

1 Introduced by Council Member Becton:
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4 **RESOLUTION 2020-42**

5 A RESOLUTION URGING THE JEA BOARD TO TAKE
6 FORMAL ACTION ON OR BEFORE THE NEXT REGULARLY
7 SCHEDULED JEA BOARD MEETING (JANUARY 28, 2020)
8 TO: (1) TAKE OR INITIATE ALL ACTIONS NECESSARY
9 TO RENEGOTIATE, RESCIND, CANCEL AND/OR
10 TERMINATE ALL EXECUTED NON-CEO EMPLOYMENT
11 AGREEMENTS BETWEEN JEA AND SENIOR LEADERSHIP
12 EMPLOYEES APPROVED BY THE BOARD AT THE JULY
13 23, 2019, BOARD MEETING IN CONNECTION WITH
14 SCENARIO 3 (THE NON-TRADITIONAL UTILITY
15 RESPONSE), SUBJECT TO THE CONSENT OF AFFECTED
16 SENIOR LEADERSHIP EMPLOYEES AS MAY BE REQUIRED
17 BY LAW; (2) DIRECT THE INTERIM CHIEF EXECUTIVE
18 OFFICER AND MANAGING DIRECTOR ("INTERIM JEA
19 CEO") TO REOPEN COLLECTIVE BARGAINING
20 NEGOTIATIONS AND RENEGOTIATE APPLICABLE JEA
21 COLLECTIVE BARGAINING AGREEMENTS TO REMOVE
22 FROM THE AGREEMENT TERMS ANY JEA EMPLOYEE
23 RETENTION PAYMENTS THAT ARE CONTINGENT UPON A
24 RECAPITALIZATION EVENT; (3) REFRAIN FROM
25 INCLUDING AS A CONDITION TO A RECAPITALIZATION
26 EVENT OR JEA REORGANIZATION THAT JEA
27 EMPLOYEES, NON-JEA EMPLOYEES, OR JEA CUSTOMERS
28 RECEIVE GRANTS, REFUNDS, REBATES OR OTHER CASH
29 OR IN-KIND INCENTIVES IN ANY JEA PROPOSED
30 RECAPITALIZATION EVENT (AS DEFINED IN SECTION
31 120.201(HH), *ORDINANCE CODE*) OR JEA PROPOSED

1 REORGANIZATION TO BE APPROVED BY THE COUNCIL;
2 AND (4) FULLY ENGAGE AND INFORM ALL
3 STAKEHOLDERS, RATEPAYERS, AND OTHER INTERESTED
4 PARTIES IN ANY STRATEGIC PLANNING PROCESS
5 AND/OR DECISION-MAKING PROCESS REGARDING THE
6 FUTURE OF JEA; DIRECTING THE CHIEF OF
7 LEGISLATIVE SERVICES TO FORWARD A COPY OF THIS
8 RESOLUTION TO THE JEA BOARD AND THE INTERIM
9 JEA CEO; REQUESTING EMERGENCY PASSAGE UPON
10 INTRODUCTION; PROVIDING AN EFFECTIVE DATE.

11
12 **WHEREAS**, at the JEA Board meeting held on July 23, 2019 (the
13 "July Meeting"), the JEA Board (the "Board") approved several board
14 resolutions that empowered the Chief Executive Officer and Managing
15 Director ("JEA CEO") to pursue "Scenario 3 (The Non-traditional
16 Utility Response)" (herein "Scenario 3"), one of several strategic
17 scenario-based planning options that were presented to the board on
18 or prior to the July Meeting; and

19 **WHEREAS**, pursuant to JEA Resolution 2019-07 approved by the
20 Board at the July Meeting, the JEA CEO was empowered under Scenario
21 3 to explore, through a competitive solicitation, an alternative
22 non-governmental utility ownership structure, which included
23 privatization alternatives, community owned cooperatives, initial
24 public offerings, and other alternative non-governmental utility
25 ownership structures; and

