

1 Introduced by Council Member Becton and amended by the Rules
2 Committee and amended on the Floor of Council:

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5 **RESOLUTION 2020-42-A**

6 A RESOLUTION URGING THE JEA BOARD TO TAKE
7 FORMAL ACTION ON OR BEFORE THE NEXT REGULARLY
8 SCHEDULED JEA BOARD MEETING (JANUARY 28, 2020)
9 TO: (1) TAKE OR INITIATE ALL ACTIONS NECESSARY
10 TO RENEGOTIATE, RESCIND, CANCEL AND/OR
11 TERMINATE ALL EXECUTED NON-CEO EMPLOYMENT
12 AGREEMENTS BETWEEN JEA AND SENIOR LEADERSHIP
13 EMPLOYEES APPROVED BY THE BOARD AT THE JULY
14 23, 2019, BOARD MEETING IN CONNECTION WITH
15 SCENARIO 3 (THE NON-TRADITIONAL UTILITY
16 RESPONSE), SUBJECT TO THE CONSENT OF AFFECTED
17 SENIOR LEADERSHIP EMPLOYEES AS MAY BE REQUIRED
18 BY LAW; (2) EXCEPT FOR ANY PREVIOUSLY
19 NEGOTIATED COLLECTIVELY BARGAINED BENEFITS
20 APPROVED BY COUNCIL, REFRAIN FROM INCLUDING AS
21 A CONDITION TO A RECAPITALIZATION EVENT OR JEA
22 REORGANIZATION THAT JEA EMPLOYEES, NON-JEA
23 EMPLOYEES, OR JEA CUSTOMERS RECEIVE GRANTS,
24 REFUNDS, REBATES OR OTHER CASH OR IN-KIND
25 INCENTIVES IN ANY JEA PROPOSED
26 RECAPITALIZATION EVENT (AS DEFINED IN SECTION
27 120.201(HH), *ORDINANCE CODE*) OR JEA PROPOSED
28 REORGANIZATION TO BE APPROVED BY THE COUNCIL;
29 AND (3) FULLY ENGAGE AND INFORM ALL
30 STAKEHOLDERS, RATEPAYERS, AND OTHER INTERESTED
31 PARTIES IN ANY STRATEGIC PLANNING PROCESS

1 AND/OR DECISION-MAKING PROCESS REGARDING THE
2 FUTURE OF JEA; DIRECTING THE CHIEF OF
3 LEGISLATIVE SERVICES TO FORWARD A COPY OF THIS
4 RESOLUTION TO THE JEA BOARD AND THE INTERIM
5 JEA CEO; REQUESTING ONE CYCLE EMERGENCY
6 PASSAGE; PROVIDING AN EFFECTIVE DATE.

7
8 **WHEREAS**, at the JEA Board meeting held on July 23, 2019 (the
9 "July Meeting"), the JEA Board (the "Board") approved several board
10 resolutions that empowered the Chief Executive Officer and Managing
11 Director ("JEA CEO") to pursue "Scenario 3 (The Non-traditional
12 Utility Response)" (herein "Scenario 3"), one of several strategic
13 scenario-based planning options that were presented to the board on
14 or prior to the July Meeting; and

15 **WHEREAS**, pursuant to JEA Resolution 2019-07 approved by the
16 Board at the July Meeting, the JEA CEO was empowered under Scenario
17 3 to explore, through a competitive solicitation, an alternative
18 non-governmental utility ownership structure, which included
19 privatization alternatives, community owned cooperatives, initial
20 public offerings, and other alternative non-governmental utility
21 ownership structures; and

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

28 **WHEREAS**, in addition to approving the exploration of a non-
29 governmental utility ownership structure under Scenario 3 at the
30 July Meeting, the Board also empowered the JEA CEO to pursue and
31 implement employee retention payments for all JEA employees, non-

1 CEO employment agreements with senior leadership employees, long-
2 term incentives for JEA and non-JEA employees, and customer rebate
3 programs, all of which were either subject to, associated with, or
4 implemented in the context of a Recapitalization Event; and

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

11 **WHEREAS**, with respect to all non-CEO senior leadership
12 employees (collectively, the "Senior Leadership Team"), the Board
13 empowered the Chair and the JEA CEO pursuant to JEA Resolution
14 2019-09 to execute non-CEO employment agreements with the Senior
15 Leadership Team, which agreements required a mandatory Separation
16 and Transition Agreement resulting in payments to the Senior
17 Leadership Team (collectively, the "Senior Leadership Team
18 Consultant Pay") and other mandatory payments to the Senior
19 Leadership Team (collectively, the "Senior Leadership Team
20 Termination Pay"), subject to certain conditions. The Senior
21 Leadership Team Consultant Pay and Senior Leadership Team
22 Termination Pay shall be collectively referred to herein as the
23 "Senior Leadership Team Pay"); and

