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COUNCIL

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MEMORANDUM ON LOT J PROJECT LEGISLATION

To: Office of Mayor Lenny Curry, Administration
Jacksonville Jaguars, Developers
Jacksonville City Council Auditors

From: The Honorable Danny Becton
City Council Member, District 11

Date: ~~November 16, 2020~~
November 30, 2020 Updated

Re: 2020-648 Lot J – Questions Regarding Development Proposal

In assembling all responses based on the memo of November 16th and performing continued review of the updated Development Agreement, and Supporting Agreements, I would like to resubmit the following collection of “**answers provided**” along with additional “**Follow-Up Questions**” for further review. It would be helpful to receive the additional responses prior to the **December 3, Committee of the Whole** meeting, or shortly thereafter, if possible. I appreciate and Thank You for your participation to this request and for the answers that are to be provided.

Areas in **BLUE** are Developer Comments, **RED** are Administration Comments and **GREEN** are Becton Follow-Ups

1) In review of the Parking Garages (Hotel & Multi-Family):

- a. What is the benefit/reason for the city owning the parking garages?
 - i. **Follow-up Question: This overall question of why the City should own the parking garage is still troubling in the fact that the debt service on the cost of construction (\$29.9 or \$18m, 1b(ii) conflicting amounts) and the City’s continued cost of partial operations, complete maintenance and repair in addition to no Ad-Valorem taxes to be collected is “extremely” unlikely to be anything other than a major annual expense to the city as the parking garage will be an integral part of the Residential/Hotel Community than anything public. Please provide a business reason for this requirement that the Parking Garage be City Owned?**

- ii. What revenue opportunity is available and projected for the city within the parking garage facilities?
 - 1. **Admin RESPONSE:**
 - a. **Section 4.3 of the parking agreement provides that the City is entitled to the revenues from parking except for revenues from hotel guest, residents in the Residential Parking Garage, valet program and a validated parking program, if created. Administration may wish to consider adding language that City is entitled to all parking revenues for Stadium and other third-party events in the complex.**
 - b. **Follow-up Question: Has this been addressed in the recent updated agreements? If not why, it's a major source of projected revenue?**
- iii. What is the City's future liability for the operation, maintenance and repairs of these garages? In comparison of currently owned parking garage(s).
 - 1. **Developer RESPONSE:**
 - a. **With respect to the parking garages in the residential facility, the development team and the City will share operating expenses equally. The City will not be responsible for operation and management fees. The City will be responsible for maintenance.**
 - b. **Follow-up Question: It was expected to have some expense detail in comparisons from existing Parking Garages for which the city owns?**
- iv. Why would the revenue from parking not go into a fund for operation, maintenance and repair of these facilities? Removing the city's future liability for these structures?
 - 1. **Admin RESPONSE:**
 - a. **Validated revenues will go into a fund to reinvest the infrastructure.**
 - b. **Follow-up Question: Isn't Validated, Non-Revenue, Free Parking?**
 - c. **Follow-up Question: Section 3.5 of the Parking Agreement states that all revenue generated from the Discounted Program will go into a "marketing fund" to promote Lot J Complex, this is not infrastructure reinvestment?**
 - d. **Follow-up Question: All other revenue, per Section 3.3 that is collected from parking is "retained by Owner", again not specified for infrastructure?**
- b. What are the costs of construction for each parking garage that is included within in the City's \$77.7 Infrastructure costs?
 - i. Cost for the Hotel Parking Garage?

1. **Admin RESPONSE:**
 - a. **There is no hotel parking garage, hotel parking will be captured within the two mixed-use garages and Valet spaces designated in the surface lots.**
- ii. Cost for the Mixed-Use Residential Parking Garage?
 1. **Admin RESPONSE:**
 - a. **\$29.8M is the estimated total for the two mixed use garages.**
 - b. **Follow-up Question:** There is a discrepancy between the answer provided here as Cordish, CEO Mr. Smith who stated that the parking garage cost was \$18m vs. the \$29.9m stated here, please confirm cost?
- c. Where would a third parking garage possibly be constructed and why?
 - i. **Admin RESPONSE:**
 1. **Any future garages have been removed from this development agreement.**
- d. Why would we not want that the Parking Garages to be Developer Owned (Not City Owned) as it seems to be little or no revenue benefit for the city but only future liabilities and no Ad Valorem tax gain?
 - i. **Admin RESPONSE:**
 1. **City retains all non-validated transient parking revenues from the garages.**
 2. **Follow-up Question:** Who ultimately will decided if validation or discounting is to take place?
 3. **Follow-up Question:** In regards to the public spaces being allocated to non-validated transient parkers, what type of revenue projections can be projected per year, specific for only the parking garages?
- e. If the City's Parking Garage(s) were Developer Owned, what would the updated financial picture & ROI look like?
 - i. **Admin RESPONSE:**
 1. **COJ Auditor? Do we want to provide this information?**
 2. **Follow-up Question:** No answer provided?
- f. What are the modified terms as of this date of the updated Parking Agreement as noted in the Council Auditor's report?
 - i. **Developer RESPONSE:**
 1. **The most current information will be provided in the finalized Parking Agreement.**
 - ii. What is the City's obligation for the surface parking lot to the Developer in regards to giving up space(s) (how many) and any city revenue given up based on Hotel and Residential parking?
 1. **Developer RESPONSE:**
 - a. **The Developer and the City will share equally operating expenses for the residential garages. The City will continue to be responsible for maintenance on the**

