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**MEMORANDUM**

**TO:** Tim Johnson, Executive Director-Plan Administrator  
Jacksonville Police and Fire Pension Fund Board of Trustees

**CC:** Jason R. Gabriel, General Counsel

**FROM:** Lawsikia J. Hodges, Deputy General Counsel  
Government Operations Department 

**RE:** 2017 IAFF and FOP Agreements - Chapter Funds

**DATE:** December 15, 2017

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**I. Background.**

Over the past several years, the pension benefits provided in the Jacksonville Police and Fire Pension Plan, as codified in Chapter 121 of the Ordinance Code (the "*Pension Plan*"), have significantly changed under several collectively bargained agreements. In addition to other pension benefits, these agreements provided for the parties' use of the Florida Insurance Premium Tax revenue due to the City pursuant to Chapters 175 and 185, Florida Statutes (the "*Chapter Funds*"). Under Chapters 175 and 185, Chapter Funds may be used to fund the Pension Plan's unfunded actuarial accrued liability or fund enhanced benefits<sup>1</sup> to Pension Plan members. Subject to the Florida Department of Revenue (the "*DOR*") annual reporting requirements and other applicable provisions under Chapters 175 and 185, the Board, as the Pension Plan administrator, may apply to receive Chapter Funds from the DOR by March 15<sup>th</sup> of each year. The DOR normally remits Chapter Funds to the City in the same calendar year that the Board applies for the Chapter Funds.

On June 9, 2015, the Jacksonville City Council ("*City Council*") enacted legislation pursuant to Ordinance 2015-504-E that approved the 2015 Retirement Reform Agreement between the City and the Board (the "*2015 Agreement*"). The 2015 Agreement was executed by the parties on June 19, 2015. In addition to other pension

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<sup>1</sup> Enhanced benefits are retirement benefits in excess of benefits provided under the Pension Plan that are considered standard or base level of benefits provided to members.

benefits, the 2015 Agreement provided for the parties' use of the Chapter Funds. Section III.D.4 of the 2015 Agreement provides as follows:

Upon the Effective Date and in each of the fourteen fiscal years thereafter, 50% of the Florida Insurance Premium Tax Rebate Dollars (i.e. Chapter 175/185 Funds) shall be deposited into the Enhanced Benefits Account and 50% of the Florida Insurance Premium Tax Rebate Dollars shall be credited to the City as a portion of each fiscal year's actuarially required contribution (i.e. ARC payment). In each fiscal year the Florida Insurance Premium Tax Rebate Dollars are deposited into the Enhanced Benefit Account, or when a transfer is made pursuant to section 2 above, the JPPF may use those funds to: (i) make a voluntary contribution to pay down the unfunded liability; (ii) fund a share plan as outlined in Section E below; and/or (iii) provide the "holiday bonus". (As used herein, "holiday bonus" refers to the annual discretionary Chapter 175/185 Fund bonus payment identified in City Ordinance 2006-508-E.)

Based on the above provision in the 2015 Agreement, the Actuarial Valuation Report as of October 1, 2015 (the "*AVR Report for Fiscal Year 2016-2017*") prepared by Pension Board Consultants, Inc. ("*PBC*")<sup>2</sup>, which report determined the City's actuarially required contribution (ARC) for Fiscal Year 2016-2017 (the "*2016-2017 ARC Payment*"), reduced the City's 2016-2017 ARC Payment by an amount equal to 50% of the estimated Chapter Funds due to the City for calendar year 2016 (the "*2016 Chapter Funds*"). See Item 5(b), Page 1 of the AVR Report for Fiscal Year 2016-2017. The AVR Report for Fiscal Year 2016-2017 was approved by the Board at its publically noticed meeting on January 29, 2016. Based on the AVR Report for Fiscal Year 2016-2017, the City Council at its regular meeting appropriated and included in its annual budget ordinance for Fiscal Year 2016-2017 the City's 2016-2017 ARC Payment, which payment included the reduction in an amount equal to 50% of the estimated 2016 Chapter Funds, in compliance with the 2015 Agreement. The City's 2016-2017 ARC Payment was wired to the Board on December 7, 2016. Thus, 50% of the estimated 2016 Chapter Funds, to be applied for by the Board and received in calendar year 2017, was already applied, spent and accounted for well in advance of October 1, 2017 as evidenced by the AVR Report for Fiscal Year 2016-2017, the City's 2016-2017 ARC Payment that was budgeted for Fiscal Year 2016-2017 in Ordinance 2016-504-E (City's annual budget ordinance), and the City's 2016-2017 ARC Payment made to the Board on December 7, 2016.

