



# JEA Special Board of Directors Meeting

Monday, November 2, 2020

6:00 PM

# JEA BOARD SPECIAL MEETING AGENDA

November 2, 2020 • 6:00 p.m.

21 West Church Street, 19<sup>th</sup> Floor, Jacksonville, FL 32202



I. WELCOME	
A.	Call to Order
B.	Adoption of the Agenda – Action
C.	Safety Briefing – Paul McElroy, Interim Managing Director/CEO
D.	Sunshine Law/Public Records Statement – Jody Brooks, Office of General Counsel

II. FOR BOARD CONSIDERATION			
Item(s)		Speaker/Title	Discussion Action/Information
A.	CEO Selection Process	Jody Brooks, Office of General Counsel	Information
B.	Results from October 27, 2020 Meeting	Jody Brooks, Office of General Counsel	Information
C.	Board Discussion on Rankings of the three CEO Candidates	John Baker, Board Chair Board Members	Discussion
D.	Vote on Selection of CEO / Managing Director	John Baker, Board Chair Board Members	Action
E.	Compensation Discussion	John Baker, Chair Angie Hiers, Interim Chief of HR	Discussion
F.	Employment Agreement	Jody Brooks, Office of General Counsel	Action

III. CLOSING CONSIDERATIONS	
Item(s)	
A.	Announcements – Next Board Meeting November 17, 2020
B.	Adjournment

## Board Calendar

**Board Meetings:** 9:00 a.m. – Fourth Tuesday of Every Month (exception(s): November 17, 2020 and December 15, 2020  
(Subject to Change Based on Board Action)

**Committees:** Finance & Audit Committee: December 11, 2020

Other Committee Meetings TBD

**EMPLOYMENT AGREEMENT  
FOR JEA CHIEF EXECUTIVE OFFICER/MANAGING DIRECTOR**

**THIS EMPLOYMENT AGREEMENT FOR JEA CHIEF EXECUTIVE OFFICER/MANAGING DIRECTOR** (“Agreement”) is made and entered into in duplicate on this \_\_\_\_ day of November 2020 (“Effective Date”), by and between JEA, a body politic and corporate under the laws of the State of Florida and an independent agency of the Consolidated City of Jacksonville, hereinafter referred to as JEA (“Employer”), and \_\_\_\_\_, an individual currently residing in \_\_\_\_\_ (“Employee or CEO”).

**WITNESSETH:**

**WHEREAS**, JEA is a municipal utility providing electricity to more than 475,786 customers in Jacksonville and the surrounding areas in northeast Florida;

**WHEREAS**, JEA, founded in 1968, manages an electric system that dates back to 1895, and now owns and operates an electric system that includes generation, transmission, interconnection and distribution facilities (“Electric System”). The generating facilities, located on four plant sites in Jacksonville, as noted in JEA’s Annual Disclosure Report for Fiscal Year Ended September 30, 2019, the total combined installed capacity of the Electric System’s generating units is 2,642 megawatts (“MW”), net, summer and 2,935 MW, net, winter;

**WHEREAS**, JEA also provides water and wastewater utility services to approximately 355,635 water customers (“Water System”) and 277,815 wastewater customers (“Sewer System”);

**WHEREAS**, JEA’s Water System currently is composed of 38 water treatment plants and two repump facilities, 137 active water supply wells, approximately 4,806 miles of water distribution mains and water storage capacity of 83 million gallons (including the repump facilities). The overall peak capacity of the Water System is approximately 319 million gallons per day (“mgd”), and the Water System experienced an average daily flow of approximately 117 mgd and a maximum daily flow of approximately 173 mgd during the Fiscal Year ended September 30, 2019;

**WHEREAS**, the Sewer System currently composed of 11 wastewater treatment plants that have a rated average daily treatment capacity of approximately 123 mgd and a maximum daily flow capacity of approximately 247 mgd, approximately 1,482 pumping stations, approximately 754 low pressure sewer units and approximately 4,113 miles of gravity sewers and force mains. The Sewer System experienced an average daily flow of approximately 76 mgd and a non-coincident maximum daily flow of approximately 106 mgd during the Fiscal Year ended September 30, 2019;