surface lots around the sports complex, consistent with its current obligations. The City will retain revenue from daily transient parkers who park in the surface lots and in the residential garages and, in addition, has negotiated to retain parking revenue on Jaguars game days (which was a revenue stream previously retained by the Jaguars) in the new spaces created as part of the project. The number of daily transient parkers will increase once the project is operating, as there will be more people visiting the sports and entertainment complex than are currently visiting. This creates an expanded revenue stream for the City.

- b. Follow-up Question: Where in the Parking Agreement does it specify that the City will retain all revenue from NFL Games? And In what Lots?
 - c. Follow-up Question: Section 12.6 of the Development Agreement, it says revenue “from spaces in the Project” which is ambiguous as to which Lots within the area? What lots are intended and why is it not more specific if the intent is all lots (including M, N and P) around the stadium? How about Lots D, C and A?
 - d. Follow-up Question: The answer provided does not address the requirement in which the Developer is allowed parking for Hotel and Residential Use. What limitation, if any, is there in the number of spaces allocated for use within the surface lot?
 - e. Follow-up Question: Who will ultimately determine to have the Validation or Discount parking requirements?
- iii. Why is it necessary to give up any revenue on the surface lot when the hotel and residential components have their own spaces within the parking garages?
1. **Admin RESPONSE:**
 - a. **Demand from transient traffic is projected to exceed the capacity of the new garages. Use of the adjacent surface lots provides sufficient spaces for the estimated demand without having to construct additional garages.**
 - b. Follow-up Question: Why not just keep all of the parking within the Parking Garages for Hotel and Residential use only and leave all transient parking to the surface lot areas and make the parking garages Developer owned? (Having transient parking in those garages will require special handling, management and expense plus those garage spaces for Lot J customers due to limits and their integration within the residential buildings will make it difficult to find for transient customers.)

2) Regarding the Communication Antenna within Lot J:

- a. Who's owns the communication antenna within Lot J?
- b. What is the current lease or easement terms, with whom and by whom?
- c. What are the projected costs for modification or relocation of that antenna?
- d. What is the plan for its modification or removal?
- e. Can the antenna guide wire base just be repositioned onto the new surface lot construction platform?
- f. **Developer RESPONSE:**
 - i. **Language regarding the communication antenna within Lot J has been removed from the current version of the agreement.**
 - ii. **Follow-up Question: Why does the updated agreement Section 11.2 of Development Agreement still list "engineering relating to accommodating the existing guide wire anchor" as possible expense of infrastructure funding?**

3) Regarding the \$65.5m Bread Box Loan:

- a. In distributing these city funds, does the developer have any obligation to spend private development dollars while being provided these city dollars? (private dollars at the same time while getting the City funding).
 - i. **Admin RESPONSE:**
 1. **Yes, these COJ dollars are reimbursed based on project completion. They are not reimbursed until proof of completion is provided by a third party.**
- b. When exactly is the payment of the \$13.1m required within the City's Defeasance Fund?
 - i. **Admin RESPONSE:**
 1. **Within (48-72 Hours?) of disbursement of funds from the COJ.**
 2. **Follow-up Question: Disbursement of Funds? When and how much?**
- c. How does the estimated growth of the \$13.1m factor into the repayment and how is it anticipated to pay-off the loan in 33 years? Please provide the projection analysis and mechanics of the payments and payoff.
 - i. **Admin RESPONSE:**
 1. **Attached proforma showing the breakdown of the 2033.**
 2. **Follow-up Question: It was stated by the Developer that the \$13.1 could possibility "matured" in 33 years (CORRECTION, not anything dealing with 2033 from my initial question). What average interest rate and growth projection justifies this analysis (No proforma was attached)?**
 3. **Follow-up Question: Can it be confirmed, the result of this Bread Box Loan will actually be monies provided to developer for which the city annually will have to make principle and interest payments of approximately \$3.8m over 30 years @4.1% (based on J. Greive's info)?**

4. **Follow-up Question: Can it be confirmed, the result of the growth of the \$13.1m, upon maturity, will be funds available to the city only upon that date which will not be tied to any repayment, but general-purpose monies subject to the city's appropriation at that time?**