Based on newly-enacted state pension liability surtax law<sup>3</sup>, in 2016 the City began negotiating with various collective bargaining units to create new defined contribution retirement plans that would replace the City's defined benefit retirement plans. The Pension Plan member benefits that had previously been negotiated under the 2015

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<sup>2</sup> The Board's retained actuary at the time of the report.

<sup>3</sup> §212.055(9), Florida Statutes.

Agreement were replaced by agreements that modified existing collectively bargained agreements. On February 7, 2017, the City entered into an agreement which modified the existing collectively bargained agreement(s) with the Fraternal Order of Police (“FOP”), Jacksonville Consolidated Lodge No. 5/310, Inc. (the “2017 FOP Agreement”). Similarly, on February 8, 2017, the City entered into an agreement which modified the existing collectively bargained agreement(s) with the Jacksonville Association of Firefighters (“IAFF”), IAFF Local No. 122, Inc. (“2017 IAFF Agreement”) (collectively, the 2017 FOP Agreement and the 2017 IAFF Agreement shall be referred to herein as the “2017 Agreements”). The new Pension Plan benefits under the 2017 Agreements were to take effect, in accordance with the 2017 Agreement terms, on October 1, 2017. Similar to the 2015 Agreement, the 2017 Agreements provided for the parties’ use of Chapter Funds. The 2017 FOP Agreement provides as follows:

In summary, this proposal: .... 3) Effective October 1, 2017, reassigns all future Chapter 185 revenues to the Fund for the FOP’s legal use. See Article III (Additional Terms), Section B (Chapter Funds).

The 2017 IAFF Agreement also provides as follows:

In summary, this proposal: .... 3) Effective October 1, 2017, reassigns all future Chapter 175 revenues to the Fund for the IAFF’s legal use. See Article III (Additional Terms), Section B (Chapter Funds).

After the parties’ executed the 2017 Agreements, the City filed legislation to approve the agreements and amend the Pension Plan under Chapter 121 of the Ordinance Code to be consistent with the 2017 Agreement terms (the “2017 Reform Ordinance”). The City also began working with the Board’s current actuary, GRS Retirement Consulting Company (“GRS”), to prepare an actuarial impact statement that assessed the impact of the pension reform changes under the 2017 Agreements.<sup>4</sup> On April 10, 2017, GRS presented a draft 2017 actuarial impact statement to the Board (the “2017 Actuarial Impact Statement”), which statement incorporated by reference the Actuarial Valuation Report as of October 1, 2016 prepared by PBC (the “AVR Report for Fiscal Year 2017-2018”) subject to certain GRS disclosures. The AVR Report for Fiscal Year 2017-2018 not only determined the City’s ARC payment for Fiscal Year 2017-2018 (“2017-2018 ARC Payment”), prior to the 2017 Agreements and 2017 Reform Ordinance, but the report also compared the City’s 2017-2018 ARC Payment to the City’s 2016-2017 ARC Payment. The AVR Report for Fiscal Year 2017-2018 on Page 1, Item 5(b)(Chapter Funds Allocation) also applied 50% of the estimated 2016 Chapter Funds to the City’s 2016-2017 ARC Payment. GRS in preparing the 2017 Actuarial Impact Statement did not adjust or modify the 2016 Chapter Funds allocation applied to reduce the City’s 2016-2017 ARC Payment. As to the Chapter Funds allocation after changes based on the terms of the 2017 Agreements, GRS only modified the City’s 2017-2018 ARC payment

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<sup>4</sup> Section 121.104 of the Ordinance Code also requires that an actuarial report be included in all proposed legislation concerning the Pension Plan.