24 **WHEREAS**, in addition to the Employment Retention Payments and
25 the Senior Leadership Team Pay, the Board also empowered the JEA
26 CEO pursuant to JEA Resolution 2019-10 to finalize and implement a
27 long-term incentive program known as the Long-Term Performance Unit
28 Plan (the "PUP Program"), which program as presented to the Board
29 benefitted JEA and non-JEA employees and provided that PUP units
30 could monetarily vest upon a Recapitalization Event. The JEA Board
31 subsequently, by unanimous vote, rescinded the PUP Program on

1 December 17, 2019; and

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

8 **WHEREAS**, the Senior Leadership Team Pay and the Customer
9 Rebates shall be collectively referred to herein as the "Golden
10 Parachute Benefits"; and

11 **WHEREAS**, based on information reports provided to the Council
12 by the Council Auditor, attached hereto as **Exhibit 1**, the total
13 estimated value of the Golden Parachute Benefits is \$383,025,147
14 (Senior Leadership Team Pay - \$3,120,797 and Customer Rebates -
15 \$379,904,350); and

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

22 **WHEREAS**, while well-intended, the Golden Parachute Benefits
23 may have the unintended consequence of incentivizing JEA customers,
24 the Senior Leadership Team, and any benefitted JEA and non-JEA
25 employees to vigorously promote and pursue a Recapitalization Event
26 for personal financial gain rather than because a Recapitalization
27 Event is truly in the best interest of the City; and

28 **WHEREAS**, the Council believes that the public trust and
29 perception of JEA has been unnecessarily tarnished by the ITN
30 process, the PUP Program, and the Golden Parachute Benefits, and
31 the public trust cannot be restored without (i) full confidence in

1 the Board, Interim JEA CEO, and Senior Leadership Team, and (ii)
2 full communication and engagement with the Council and the public
3 at large regarding the future of JEA; and

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

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

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

14 **Section 2. Urging the JEA Board to take formal action on**
15 **or before the next regularly scheduled JEA Board meeting (January**
16 **28, 2020).** The Council strongly urges the JEA Board to take formal
17 action on or before the next regularly scheduled JEA Board meeting
18 (January 28, 2020) to do the following: (1) take or initiate all
19 actions necessary to renegotiate, rescind, cancel and/or terminate
20 all executed non-CEO employment agreements between JEA and senior
21 leadership employees approved by the JEA Board at its July 23,
22 2019, board meeting in connection with Scenario 3, subject to the
23 consent of affected senior leadership employees as may be required
24 by law; (2) except for any previously negotiated collectively
25 bargained benefits approved by Council, refrain from including as a
26 condition to a Recapitalization Event or JEA reorganization that
27 JEA employees, non-JEA employees, or JEA customers receive grants,
28 refunds, rebates or other cash or in-kind incentives in any JEA
29 proposed Recapitalization Event (as defined in Section 120.201(HH),
30 *Ordinance Code*) or JEA proposed reorganization to be approved by
31 Council; and (3) fully engage and inform all stakeholders,

1 ratepayers, and other interested parties in any strategic planning
2 process and/or decision-making process regarding the future of JEA
3 to enable such stakeholders, ratepayers, and other interested
4 parties to participate in any strategic planning process and/or
5 decision-making process regarding the future of JEA to the greatest
6 extent practicable. Examples of ways to fully engage and inform
7 stakeholders, ratepayers, and other interested parties pursuant to
8 this section may include, but not be limited to, hosting town hall
9 meetings and board workshops as well as proactively making
10 information available to the public.

11 **Section 3. Directing to forward.** The Chief of the
12 Legislative Services Division is hereby directed to forward a copy
13 of this resolution for distribution to the JEA Board and the
14 Interim JEA CEO, Melissa Dykes.

15 **Section 4. Requesting One Cycle Emergency Passage**
16 **pursuant to Council Rule 4.901 Emergency.** One Cycle Emergency
17 passage of this legislation is requested. The nature of the
18 emergency is that according to the JEA website, the next JEA Board
19 meeting is January 28, 2020, and the Council is requesting action
20 be taken or initiated to effect the directives outlined in Section
21 2 above.

22 **Section 5. Effective Date.** This resolution shall become
23 effective upon signature by the Mayor or upon becoming effective
24 without the Mayor's signature.

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26 Form Approved:

27
28 /s/ Margaret M. Sidman

29 Office of General Counsel
30 Legislation Prepared By: Paige H. Johnston