4) Hotel & Residential Development:

- a. How does the REV Grants and Completion Grant compare to previous city deals regarding claw backs and ownership transfer?
 - i. **Developer RESPONSE:**
 1. **In the updated agreement, the Developer has agreed to not sell the Mixed-Use or Hotel Component to an unaffiliated third-party within 5 years of substantial completion.**
 2. **Follow-up Question: Please provide comparable(s) to previous projects where city approved REV Grants and Completion Grants, regarding amounts, percentages, and number of years? (for The District, SoBA Apts, The Strand Apts, 220 Riverside and 200 Riverside)**
- b. Explain in detail, how the \$12.5m Completion Grant will be funded from what source and the projections of those payments?
 - i. **Developer RESPONSE:**
 1. **Given that the successful completion date of the hotel component is undetermined, and that the full payment of the \$12.5 million completion grant is due in equal payments over the course of 5 years after that date, the funding source is not being determined by this legislation. The most appropriate funding source will be determined at the time of successful completion and subject to City Council appropriation. This provides the City with flexibility in terms of how to most efficiently cover a future contingent expense.**
- c. Please provide the \$52m Ad Valorem projection brake down as noted in the ROI calculation?
 - i. **Developer RESPONSE:**
 1. **ATTACHMENT**
 2. **Follow-up Question: No attachment provided?**
- d. If there is a sale of these properties (within a reasonable amount of time), why would the city or developer not commit to having claw-backs for direct city incentives (not REV grants or bed tax rebates) including property donation value within this agreement?
 - i. **Developer RESPONSE:**
 1. **The Developer agrees to not sell the Mixed-Use or Hotel Component to an unaffiliated third-party within 5 years of substantial completion.**

2. **Follow-up Question: Is the 5 years based on the completion of the entire Lot J project, including LIVE!, Residential and Hotel development?**

5) **LIVE! Venue:**

- a. What are specific “uses” that are planned for the LIVE! component as compared to other venues including Daily’s Place, the Arena, etc. that this venue will offer?
 - i. **Developer RESPONSE:**
 1. **The Live! venue will provide a place for people to go before and after concerts, football games or other events, and will also be able to host watch parties during major sporting events. It will extend the amount of time people spend downtown on event day, stimulate downtown’s economy and create additional opportunities for the City to generate additional sales tax and parking revenue. Live! will also help the City attract events of national significance, like the college football playoff, NFL draft or Super Bowl. When trying to attract other events we have consistently heard from promoters that they would like for there to be more for patrons to do around the sports and entertainment complex.**
- b. What “entertainment gap” is being filled by the LIVE! venue that the other venues do not or cannot provide?
 - i. **Developer RESPONSE:**
 1. **The Live! venue will accommodate smaller events that would not otherwise go to the arena and Daily’s Place. For instance, it can showcase up and coming acts that would not go to the arena or amphitheater.**
- c. Why is there a 3pm cutoff for landlord use during weekdays of the LIVE! Venue?
 - i. **Developer RESPONSE:**
 1. **This is to ensure that the restaurants and other venues have enough time to set up for dinner / an evening crowd. Currently, most people leave downtown after work, but this will be a place for people to go, park (which daily transient non-validated revenue would go to the city) and eat.**
- d. Can examples be provided based on other cities of where the Cordish Company has LIVE! venues and their level of successful? Please provide non-developer references (name and phone number) within those city’s that can attest to these venue’s successes.
 - i. **Developer RESPONSE:**
 1. **Kansas City Power and Light District, Kansas City, MO, Ballpark Park Village, St. Louis, MO, and Texas Live!, Arlington, TX are examples of successful sports and entertainment projects developed by The Cordish Companies.**

- e. What is the status of revenue from Ticket Surcharges within the LIVE! Venue that would benefit the City or at the least provide for the ability to cover the city's future obligations for capital improvements, repair and maintenance?
 - i. **Admin RESPONSE:**
 1. **Currently being negotiated.**
 2. **Follow-up Question:** Please provided updated information based on recent updated agreements regarding Ticket Surcharge Revenue available to the city from the LIVE! Venue?
 - a. Why is the FL/GA Event the only designed "big" event allowed to have a surcharge based on the current agreement?
 - b. Why are other big events including the Gator Bowl, other college football event(s), etc. excluded from ticket surcharges?
- f. **Follow-up Question:** Regarding the LIVE! Lease Agreement, please provide a "White Paper" specific as to the summary of provisions of this lease including but not limited to: the terms, the revenue and expense obligations of Landlord and Tenant and any termination default stipulations?