to not apply Chapter Funds to reduce the City's required payment as clearly evidenced on the Actuarially Determined Contribution (ADC) table on Line H (Chapter Funds Allocation), Page 13 of the 2017 Actuarial Impact Statement. The Board discussed the draft 2017 Actuarial Impact Statement at its board meeting on April 10, 2017 and, after amending the statement, approved a final statement at its board meeting on April 21, 2017. Randy Wyse, the President of IAFF ("Wyse"), was present at the Board's meeting on April 21, 2017. The 2017 Actuarial Impact Statement, as required under Section 121.104 of the Ordinance Code, was prepared and provided to City Council during its review of the 2017 Reform Ordinance. Based on the AVR Report for Fiscal Year 2017-2018, the City Council appropriated and included in its annual budget ordinance for Fiscal Year 2017-2018 the City's 2017-2018 ARC Payment. The City's 2017-2018 ARC Payment did not include a reduction to the required payment amount based on an allocation of Chapter Funds or an increase to the required payment amount based on a reallocation of the 2016 Chapter Funds that had already been applied and accounted for towards the City's 2016-2017 ARC Payment.

The City Council in approving the 2017 Agreements and the 2017 Reform Ordinance relied upon the 2017 Actuarial Impact Statement and the information contained therein, including the Chapter Funds allocation to the City's 2016-2017 ARC Payment provided in the AVR Report for Fiscal Year 2017-2018. The 2017 Agreements were approved and ratified by the City Council pursuant to Ordinances 2017-251-E and 2017-252-E, respectively, at its publically noticed meeting on April 24, 2017. At the City Council meeting on April 24, 2017, the City Council also adopted Ordinance 2017-259-E, which amended the Pension Plan codified under Chapter 121 to be consistent with the 2017 Agreements terms. Wyse and Steve Zona, President of FOP, were present at the City Council meeting on April 24, 2017.

Consistent with the Chapter Funds provisions in the 2017 Agreements, Sections 121.114(c) and (d), Ordinance Code, provides as follows:

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(c) Effective October 1, 2017, all Chapter 175 Florida Insurance Premium Tax Rebate Dollars shall be administered by the Board for the legal use of the fire fighter Members, as determined by the legally recognized collective bargaining unit.

(d) Effective October 1, 2017, all Chapter 185 Florida Insurance Premium Tax Rebate Dollars shall be administered by the Board for the legal use of the police officer Members, as determined by the legally recognized collective bargaining unit.

Because the Board's annual report filing with the DOR was delayed this particular year, the DOR did not approve the Board's annual report and remit the 2016 Chapter Funds to

the City until after October 1, 2017.<sup>5</sup> The Chapter Funds were received by the City in November of 2017 and are the Chapter Funds due to the City for calendar year 2016. As indicated above, based on the AVR Report for Fiscal Year 2016-2017, the 2017 Actuarial Impact Statement, which incorporates the AVR Report for Fiscal Year 2017-2018 subject to certain GRS disclosures, and Ordinance 2016-504-E (the City's annual budget ordinance for Fiscal Year 2016-2017), 50% of the 2016 Chapter Funds was accounted for and applied to the City's 2016-2017 ARC Payment, a fact known by all parties involved and in existence before, during, and after the collective bargaining and ratification process that occurred during the Spring of 2017. Consistent with the AVR Report for Fiscal Year 2016-2017 and the 2017 Actuarial Impact Statement as to the allocation of 2016 Chapter Funds, the Board intends to allocate the 2016 Chapter Funds based on the 2015 Reform Agreement terms, in full compliance with the 2017 Agreements and 2017 Reform Ordinance. Copies of the AVR Report for Fiscal Year 2017-2018, the 2017 Actuarial Impact Statement, and the AVR Report for Fiscal Year 2016-2017 are attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively.

In light of the above facts, you have asked the questions below regarding the Board's use and allocation of the 2016 Chapter Funds.

## II. Questions Asked and Answers.

### (a) Does Ordinance 2017-259-E give IAFF and FOP access to (i) the current reserve account balances and (ii) the 2016 Chapter Funds?

(i) Reserve Account Balances. Yes. FOP and IAFF may each use twenty percent (20%) of the existing balances in the Unfunded Liability Payment Account (ULPA) and the Supplemental Payment Account (SPA) as of September 30, 2017 in accordance with the 2017 Agreements and Sections 121.114(a) and (b), *Ordinance Code*.