26 **WHEREAS**, based on a certain percentage of JEA assets sold or
27 certain amount of net cash proceeds received by the City of
28 Jacksonville ("City"), the Board characterized the funding and
29 closing of a transaction or series of transactions under Scenario 3
30 as a "Recapitalization Event" (defined in Section 120.201(hh),
31 *Ordinance Code*); and

1 **WHEREAS**, in addition to approving the exploration of a non-
2 governmental utility ownership structure under Scenario 3 at the
3 July Meeting, the Board also empowered the JEA CEO to pursue and
4 implement employee retention payments for all JEA employees, non-
5 CEO employment agreements with senior leadership employees, long-
6 term incentives for JEA and non-JEA employees, and customer rebate
7 programs, all of which were either subject to, associated with, or
8 implemented in the context of a Recapitalization Event; and

9 **WHEREAS**, with respect to all JEA employees, the Board
10 empowered the JEA CEO pursuant to JEA Resolution 2019-09 to execute
11 a retention payment agreement with each JEA employee, which
12 agreement allowed an employee to receive a sum equal to their
13 salary as of July 23, 2019, contingent upon a Recapitalization
14 Event (collectively, the "Employment Retention Payments"); and

15 **WHEREAS**, with respect to all non-CEO senior leadership
16 employees (collectively, the "Senior Leadership Team"), the Board
17 empowered the Chair and the JEA CEO pursuant to JEA Resolution
18 2019-09 to execute non-CEO employment agreements with the Senior
19 Leadership Team, which agreements required a mandatory Separation
20 and Transition Agreement resulting in payments to the Senior
21 Leadership Team (collectively, the "Senior Leadership Team
22 Consultant Pay") and other mandatory payments to the Senior
23 Leadership Team (collectively, the "Senior Leadership Team
24 Termination Pay"), subject to certain conditions. The Senior
25 Leadership Team Consultant Pay and Senior Leadership Team
26 Termination Pay shall be collectively referred to herein as the
27 "Senior Leadership Team Pay"); and

28 **WHEREAS**, in addition to the Employment Retention Payments and
29 the Senior Leadership Team Pay, the Board also empowered the JEA
30 CEO pursuant to JEA Resolution 2019-10 to finalize and implement a
31 long-term incentive program known as the Long-Term Performance Unit

1 Plan (the "PUP Program"), which program as presented to the Board
2 benefitted JEA and non-JEA employees and provided that PUP units
3 could monetarily vest upon a Recapitalization Event. The JEA Board
4 subsequently, by unanimous vote, rescinded the PUP Program on
5 December 17, 2019; and

6 **WHEREAS**, with respect to the JEA customers, the Board pursuant
7 to JEA Resolution 2019-07 empowered the JEA CEO to issue a
8 competitive solicitation regarding JEA assets under Scenario 3 (the
9 "ITN"), which required that any final outcome under the ITN include
10 a distribution to JEA customers of value greater than \$400 million
11 dollars (the "Customer Rebates"); and

12 **WHEREAS**, the Employee Retention Payments, the Senior
13 Leadership Team Pay, and the Customer Rebates shall be collectively
14 referred to herein as the "Golden Parachute Benefits"; and

15 **WHEREAS**, based on information reports provided to the Council
16 by the Council Auditor, attached hereto as **Exhibit 1**, the total
17 estimated value of the Golden Parachute Benefits is over half a
18 billion dollars, or \$544,727,717 (Employee Retention Payments -
19 \$161,702,570; Senior Leadership Team Pay - \$3,120,797; Customer
20 Rebates - \$379,904,350); and

21 **WHEREAS**, in the months following the Board's actions at the
22 July Meeting, additional information has become available to the
23 Council regarding the future of JEA and the Board's actions taken
24 at the July Meeting, and it does not appear that the Council was
25 adequately apprised prior to or after the July Meeting of the
26 significant impact of the Board's actions at the July Meeting; and