6) Other Miscellaneous Issues:

- a. In looking at the Financial Returns of the Project, what is the anticipated "Direct" benefits to the City of Jacksonville's annual budget?
 - i. **Admin RESPONSE:**
 1. **Direct benefits include new Ad-Valorem taxes from the developer owned properties, Bed Taxes from lodgings at the hotel, and sales taxes from additional economic activity generated by the development and the events held therein. In addition, the city will receive parking revenue from transient parkers.**
 2. **Follow-up Question:** What is the projection on Ad-Valorem taxes to be collected (outside of any specified in 4(c) explained above?
 3. **Follow-up Question:** What is the projection on the Bed Taxes to be collected?
 4. **Follow-up Question:** What is the projection on the impact of Sales Taxes on our budget? How are sales taxes allocated back to the county by the state?
 5. **Follow-up Question:** What projections are available for parking revenue broken out by Parking Garage vs Surface Lots?
 - ii. What is the "Direct" expenses to the COJ Budget that would offset these revenues?
 1. **Admin RESPONSE:**
 - a. **The City will incur approximately \$11-12 million per year in debt service cost once all bonds are issued. The City will split certain costs related to the parking garages and as those deal points settle projections will be shared.**

- b. Follow-up Question: What additional expenses can be anticipated and their estimated expense including the Venue maintenance and repair?
- iii. A spreadsheet showing Revenue(s) [line items by separate components] and Expenses [line items by separate components] would be helpful in seeing how the net benefit to the city on an annual going basis, looking out into the future (10, 20 years or perhaps until the \$65.5m is paid off).
 1. **Admin RESPONSE:**
 - a. **As the deal points are finalized in light of City Council feedback we are pulling together estimates of the dollar amounts of the revenues and expenses that we will share when available. We will work to project these out over time periods you reference above.**
 - b. Follow-up Question: Please provide, when and if available?
- b. Holistically, including already approved obligations and then forward, what expectations or projections does the City have in how much in total “incentives” might be required downtown, especially for city owned property?
 - i. **Admin RESPONSE:**
 1. **The DIA can show their total current/potential incentive commitments. No other incentives have been proposed for this project beyond that contained in the development agreement.**
 2. Follow-up Question: This question was specifically asked in consideration of the city properties owned along Bay Street, including the previous landing properties. As one might budget for the inevitable, please provide the DIA analysis or any additional information that can give estimated projections?
 - ii. Against, how much can the city afford?
 1. **Admin RESPONSE:**
 - a. **This is a decision that must be made on a project by project basis and is subject to the appropriation authority of City Council.**
- c. Follow-up Question: In regards to the \$65.5 Bread Box Loan / \$52.4m Grant:
 - i. Follow-up Question: Funding from this grant beyond the REV Grant being provided to the Residential development similar to other multifamily development deals downtown, why would it not be considered a competitive advantage provided to this project with Public Funding in which the Developer of the Multifamily would benefit in receiving part of the \$52.4m Grant over other Multifamily developments within the area?
 - ii. Follow-up Question: Funding from this grant beyond the Completion Grant being provided to the Hotel development similar to other hotels development deals downtown, why would it not be considered a competitive advantage provided to this project with Public Funding in

which the Developer of the Hotel would benefit in receiving part of the \$52.4m Grant over other Hotels developments within the area?

7) Auditors Concerns: What Considerations have been made per the concerns based on their November 5th memo as follows?

a. 1) City Funding/Market Feasibility Study: (added)

i. The City is providing one of the largest, if not the largest, investments in a public/private development with total funding of \$233.3 million. Items to consider:

1. There is not an extension of the Lease with the Jaguars, which expires in 10 years, and could impact the sustainability and viability of the Project.
2. The City has not conducted an independent market feasibility study specifically related to the Jacksonville downtown market to determine whether the project is sustainable and whether the market can support this project

ii. Developer RESPONSE:

1. There was a study done of downtown in the past few years that Brian Hughes referenced during his comments on November 5. That study indicated that to have a vibrant downtown in the main Bay Street corridor, Jacksonville needs additional activity in the sports and entertainment complex. This project supports that need for activity by providing residences, much-needed hotel rooms, office space and restaurants that people can use year-round.
2. In addition, the project is consistent with the Community Redevelopment Act plan goals set forth by the DIA. The Mixed-Use Component is consistent with the following goals:
 - a. Redevelopment Goal No. 2 – Increase rental and owner-occupied housing downtown, targeting key demographic groups seeking a more urban lifestyle.
 - b. Redevelopment Goal No. 6 – Maintain a clean and safe 24-7 Downtown for residents, workers, and visitors.
 - c. Redevelopment Goal No. 1 -Reinforce Downtown as the City’s unique epicenter for business, history, culture, education and entertainment.
 - d. Redevelopment Goal 3 -Simplify the approval process for Downtown development and improve departmental and agency coordination

b. 2) Ownership of Facilities: (added)

i. The City will own the Live! entertainment, retail and office Component and lease it to the Developer over a 35-year initial lease period, with four ten-year renewal options at a rate of \$100 per year. The Developer will run the facility, cover the costs, and retain the revenue, and will select all

tenants. In essence, the City will be removed from the operation of the facility. However, given that the City will own the property, no property tax revenue will be generated to the City. Based on construction estimates provided by the Developer for the Live! Component, we estimate this could generate property tax revenue of approximately \$22 million over 20 years.