(ii) 2016 Chapter Funds. No. The 2016 Chapter Funds, which were applied and accounted for towards the City's 2016-2017 ARC Payment prior to October 1, 2017, are governed by the 2015 Agreement, in full compliance with the 2017 Agreements and the 2017 Reform Ordinance. The terms of the 2017 Agreements regarding Chapter Funds applied to "future Chapter Funds" that were not accounted for or allocated prior to October 1, 2017. The 2016 Chapter Funds were already accounted for and applied to the City's 2016-2017 ARC Payment in the AVR Report for Fiscal Year 2016-2017 and the 2017 Actuarial Impact Statement based on the 2015 Reform Agreement terms, a fact understood and known publically by all parties prior to, during, and after the collective bargaining and ratification process that occurred in the Spring of 2017. Although the 2016 Chapter funds were received after October 1, 2017, the 2016 Chapter Funds were applied and accounted for towards the City's 2016-2017 ARC Payment prior to October 1, 2017. All parties, including the City, the Board, IAFF, FOP and the City Council were

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<sup>5</sup> The 2016 Chapter Funds were received by the City in November 2017.

aware that the 2016 Chapter Funds were being allocated based on the 2015 Reform Agreement as evidenced by the AVR Report for Fiscal Year 2016-2017, the 2017 Actuarial Impact Statement, which incorporates the AVR Report for Fiscal Year 2017-2018 subject to certain GRS disclosures, and Ordinance 2016-504-E (the City's annual budget ordinance for Fiscal Year 2016-2017). The AVR Report for Fiscal Year 2016-2017 and the 2017 Actuarial Impact Statement, which incorporated the AVR Report for Fiscal Year 2016-2017, were approved by the Board and presented to the City Council at publicly noticed meetings. The City Council relied upon both reports when it ratified and approved the 2017 Agreements and the 2017 Reform Ordinance. Accordingly, the 2016 Chapter Funds are not "future Chapter Funds" under the 2017 Agreements and, as evidenced by the documents cited above, are governed by the 2015 Reform Agreement terms, in full compliance with the 2017 Agreements and the 2017 Reform Ordinance. Under Section III.D of the 2015 Agreement, 50% of the 2016 Chapter Funds must be applied towards the City's 2016-2017 ARC Payment, in accordance with the AVR Report for Fiscal Year 2016-2017 and consistent with the 2017 Actuarial Impact Statement, and 50% of the Chapter Funds must be deposited into the Enhanced Benefits Account to be used by the Board to: (i) make a voluntary contribution to pay down the unfunded liability; (ii) fund a share plan; and/or (iii) provide the "holiday bonus".

**(b) Is the Board at risk for IAFF and FOP's use of future Chapter Funds?**

Effective October 1, 2017, pursuant to the 2017 Agreements and Section 121.114, *Ordinance Code*, the Chapter Funds shall be administered by the Board for the legal use of the fire fighter and police officer Members, as determined by the legally recognized bargaining unit for each. Accordingly, as to future Chapter Funds (e.g., 2017 Chapter Funds and subsequent years) the Board must review each bargaining unit's Chapter Funds proposal to determine whether the use is legal and administer such funds accordingly.

**(c) Does Board need to comply with 175/185 to continue receiving Chapter Funds?**

The Board, pursuant to Sections 175.351(2) and 185.35(2), Florida Statutes, is deemed to comply with Chapter 175/185. However, for purposes of Chapter Funds only, Sections 175.261 and 185.221, Florida Statutes, require local plans like the Board to submit an annual report to the DOR by March 15<sup>th</sup> each year. Therefore, in order to receive future Chapter Funds, the Board must comply with this provision.

**(d) Do participants have to be a member of the Pension Plan to benefit from Chapter Funds?**

Yes. Section 121.114, *Ordinance Code*, states that Chapter Funds shall be administered by the Board for the *legal use of the police officer and fire fighter Members*. The term "*Member*" is defined in Section 121.102(e)(1) as "employees of the City of Jacksonville, hired before October 1, 2017, who have enrolled in the Police and Fire Pension Plan and are contributing to the Plan through payroll deduction".

**(e) Can IAFF and FOP use Chapter Funds to pay for a VEBA (health insurance trust)?**

If and when the recognized collective bargaining unit for fire fighters formally requests the Board after October 1, 2017 to use future Chapter Funds for a VEBA, such request would be submitted and processed as outlined in the response to question (j) below.