**WHEREAS**, JEA owns and operates the District Energy System a separate utility system that provides chilled water to 12 locations in Jacksonville;

**WHEREAS**, the JEA governing body is made up of a seven-member Board of Directors appointed by the Mayor and confirmed by the City Council;

**WHEREAS**, the JEA Board of Directors is tasked with appointing a CEO to serve at the pleasure of the governing body to operate the eighth largest community-owned electric utility company

in the United States and the largest in Florida, with total assets of approximately \$7.7 billion (2019) and 2158 budgeted employee positions (2019);

**WHEREAS**, this Agreement is a five year employment agreement between JEA and the Employee;

**WHEREAS**, JEA is desirous of employing Employee as Chief Executive Officer and Managing Director pursuant to the terms and conditions and for the consideration set forth in this Agreement, and Employee is desirous of entering into the employ of JEA pursuant to such terms and conditions and for consideration.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, and obligations contained herein, JEA and Employee agree as follows:

### **SECTION I – EMPLOYMENT AND DUTIES:**

- 1.1 **Term.** The mutual promises, covenants, and obligations contained herein shall be in effect for a period of five (5) years from the Effective Date (“Term”), at which time this Agreement shall be deemed to have expired and to have no further force and effect. The terms of this Agreement may be reviewed and renegotiated by JEA and Employee, as appropriate, beginning one month before the expiration of the Term. Nothing in this provision, or elsewhere in this Agreement, shall be construed to alter the Employee’s at-will employment status.
- 1.2 **Position and Duties.** Beginning \_\_\_\_\_, 2020, Employee shall be employed as Chief Executive Officer and Managing Director of JEA (hereinafter collectively “CEO”). Employee agrees to serve in this position and to perform diligently and to the best of Employee’s abilities the duties and services required by such a position as determined by JEA’s Board of Directors (the “Board”), as well as such duties that may from time to time be directed by the Board. Such duties include, but are not limited to, exercising the full authority, responsibility and duties commensurate with the laws establishing JEA to manage the affairs of JEA and to manage and direct staff, business, and operations of JEA.
- 1.3 **Compliance with Policies and Procedures.** Employee shall at all times comply with and be subject to such policies and procedures as the Board may establish and shall manage the affairs of the utilities systems under the supervision of the governing body of JEA.
- 1.4 **Diligence to Position.** Employee shall devote his full business time, energy, and best efforts to the business of Employer; provided, however, that it is agreed that this obligation, shall not preclude Employee from engaging in appropriate civic, charitable or religious activities or, with the consent of the Board, from serving on the boards of directors of companies that are not competitors to JEA, as long as the activities do not materially interfere or conflict with Employee’s responsibilities to or ability to perform Employee’s duties of employment at JEA, within the sole discretion of the Board. Subject to the foregoing, Employee may not engage, directly or indirectly, in any other business, investment, or activity that interferes with Employee’s performance of his duties, is directly contrary to JEA’s interests, or requires any significant portion of Employee’s business time.

- 1.5 **Fiduciary Obligations.** Employee acknowledges and agrees that Employee owes a fiduciary duty of loyalty, fidelity, and allegiance to act at all times in the best interests of Employer and to act in a manner consistent with the responsibilities as provided in the JEA Charter and other policies, rules and regulations governing the conduct of JEA employees. Employee further agrees to do no act which would intentionally injure the direct or indirect interests in, in connection with, or benefit from any outside activities, which interests might conflict with JEA, or upon discovery thereof, allow such a conflict to continue. Moreover, Employee agrees to disclose to the Board Chairman, any facts which might involve a possible conflict of interest.