- ii. The City will own two parking garages (with 700 spaces in total) that will be built for the 400 residential units. Per the current Parking Agreement as filed (which is currently being revised according to the Administration and Developer), the City pays all the maintenance costs and operational costs of these garages; however, these spaces are restricted to the occupants of the residential units and the Developer retains all the parking revenue. Given that the City will own the property, no property tax revenue will be generated to the City from these garages. We do not have specifics on the construction costs for these two garages from the Developer; however, based on cost estimates of approximately \$20,000 to \$25,000 per space (which we obtained from a parking study related to a recent economic development deal), we estimate these garages could generate property tax revenue of approximately \$3 to \$4 million over 20 years.

iii. **Developer RESPONSE:**

1. **The development team has expertise operating Live! complexes around the country and is in the best position to operate a successful facility, which will bring the most benefit to the City. The development team is contributing at least half of the costs to create this City-owned asset and is responsible for all cost overruns with respect to the entire project.**
2. **With respect to the parking garages in the residential facility, the development team and the City will share operating expenses equally. City not participating in operating and management fees. The agreement will be updated to reflect the foregoing.**

c. **3) Potential Timing of City Funding:**

- i. Based on the language in the Development Agreement, there is the potential for a large amount of City dollars to be invested into the Project before any Developer dollars. Much of the City's dollars for infrastructure of \$77.7 million (or up to \$92.8 million if there are cost overruns) could go into the Project before any dollars are invested by the Developer. The City could also be required to be put in a large portion of the City Loan depending on the pro rata basis funding determined by the Developer. Providing contributions to a project up front is always riskier than providing incentives on the back end once a project is completed. In the Development Agreement, there is Completion Guaranty being provided to the City to ensure that the Project is still completed after City funding

is put into the Project; however we do offer some comments below on the Project Completion Guaranty.

1. Developer RESPONSE:

- a. **The Developer has already spent significant money on market studies, conceptual designs, and plans and specifications. The developer is also providing a completion guarantee to complete the project once the horizontal infrastructure commences. While the timing of the funding requires City dollars in infrastructure to be spent first, that is necessary to prepare the site for vertical construction.**
- b. **The increase from \$77.7 million to \$92.8 million in infrastructure is not for any cost overrun, but for certain known potential issues. The current investment of \$77.7M in infrastructure is based on information regarding the level of environmental contamination, the subsurface conditions, the requirements with respect to building on the storm water retention pond site, and the engineering relating to accommodating the existing guide wire anchor. To the extent that factors outside of the Developer's control impact these portions of the project infrastructure, and, as a result, cause the infrastructure costs relating to these portions of the project to exceed current estimates, the City agreed to allocate up to no more than the \$15.1M from the investment reduction to cover such unanticipated costs.**

d. 4) Addressing the Project Completion Guaranty as follows:

1. There are items within the Completion Guaranty that should be considered:
 - a. Guarantors of the projects are affiliate corporations of Cordish and the Jaguars - not the actual parent companies. The agreement requires that the City be provided evidence of the Guarantors' financial capacity to carry out the guarantee. To date, nothing has been provided to evidence the financial capacity of each of the entities. Also, the Agreement does not go into specifics on the financial capacity needed to qualify as an acceptable Guarantor.
 - b. The Development Agreement states that if the Guarantor terminates the Completion Guarantee for any reason other than Substantial Completion of any Component of the Project, the Agreement shall automatically become null and void and shall be of no further force or effect. This language would appear to give the Guarantor the power to

terminate the Completion Guaranty if they so desired with no further responsibilities under the Agreement.

2. Recommendation that evidence of financial capacity be provided to the City and that specific language be added to require that evidence of financial capacity be maintained throughout the term of the agreement (or until the Project is completed) and that quarterly reporting be provided to the City to demonstrate this financial capacity?
3. Recommendation that only the City have the power to terminate the Completion Guaranty, not the Guarantor.

