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MEMORANDUM

TO: Honorable John Crescimbeni, Chair, Finance Committee, City Council

FROM: Cindy A. Laquidara, General Counsel

RE: **Authority of Board of Trustees of Police and Fire Pension Fund to Establish the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan**

DATE: August 10, 2012

You have asked for a legal opinion as to whether the Board of Trustees of the Jacksonville Police and Fire Pension Fund (“Board”) was authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan (“Senior Staff Plan”).

As you know, the City’s Director of Ethics Compliance and Oversight (“Director”) is gathering documents from and making inquiries to the Board, as to the details of the creation and maintenance of the Senior Staff Plan. I am not yet privy to the information that will be received and made public and available by the Director, and caution you that this opinion will be updated subject to an analysis of that information and any additional research necessitated, if any, by such information.

1. Question Asked.

Was the Board of Trustees of the Jacksonville Police and Fire Pension Fund authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan?

2. Short Answer.

The Board of Trustees of the Jacksonville Police and Fire Pension Fund was not authorized to create the Jacksonville Police and Fire Pension Fund Senior Staff Voluntary Retirement Plan.

Discussion.

- A. Article 16 (Retirement and Pension Benefits) of the Charter establishes the pension system of the Consolidated Government, and does not authorize any agency other than the Council to amend existing plans or create new plans.**

The pension plans of the Consolidated Government are identified in Article 16 (Retirement and Pension Benefits) of the Charter. Article 16 provides in Section 16.01 that all officers and employees of the Consolidated Government shall be members of either the 1937 police and fire pension fund or the 1937 general employee pension fund. Article 16 provides for no other pension plans.

Section 16.01 of the Charter authorizes the Council to amend the pension system to provide for separate classifications. Nothing in Article 16 authorizes any other agency (especially an agency with no taxing or rate making power) to create a pension fund or classification for employees employed by that agency.

- B. Article 22 (Jacksonville Police and Fire Pension Board of Trustees) establishes the Board for the purpose of administering the Police and Fire Pension Fund, not to create pension plans.**

Article 22 (Jacksonville Police and Fire Pension Board of Trustees) establishes the Board of Trustees to administer the Police and Fire Pension Fund. Its Section 22.10 “declaration of purpose” calls for the Board to “... be considered a governmental unit responsible for the management of an irrevocable trust ...”. Its purpose is to manage an irrevocable trust funded by the City Council, not to create a new trust for separately identified employees to be funded by the City Council. Managing a trust is a limited authorization of power, and does not carry with it the exercise of additional powers beyond that necessary for managing the body of the trust.

While Section 22.04(e) authorizes the employment and fixing of compensation of staff, there is nothing within the powers section that suggests that the administrators of this fund have authority to *create* a new pension fund within the already authorized 1937 Police and Fire Pension Fund and thus to modify a plan created by ordinance, and Charter.

Section 22.07 (Amendatory power) confirms the limited power of the Board:

“(a) ... nothing herein shall empower the board to amend the provisions of the pension plan without the approval of the Jacksonville City Council.”

(c) The benefit plan administered by the board shall be as established by ordinance or charter provision, or by special act or general law of the Legislature ...”

(All underlining added)

It is clear from Section 22.07 that it is the City Council, the taxing authority of the Consolidated Government and insurer of the fund, that is solely empowered to create and amend pension plan benefits for employees. It is also clear that incorporating the Senior Staff Plan within the 1937 Police and Fire Pension Fund is an unauthorized amendment of the 1937 Police and Fire Pension plan.

3. Conclusion

Based on the foregoing, it is my conclusion that there was no authority for the Police and Fire Pension Board of Trustees to create the Senior Staff Plan within the 1937 Police and Fire Pension Plan.

I look forward to discussing this issue at greater length with the Council after my review of documentation and further research is complete. Such discussion will address, among other things, the future of the Senior Staff Plan. In the interim, please do not hesitate to contact me if you have any other concerns.

CC: Council President
Mayor
Chairman, Police and Fire Pension Fund
Executive Director, Police and Fire Pension Fund
Director, Office of Ethics, Compliance, and Oversight