee-Johnson has several connections with Mr. Zahn and became a strong proponent for Mr. Zahn's initiatives at Board meetings, including the PUP and privatization at JEA.
3. Document Production. Our document review team, eDiscovery CoCounsel, completed its review of approximately 144,000 additional files produced by JEA to the FBI. Accordingly, SHB has completed its first-level review of the 584,094 files in the Relativity database. We have begun our second-level review of selected material documents for inclusion in our final report. We expect to complete that process by mid-October. We also continue to work with former JEA consultants and OGC to verify we obtained all material, non-trade secret documents responsive to the Committee's requests.
 4. Looking Forward: In the absence of additional interviews, we propose the following investigative timeframe, subject to the Committee's review and approval:

- complete our interviews of material fact witnesses by the end of September;
- complete our document review by the middle of October; and
- prepare our report in a timeframe determined by the Committee.

Please let me know if you have questions in preparation for the Committee's September 28 meeting.

Steve

Stephen D. Busey
Chairman

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