4. Developer RESPONSE:

- a. **The Developer has provided the City administration with evidence of the guarantor financial capacity.**
- b. **The guarantors do not have the ability to terminate the guaranty other than if the City defaults or if the development agreement is otherwise terminated in accordance with its terms. The guarantee will be clarified to confirm that.**
 - i. **Follow-up Question: Auditors has this been clarified to your satisfaction?**

e. 5) Pro Forma for Live! And Parking Operations:

- i. Pro-formas for the viability of the Live! Component and Parking operations (i.e. projected annual revenues and expenses) have been requested, but they have not been provided. Given that the City is investing \$50 million into the Live! component and is responsible for covering all costs of the Residential Parking Garages (as currently drafted in the agreement- but changing per the Developer/Administration) as well as the Surface Parking Lot of 700 spaces, and lots M, N, and P (with only a portion of the parking revenue being remitted to the City), it is important to know the estimated annual net cost that the City will be taking on.
- ii. **Developer RESPONSE:**
 1. **The City is currently responsible for capital maintenance and repair of Lot J and the surrounding areas, including Lots M, N and P. Those responsibilities include things like landscaping, hardscape and lighting. The surface lot that is currently Lot J will be developed, and the surface lot on the storm water detention pond will be approximately one-half of the size of the current Lot J. The City annually reviews and approves the Capital Budget for the sports complex, which includes capital repairs and maintenance for those areas.**
 2. **Follow-up Question: Answer provided fails to address the question.**

f. 6) Detail for Project Cost Estimates:

- i. Although we have requested detailed construction cost estimates for each of the Project Components, to date we have not received cost estimates and have been told the plans are still conceptual.
- ii. Recommendation: Initial cost estimates for City Infrastructure should be fully vetted by the Public Works Department for all of the City's infrastructure, in addition to the JEA with respect to the relocation of several significant utility lines.
- iii. **Developer RESPONSE:**
 1. **The development team has been working with the Department of Public Works and with local civil engineers (ETM) who have previously done work in the sports and entertainment complex. This same group worked on the construction of Daily's Place in 2017, which required Lot J to be excavated to accommodate a drainage pipe and the storm water detention pond to be drained. They are knowledgeable about the subsurface conditions in Lot J.**
 2. **Follow-up Question: The answer fails to address the question providing cost estimates on different components and facilities. Provide estimated cost on known category issues?**

g. 7) Reallocation of City Funds:

- i. Per Section 8.7 of the Development Agreement, the Developer has the ability to reallocate City Funds (defined as the borrowing of \$208.3 million) between and among the Components (which includes Horizontal Infrastructure Improvements, Vertical Infrastructure Improvements, Live!, Mixed-Use, and Hotel). This in essence allows for the Developer to utilize the City Funds cover possible cost overruns on one portion of the Project when it has savings on another.
- ii. Recommendation: We have discussed several sections of the Agreement that appear to have conflicting language concerning the cost savings with the Developer/Administration and these sections are currently under review?
- iii. **Developer RESPONSE:**
 1. **The agreement will be updated to clarify that the loan proceeds will only go towards the Mixed-Use and Hotel Components and that infrastructure funds can only go towards infrastructure.**
 - a. **Follow-up Question: Auditors has this been clarified to your satisfaction?**

h. 8) Cost Savings:

- i. There are conflicting language provisions within the Ordinance and Sections 8.7, 8.8, and 8.9 of the Development Agreement as it relates to cost savings on each of the Project Components and the Minimum Developer Investment.

- ii. Recommendation: This language needs to be revised to clearly identify how costs savings will be treated. As currently drafted in the Development Agreement, we have the following concerns:
 - 1. The costs of the Residential Parking Garages count towards the Minimum Developer Investment even though they will be built with City Funds as part of the Infrastructure Improvements.
 - 2. Recommendation: The costs of the Residential Parking Garages should not count towards the Minimum Developer Investment. The Parking Garages are a part of the Infrastructure Improvements for which the City is contributing \$77.7 million towards. Counting them towards the Minimum Developer Investment gives the Developer credit for the City's contribution.
 - 3. **Developer RESPONSE:**
 - a. **The Developer agrees to share the costs of operating the residential garages with the City. City not participating in operating and management fees. Each party will pay half of the operating expenses. The Developer also agrees to take the cost of the parking garages out of the minimum developer investment make good calculation. As it relates to the minimum developer investment make good calculation, it will consist of the direct costs of the hotel and mixed-use components and 7.5% of total project costs to cover the developer's unreimbursed project management and general and administrative expenses.**
 - b. **Follow-up Question: Auditors has this been changed to your satisfaction?**
 - 4. Once the entire project is complete, a reconciliation calculation is performed on the amount of Developer Funding. If the Developer puts in less than the Minimum Developer Investment required in the Agreement, the City's Contribution to the Mixed Use and Hotel Component would be reduced on a pro rata basis, but only after allocating any Cost Overruns related to the Horizontal and/or the Vertical Infrastructure, or the Live! Component to the City.
 - 5. Recommendation: The City should not have to cover Cost Overruns as part of the calculation to determine the "credit/reduction" it is owed.
 - 6. **Developer RESPONSE:**
 - a. **The City is not covering any Cost Overruns, as these are the responsibility of the Developer. The City's contribution is limited in the aggregate. In the above scenario, the Developer would have invested additional funds into City-owned assets, and these funds would be credited to the Developer.**

b. Follow-up Question: Auditors has this been clarified to your satisfaction?

