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CITY OF JACKSONVILLE**

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August 26, 2021

Via Email Only

Board of Trustees ("Board")
Jacksonville Police and Fire Pension Fund ("Fund")
One West Adams Street, Suite 100
Jacksonville, Florida 32202

RE: August 20, 2021 Board Action regarding Independent Legal Counsel

Dear Trustees:

The Board's action taken at its regular Board meeting held on August 20, 2021 with respect to the purported engagement of the Sugarman & Susskind, P.A. firm, as "independent counsel" was unlawful. As each of you knows, the Office of General Counsel has on many prior occasions provided guidance to the Board on this topic. Recently, on June 8, 2021, Chairman Brown, Tim Johnson, and Bob Sugarman met with my predecessor General Counsel Jason Gabriel, Deputy General Counsel Lawsikia Hodges, the Board's assigned OGC attorney, and Council Member Boylan, the then-City Council liaison to the Board, to discuss the Board's desire to engage independent counsel. At this meeting General Counsel Gabriel reaffirmed our office's position, consistent with the unequivocal position stated in General Counsel Binding Legal Opinion 2016-02 (attached hereto), that the Board may not engage outside counsel without first obtaining the necessary certifications from the General Counsel in accordance with Section 7.01 of the Charter.

Despite the clear guidance at the June 8th meeting and over the many concerns and objections raised on the record by Office of General Counsel attorneys present at the August 20th Board meeting, the Board nevertheless unanimously approved and ratified the signed engagement letter between the Board and Sugarman & Susskind, P.A., for the firm to provide legal services as independent counsel without first obtaining the necessary certifications required under Section 7.01 of the City Charter. Furthermore, the "engagement letter" adopted by the Board on June 8th contains many unlawful and troubling terms, including providing that Sugarman and Susskind's representation is not limited solely to pension related matters, thereby authorizing the firm to provide guidance on matters over which they have no

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qualification to render or which may be expressly contrary to positions taken by other agencies of the Consolidated Government. It authorizes the firm to violate the City's procurement code and travel policies. It eliminates the cost-saving measures pertaining to provision of routine attorney or paralegal services by the OGC and at a drastically reduced rate compared to the firm's rates. It obligates the City to fund the firm's bills regardless of how high they are because the letter (drafted by the firm itself, coincidentally) fails to include a "not-to-exceed" indebtedness cap, which is a direct and clear violation of Section 106.331, Jacksonville Ordinance Code (violations of this section can create personal liability for those who authorized the contract). And, also troubling, it removes the automatic ability for the firm's legal bills to be reviewed by anyone other than the executive director of the Fund. It authorizes the Fund to waive legal conflicts in situations where the Firm is suing or wants to sue another entity of the Consolidated City. It fails to include a contract termination date, thereby creating a perpetual contract between the Fund and the firm. It also eliminates the ability of anyone other than the Board to terminate the engagement.

The Office of General Counsel's role in providing legal counsel to the Board and the Consolidated Government was conclusively settled in binding General Counsel Opinion 2016-02. Further, you have repeatedly been advised by our office that pursuant to Section 7.01 of the City Charter, any outside legal counsel engaged by the Board must first be certified by me, the General Counsel, as to: 1) compliance with the City Charter and the Board's authority; and 2) the necessity of outside counsel. Additionally, General Counsel review also ensures that no provision within the contract violates federal, state and local laws that may subject the City and its officials to civil or criminal liability. It has been the City's and the General Counsel's clear historical practice of providing the Board with appropriate pension counsel utilizing the process mandated by the Charter. It is confusing why those practices are suddenly no longer sufficient to continue to re-engage pension counsel for the Board unless it is the specific intent of the Board to attempt to now administer the Police and Fire Pension in secret and outside any oversight of the safeguards provided by the Charter.

Due to the Board's unlawful failure to comply with the City Charter requirements, the Board's action last Friday, and any future actions, to engage Sugarman & Susskind, P.A. or any other firm, as independent counsel is, and shall be, **unauthorized and void *ab initio*** (i.e., of no legal effect). Our office recognizes that there currently exists an engagement letter between the Office of General Counsel and Sugarman & Susskind, P.A., dated December 16, 2016, as amended, for the sole purpose of providing pension counsel to the Board. Nonetheless, the current engagement of Sugarman & Susskind, P.A. is currently under review by our office to ensure that the firm is sincerely committed to providing legal services to the Board within the framework and requirements of our unique Consolidated Government structure and the firm's contractual obligations.

Feel free to call me directly if you have any questions.

Sincerely,



Jason R. Teal
Acting General Counsel

Enc.

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cc (via email only): **Hon. Sam Newby, City Council President**
Hon. Terrance Freeman, City Council Vice-President
Hon. Council Member Brenda Priestly Jackson, Rules Committee Chair
Hon. Council Member Ron Salem, PFPF City Council Liaison
Hon. Council Member Michael Boylan
Lawsikia Hodges, Deputy General Counsel
Jon R. Phillips, Deputy General Counsel
Robert Sugarman, Sugarman & Susskind, P.A.
Pedro Herrera, Sugarman & Susskind, P.A.
Timothy H. Johnson, Executive Director-Plan Administrator