## SECTION II – COMPENSATION AND BENEFITS:

- 2.1 **Annual Base Salary.** Employee shall be paid a salary of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per annum (“Annual Base Salary”), which shall be paid in accordance with JEA’s standard payroll practice, including deductions for all legally applicable taxes and withholdings, with accrual commencing with the pay period beginning \_\_\_\_\_, 2020. The annual Base Salary shall increase by three (3%) per annum, effective on \_\_\_\_\_ of 2021 through 2024.
- 2.2 **Performance Compensation.** Employee will be eligible to receive annual Performance Compensation of up to fifteen (15%) of Employee’s Base Salary based on (i) annual goals and objectives to be established by the Board, and (ii) an annual overall evaluation by the Board. The Board’s annual evaluation shall be based upon each fiscal year’s established goals and objectives. The evaluation period for the annual Performance Compensation shall begin with the fiscal year beginning October 1, 2020. The evaluation shall be completed and any Performance Compensation shall be paid within ninety (90) days of the end of the fiscal year. Employee shall not be eligible for participation in JEA’s pay for performance plan or any other incentive based compensation plan developed for all other JEA employees.
- 2.3 **Vehicle.** Employee will have the use of an appropriately equipped JEA vehicle at the expense of JEA to supplement Employee’s personal vehicle. In lieu of having use of a JEA vehicle, Employee may, at Employee’s option, be provided a monthly automobile allowance of \$850, payable on the first bi-weekly pay period of each month subject to withholding. It is specifically intended and understood that this allowance shall be provided for unreimbursed expenses incurred by the Employee within the territorial limits of the JEA service territory and receipt of this allowance shall not prevent the Employee from claiming and being reimbursed for travel expenses resulting from travel by him outside the JEA service territory in the manner provided by the Ordinance Code the City of Jacksonville.
- 2.4 **Business Allowance.** Employee will be provided a monthly allowance in the amount of \$1,000 for telephone and other business expenses incurred in Employee’s efforts to promote and represent JEA beyond those identified in JEA employee policies. The business allowance shall be payable on the first bi-weekly pay period of each month, subject to withholding.

- 2.5 **Annual Leave.** Employee will be provided annual leave in accordance with JEA's existing policies and procedures. Without limiting the generality of the foregoing, Employee shall be entitled to \_\_\_\_\_ hours of leave during each year of employment commencing on \_\_\_\_\_, 2020.
- 2.6 **Fringe Benefits.** Employee shall be allowed to participate, on the same basis generally as other employees of JEA, in all general employee benefit plans and programs, including improvements or modifications of same, which on the effective date or thereafter are made available by JEA to all or substantially all of JEA's executive employees. Such benefits, plans, and programs may include, without limitation, medical, health, and dental care, life insurance, disability protection, and the pension plans including JEA's Supplemental Executive Retirement Plan including any amendments thereto. Except as specifically provided herein, nothing in this Agreement is to be construed or interpreted to provide greater rights, participation, coverage, or benefits under the benefit plans or program than provided to executive employees pursuant to the terms and conditions of such benefit plans and programs. JEA shall not by reason of this Section II be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any employee benefit program or plan, so long as such actions are similarly applicable to covered employees generally.

### SECTION III – TERMINATION AND EXTENSION:

- 3.1 **At-Will Status.** Employee acknowledges that the employment relationship between Employer and Employee is at-will, meaning the employment relationship may be terminated, at any time, by the Employer or the Employee for any lawful reason or for no reason, with or without notice. However, the Employee agrees to make every reasonable effort to provide the Employer with thirty (30) days written notice prior to termination of the employment relationship. Employee further acknowledges that no other provision within this Agreement alters or contradicts his at-will employment status.
- 3.1.1 If Employee's employment is terminated with or without cause, all future compensation to which Employee is otherwise entitled and all future benefits for which Employee is eligible shall cease and terminate as of the date of termination, except as specifically provided in this Section 3.1.1. If Employee's employment is terminated by JEA without cause then (a) Employee shall be paid all amounts and shall receive all benefits earned through the date of termination of employment, (b) JEA shall pay Employee a lump sum payment equal to twenty (20) weeks of the current Annual Base Salary, less applicable taxes and deductions (such payment will be made within thirty (30) days of the date Employee's termination occurs) ("Severance"), and (c) Employee shall be entitled to all other vested benefits, to all additional rights to continuation of benefits to the extent provided by applicable benefits plans, COBRA, and other applicable law, and to all other rights provided by applicable law.