7. If any reduction in the City's contribution to the Hotel or Mixed-Use Component exceeds the amount of City Funds remaining to disburse for such Component, the Developer has the option at its discretion to pay for such shortfall by: (1) reducing the maximum value of the REV Grant and/or the Hotel Completion Grant; or (2) making a principal payment on the City Loan equal to the amount of such shortfall.
8. Recommendation: The language should be clarified to state that the Developer shall compensate the City, rather than having the option, and the Developer should not get the choice of how to compensate the City for any shortfall. Rather, the City should decide how any payment for a shortfall should be applied.

9. Developer RESPONSE:

a. The agreement will be clarified that the option relates only to the mechanism for payment, as opposed to whether any payment is owed. The Developer agrees that the option to make a payment to the trust defeasance account will be eliminated.

b. Follow-up Question: Auditors has this been clarified to your satisfaction?

i. 9) Manager/Trustee of the Breadbox Loan:

- i. Per discussions with the Developer and OGC, the Developer must control the selection of the Trustee and Manager of the Trust for the investment of the City's Breadbox Loan funds of \$13.1 million over 50 years. Given that the Trustee and Manager will have full control over the investment of the City's loan funds, the City also has no control over the amount of fees charged by the Trust, which could erode the City's return on the funds and lengthen the time necessary to reach the full \$65.5 million. The Administration has informed us that they are having discussions with the Trust Manager related to the fees charged and investment portfolio.
- ii. Recommendation: The City should have input on the Trustee and Manager of the Trust as it relates to investments and fees charged to ensure the City's dollars are protected and in alignment with the City's goal of recouping the full \$65.5 million.

iii. Developer RESPONSE:

1. **The City administration and the proposed trustee had a further discussion on November 9. The Developer is willing to give the City as much control and involvement as possible, while preserving the integrity of the tax structure. The City is confident with the plan of investment-as an "active" passive strategy consisting of a mix of low-cost index funds and both active and passive fixed income management. The City is also comfortable**

with the investment-related fees and administrative fees, which are in line with market and/or are usual and customary for the services being performed.

j. 10) Modifications to Master Development Plan:

- i. The Master Development Plan incorporated into the Agreement does not include detailed specifics in order to give flexibility to the Developer. Prior to closing, the Developer has the right to modify the Master Development Plan to respond to and accommodate changes in the market, development and other conditions and factors. If a change results in a Material Modification (meaning any new use not contemplated by the current Master Development Plan, or a substantial change to any currently contemplated use), such change shall require the approval of the City Representative, which is the Chief Administrative Officer. An example of a Material Modification given by the Administration and Developer is the hotel being converted to an office tower. Authorized Material Modifications in the Development Agreement include (1) replacing a mid-rise residential tower with one or more high-rise residential towers, and (2) adding additional floors of office space to the Live! Component.
- ii. Recommendation: A defined percentage change in dollar value or project scope should require the approval of City Council. The City should know what is being constructed with an investment of over \$200 million.
- iii. **Developer RESPONSE:**
 1. The agreement has been revised to reflect that any changes over 10% in any given line item in the Live! or infrastructure budgets will be subject to City approval.
 2. Follow-up Question: Auditors has this been changed to your satisfaction?

k. 11) Design Standards:

- i. The Development Agreement does not require any specific design standards for the Project Components. Although Lot J is in an area prone to potential flooding issues, there are no required design standards that could help minimize the impact to the City Infrastructure, as well as the other Project Components, should a flooding issue arise.
- ii. Recommendation: The Agreement should contain language requiring the project be constructed to an acceptable level determined by the City to address such issues and ensure that the City's investment is best protected.
- iii. **Developer RESPONSE:**
 1. The Developer has every incentive to ensure that all of the components, whether they are owned by the Developer or by the City, are properly constructed to plan for current and future drainage needs. The Developer has already engaged a

consultant, ETM, who has completed a resiliency study to advise on construction recommendations to for the building foundations to ameliorate concerns about water intrusion. ETM believes the Lot J preliminary design criteria included below, appropriately addresses resiliency and sea level rise consistent with and exceeds the November 2019 City of Jacksonville Adaptation and Action Area Work Group Report and Recommendations, for 2060.