**(f) Can the Board administer future Chapter Funds to non-Pension Plan, union members?**

The Board pursuant to Article 22 of the City Charter is responsible for the administration of the Plan. The 2017 Agreements and Section 121.114, *Ordinance Code*, require the Board to administer future Chapter Funds for the legal use of the fire fighter and police officer Members, as determined by the recognized collective bargaining units for each. The recognized collective bargaining units will include non-Pension Plan members, but Board cannot administer Chapter Funds for non-Pension Plan members.

**(g) What is the definition of a member?**

The term "*Member*" is defined in Section 121.102(e) as "*employees of the City of Jacksonville, hired before October 1, 2017, who have enrolled in the Police and Fire Pension Plan and are contributing to the Plan through payroll deduction.*" Section 121.102(e) also includes certain retirees and vested terminated Members, and persons receiving benefits who are the surviving spouse or minor child of a Member, in the Pension Plan membership classes.

**(h) Is the Board the administrator of Chapter Funds? (i.e., is the Board acting only as a pass-through entity under the CBA or is the Board required under Chapter 175/185 to be the administrator of the Chapter Funds?)**

Pursuant to the FOP and IAFF collective bargaining agreements, Section 121.114, *Ordinance Code*, the City Charter, and Florida Statutes, the Board is the administrator of Chapter Funds. The FOP and IAFF collective bargaining agreements and Section 121.114, *Ordinance Code*, requires the Board to administer the Chapter Funds. Additionally, Sections 175.131 and 185.11, Florida Statutes, provide that Chapter Funds may be given directly to the board of trustees for administration or directly to the municipality to be provided to the board of trustees for administration. As mentioned above, the 2016 Chapter Funds will be governed by the 2015 Agreement, in full compliance with the 2017 Agreements and the 2017 Reform Ordinance. 2017 Chapter Funds and Chapter Funds in subsequent years will be administered by the Board for the legal use of the fire fighter and police officer Members as determined by the recognized collective bargaining unit for each.

- (i) Does the Board have a fiduciary duty to ensure Chapter Funds are being used legally once in receipt of IAFF and FOP's future directive regarding Chapter Funds?**

Yes. Pursuant to Section 22.06 of the City Charter the Board trustees are fiduciaries of the Plan, and the trustees' fiduciary responsibility includes the administration of the Chapter Funds in accordance with the ordinance code.

- (j) What authority is necessary for the Board to determine that the Union membership has approved the directed use of future Chapter Funds? (i.e., Will a letter from the Union President alone suffice? Has the President been delegated authority by the union membership to direct use of the Chapter Funds? Is further documentation needed to verify that the union members have approved the directed use of the Chapter Funds? ).**

Pursuant to the FOP and IAFF collective bargaining agreements, Section 121.114, *Ordinance Code*, it is the recognized collective bargaining units for the police officers and fire fighters that must direct how the future Chapter Funds are to be used for the legal use of the police officer and fire fighter Members. In order for the Board to process a request regarding the use of Chapter Funds, the following documents will be needed: (i) a letter from the president of the union representing the bargaining unit requesting the use of the Chapter Funds; (ii) evidence that a majority of the members of the appropriate bargaining unit(s) have ratified or voted for such use; and (iii) an opinion letter from the union's legal counsel stating that the proposed use is legal and has been approved by the respective recognized collective bargaining unit. Prior to the recognized collective bargaining unit ratifying any proposed use of Chapter Funds, the president of the union representing the bargaining unit should first advise Board of the proposed use so that Board can review the use for legal and administrative concerns.

- (k) Is the Board authorized to pay holiday bonuses?**

See the response to question (a) above. As to the 2016 Chapter Funds only, and under the 2015 Agreement (in compliance with the 2017 Agreements and the 2017 Reform Ordinance), the Board may use the Chapter Funds to: (i) make a voluntary contribution to pay down the unfunded liability; (ii) fund a share plan; and/or (iii) provide the "holiday bonus". Effective October 1, 2017 for future Chapter Funds (i.e., 2017 Chapter Funds and subsequent years), the Board will no longer determine the use of those funds. The Board's sole role regarding future Chapter Funds will be to administer the Chapter Funds for the legal use of the police office and fire fighter Members as determined by the recognized collective bargaining unit for each.

### **III. Conclusion.**

I trust that this opinion provides the guidance you seek. I am available to discuss this with you at your convenience.