3.1.2 No Severance shall be due to Employee if Employee resigns his employment or if Employee's employment is terminated by JEA for cause. For purposes of the Agreement, "cause" is defined consistent with the following Rule 9.05(a) of the Civil Service and Personnel Rules and Regulations of the City of Jacksonville:

(1) Cause shall include, but is not limited to, negligence (careless workmanship or slovenliness in the performance of duty); inefficiency or inability to perform assigned duties; insubordination; willful violation of the provisions of law or department rules; conduct unbecoming a public employee which would affect the employee's ability to perform the duties and responsibilities of the employee's job; willful falsification of records (false statements, misrepresentation or fraud of official documents, such as application, attendance and leave records or work and production records); misconduct; drug abuse; conviction of any crime involving moral turpitude; and including, but not limited to, situations where the employee has:

(a) Violated any lawful official regulation or order or failed to obey any proper directive made and given by a superior officer.

(b) Been under the influence of intoxicants while on duty.

(c) Been guilty of insubordination.

(d) Been guilty of disgraceful conduct.

(e) Been offensive in conduct or language in public or towards the public, officials or employees.

(f) Been incompetent or inefficient in the performance of the duties of the position.

(g) Been careless or negligent with the monies or other property of the City/JEA.

(h) Failed to pay or make reasonable provisions for future payment of debts to such an extent that such failure is detrimental to the work situation.

(i) Used or threatened to use, or attempted to use, personal or political influence to secure promotion, leave of absence, transfer, change of pay rate or character of work.

(j) Taken for personal use from any person any fee, gift, or other valuable thing in the course of work or in connection with it, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that afforded other persons.

(k) Violated established security procedures during the examination process or has obtained information, through unauthorized or illegal means, which provides an unfair advantage on the examination.

(l) Failed to maintain a satisfactory attendance record. Proper use of sick, vacation, or annual leave shall not constitute grounds for any disciplinary action. Patterns of absences may be considered in determining the proper use of leave.

(m) Failed to acquire or maintain a valid license, registration or certification when such license, registration or certification is required and specified in the class specification for the class to which the position occupied by the employee is classified.

3.2 **Extension.** This Agreement may only be extended by action of the Board along with Employee's concurrence, with the legal formalities accompanying the execution of this Agreement. The Board Chairman shall notify Employee on or before March 1, 2024 of an intent to bring a request to the Employee and the Board to extend this Agreement. Such

notification need not include terms, and need not be in writing. This provision requiring notice may be waived by agreement of the Chairman and Employee following March 1, 2024.