27 **WHEREAS**, while well-intended, the Golden Parachute Benefits
28 may have the unintended consequence of incentivizing JEA customers,
29 the Senior Leadership Team, and any benefitted JEA and non-JEA
30 employees to vigorously promote and pursue a Recapitalization Event
31 for personal financial gain rather than because a Recapitalization

1 Event is truly in the best interest of the City; and

2 **WHEREAS**, the Council believes that the public trust and
3 perception of JEA has been unnecessarily tarnished by the ITN
4 process, the PUP Program, and the Golden Parachute Benefits, and
5 the public trust cannot be restored without (i) full confidence in
6 the Board, Interim JEA CEO, and Senior Leadership Team, and (ii)
7 full communication and engagement with the Council and the public
8 at large regarding the future of JEA; and

9 **WHEREAS**, the Council deems it to be in the best interest of
10 JEA and the City to remove the Golden Parachute Benefits from any
11 strategic planning and/or decision-making regarding the future of
12 JEA, including a Recapitalization Event or JEA reorganization, to
13 enable various stakeholders, ratepayers and other interested
14 parties to have a thorough, impartial and objective discussion
15 regarding the future of JEA; now therefore

16 **BE IT RESOLVED** by the Council of the City of Jacksonville:

17 **Section 1. Recitals.** The recitals above are true and
18 correct and incorporated herein by this reference.

19 **Section 2. Urging the JEA Board to take formal action on**
20 **or before the next regularly scheduled JEA Board meeting (January**
21 **28, 2020).** The Council strongly urges the JEA Board to take formal
22 action on or before the next regularly scheduled JEA Board meeting
23 (January 28, 2020) to do the following: (1) take or initiate all
24 actions necessary to renegotiate, rescind, cancel and/or terminate
25 all executed non-CEO employment agreements between JEA and senior
26 leadership employees approved by the JEA Board at its July 23,
27 2019, board meeting in connection with Scenario 3, subject to the
28 consent of affected senior leadership employees as may be required
29 by law; (2) direct the Interim JEA CEO to reopen collective
30 bargaining negotiations and renegotiate applicable JEA collective
31 bargaining agreements to remove from the agreement terms any JEA

1 employee retention payments that are contingent upon a
2 Recapitalization Event; (3) refrain from including as a condition
3 to a Recapitalization Event or JEA reorganization that JEA
4 employees, non-JEA employees, or JEA customers receive grants,
5 refunds, rebates or other cash or in-kind incentives in any JEA
6 proposed Recapitalization Event (as defined in Section 120.201(HH),
7 *Ordinance Code*) or JEA proposed reorganization to be approved by
8 Council; and (4) fully engage and inform all stakeholders,
9 ratepayers, and other interested parties in any strategic planning
10 process and/or decision-making process regarding the future of JEA
11 to enable such stakeholders, ratepayers, and other interested
12 parties to participate in any strategic planning process and/or
13 decision-making process regarding the future of JEA to the greatest
14 extent practicable. Examples of ways to fully engage and inform
15 stakeholders, ratepayers, and other interested parties pursuant to
16 this section may include, but not be limited to, hosting town hall
17 meetings and board workshops as well as proactively making
18 information available to the public.

19 **Section 3. Directing to forward.** The Chief of the
20 Legislative Services Division is hereby directed to forward a copy
21 of this resolution for distribution to the JEA Board and the
22 Interim JEA CEO, Melissa Dykes.

23 **Section 4. Requesting emergency passage upon introduction**
24 **pursuant to Council Rule 4.901 Emergency.** Emergency passage upon
25 introduction of this legislation is requested. The nature of the
26 emergency is that according to the JEA website, the next JEA Board
27 meeting is January 28, 2020, and the Council is requesting action
28 be taken or initiated to effect the directives outlined in Section
29 2 above.

30 **Section 5. Effective Date.** This resolution shall become
31 effective upon signature by the Mayor or upon becoming effective

1 without the Mayor's signature.

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3 Form Approved:

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5 /s/ *Margaret M. Sidman*

6 Office of General Counsel

7 Legislation Prepared By: Paige H. Johnston

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