#### SECTION IV – MISCELLANEOUS:

- 4.1 **Eligibility to Work in the United States.** Employee has provided previously to JEA the appropriate documentation to verify his authorization to work in the United States.
- 4.2 **Governing Law; Binding Effect; Amendment.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida. This Agreement shall not be assignable or transferable by Employee or his or her beneficiaries or legal representatives. No amendment or modification shall be effective unless in writing by the parties, specifically the Employee, the JEA Board Chair, and approved as to form by the General Counsel for the City of Jacksonville or his/her designee. Any lawsuit concerning this Agreement shall be brought in state or federal courts in Duval County, Florida, and the parties to this Agreement agree not to contest venue in those fora.
- 4.3 **Public Records and Open Meetings (Sunshine) Requirements.** Employee will become familiar, with the assistance of JEA’s staff and JEA’s legal counsel with the unique obligations and parameters of the State of Florida’s public records and sunshine act laws, in order that JEA maintain its record of compliance with such laws.
- 4.4 **Confidentiality.** Employee agrees and acknowledges that, in the course of Employee’s employment with JEA, Employee may learn trade secrets and other proprietary information of JEA. For purposes of this Agreement, “trade secrets” means any information protected by Florida’s Trade Secrets Act, and “proprietary information” means any information obtained during the course of Employee’s employment with JEA the disclosure of which would reasonably be expected to create a material risk of harm to JEA’s legitimate business interests. JEA agrees and acknowledges that, in the course of Employee’s employment with JEA, JEA may learn confidential information about Employee’s finances and other personal matters. Accordingly, Employee agrees that Employee will not, during or after Employee’s employment with JEA, disclose any of JEA’s trade secrets or other proprietary information, except in performance of Employee’s duties as an Employee of JEA, and JEA agrees that it will not, during or after Employee’s employment with JEA, disclose any confidential information about Employee. However, nothing in this Agreement or in this Subsection 4.4 shall impose or be construed to impose any limitation that is contrary to applicable law or applicable court order, or to limit the parties’ opportunity to agree in the future to permit disclosures of information otherwise made confidential by this Subsection 4.4.
- 4.5 **Authority.** The person executing and delivering this Agreement on behalf of JEA is an authorized officer, director or agent of JEA with full power and authority to bind JEA. Upon execution and delivery of this Agreement by JEA, this Agreement shall constitute the legal, valid and binding obligation of JEA.



- 4.6 **Execution.** This Agreement shall not become a binding and enforceable contract until signed by both parties. This Agreement may be executed in multiple counterparts, each of which shall be deemed to constitute an original.
- 4.7 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements, or understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.
- 4.8 **Confidential Disclosure in Reporting Violations of Law or in Court Filings.** Employee acknowledges and JEA agrees that Employee may disclose confidential information in confidence directly or indirectly to federal, state, or local government officials, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law or regulation or making other disclosures that are protected under the whistleblower provisions of state or federal laws or regulations. Employee may also disclose confidential information in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal. Nothing in this Agreement is intended to conflict with federal law protecting confidential disclosures of a trade secret to the government or in a court filing, 18 U.S.C. § 1833(b), or to create liability for disclosures of confidential information that are expressly allowed by 18 U.S.C. § 1833(b).
- 4.9 **Notices.** For purposes of this Agreement, notices, demands and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when received if delivered in person, the next business day if delivered by overnight commercial courier (e.g., Federal Express), or the third business day if mailed by United States certified mail, return receipt requested, postage prepaid, to the following addresses:

If to JEA, to:

JEA  
21 West Church Street  
Jacksonville, FL 32202

With a copy to:  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, FL 32202

If to Employee, to:

\_\_\_\_\_ at the address on file with JEA

Either party may change its address for notices in accordance with this Subsection 4.9 by providing written notice of such change to the other party.

- 4.10 **Waiver.** Any failure of Employee to comply with any of his or her obligations under this Agreement may be waived only in writing signed by JEA. Any failure of JEA to comply with any of its obligations under this Agreement may be waived only in writing signed by Employee. No waiver of any breach, failure, right or remedy contained in or granted by the provisions of this Amended and Restated Agreement shall constitute a continuing waiver of a subsequent or other breach, failure, right or remedy, unless the writing so specifies.
- 4.11 **Compliance with Applicable Laws.** No provision of this Agreement shall be deemed to violate applicable law and this Agreement shall be interpreted in accordance with this intent.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement on the day and year above first written.

**ATTEST:**

\_\_\_\_\_

**JEA**

\_\_\_\_\_  
John Baker, Chairman

Date: \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_  
, Employee

Date: \_\_\_\_\_

I hereby certify that the expenditure contemplated by the foregoing Agreement has been duly authorized, and provision has been made for the payment of the moneys provided therein to be paid.

\_\_\_\_\_  
Brian Roche

Interim Chief Financial Officer, JEA

Approved:

\_\_\_\_\_  
Office of General Counsel