I. 12) Parking Agreement:

- i. In discussions with the Administration and the Developer, we understand that the Parking Agreement is still being negotiated and will have changes from the Agreement that is currently on file. However, concerns related to the Parking Agreement currently on file are below.
 1. As drafted, the City is responsible for all costs related to the operation of the two Residential Parking Garages, as well as the surface lot (which may be constructed alternatively as a third parking garage) and lots M, N and P, while the Developer retains the majority of the parking revenue and will not have to pay property taxes. The entity that manages the parking on behalf of the stadium (ASM) will be the Parking Operator and will be paid a market rate. The costs of these operations are currently unknown.
 2. Recommendation: Given that the garages and surface lots are anticipated to be owned by the City, the Parking Agreement should at a minimum be structured so that operating expenses are paid from operating revenues and that the City would only cover operating losses.
 3. **Developer RESPONSE:**
 - a. **As stated above, the Developer and the City will share equally operating expenses for the residential garages. The City will continue to be responsible for maintenance on the surface lots around the sports complex, consistent with its current obligations. The City will retain revenue from daily transient parkers who park in the surface lots and in the residential garages and, in addition, has negotiated to retain parking revenue on Jaguars game days (which was a revenue stream previously retained by the Jaguars) in the new spaces created as part of the project. The number of daily transient parkers will increase once the project is operating, as there will be more people visiting the sports and entertainment complex than are currently visiting. This creates an expanded revenue stream for the City.**

- b. **Follow-up Question:** Again, what is the estimated cost of garage ownership, looking at the city's parking garage history at other venues?
 - c. **Follow-up Question:** What is the estimated revenue to be generated by the transient parkers?
 - i. Ex: Jaguar Games \$240 per season @700 spaces, totals \$168,000 revenue.
 - ii. Ex: Non-Jaguar Games \$20 per game @700 spaces, totals \$14,000 revenue. (FL/GA) & (Gator Bowl)
 - iii. Non-Validated Parking – Section 12.4, 12.5, 12.6.
 - d. **Follow-up Question:** The agreement allows for the developer to have surface parking as stated “for Hotel, Residential and Validation Parking”, No limitation stated, what revenue can be expected?
4. The Parking Agreement does not include a term end date and will continue in effect as long as the Live! Component, Mixed-Use Component, or Hotel Component are being used and occupied. It also does not allow the City to terminate the Agreement even for a breach by the Developer.
 5. Recommendation: The Parking Agreement should have an end date that can be extended upon agreement by the Developer and the City. The City should also have the right to terminate the Parking Agreement for lack of performance by Developer or default of the Developer.
- 6. Developer RESPONSE:**
- a. **The parking agreement is terminable if either party breaches its obligations thereunder. As long as the project uses are operating, parking will be needed, and the parking agreement term will be tied to operation of the project.**

m. 13) Live! Lease:

- i. This lease is for an initial 35-year term with four 10-year renewal options. There are no minimum occupancy requirements nor any specific terms that would address when the lease could be terminated by the City for non-performance. The only time that a required occupancy percentage is applied is upon the third or fourth renewal option which would be 55 years from the effective date of the lease. Occupancy at that point is required to be at least 85%.
- ii. Recommendation: The City should have termination rights for non-performance and should consider whether the Lease Operator should be required to maintain certain occupancy rates throughout the life of the lease.
- iii. **Developer RESPONSE:**

1. The lease provides the City with termination rights for non-performance by the Developer. The Developer has a financial incentive to have the building occupied at maximum capacity.
 2. **Follow-up Question: What are those rights for non-performance that the city possesses?**
- iv. (added) The City, acting as Landlord, does not have the right to utilize the Live! Facility on Blackout Dates which are defined as:
1. Any holiday for which any government offices in Jacksonville, FL are permitted or required to close for business
 2. Any day on which there is scheduled a Jaguars game, the TaxSlayer Bowl, the Jazz Festival, any festival concert that uses Metropolitan Park of any Stadium Parking,
 3. Monster Jam, or any concert or other event use the Stadium seating bowl; and
 4. Any period of up to ten consecutive days identified by Tenant that includes a date set forth in (i) and (ii) above.
5. **Developer RESPONSE:**
- a. **The City has the right to use the facility Monday through Friday before 3 pm and otherwise upon 90 days' notice to the tenant. On the two days preceding and the day of the Florida-Georgia game, the City and the Developer have agreed to share equally in profits from any events at Live! creating a new revenue stream for the City. These use rights are more robust than the City's rights to use the stadium and the amphitheater.**
- v. The Tenant of the Live! lease has the ability to mortgage and pledge its interest in the Lease to a Leasehold Mortgagee. In the event of a default of the Tenant and the Leasehold Mortgagee steps in, the City will have no input as to who would then be operating the City owned facility.
1. **Developer RESPONSE:**
- a. **This is necessary for the Developer to obtain construction financing with respect to the facility and is a customary provision in leases.**
- n. **14) Performance Time Periods:**
- i. As drafted, the performance time periods for the completion of the Project components could be as long, if not longer, than the time period detailed below (these time frames include the possible one year extension and assume that regulatory approvals are obtained within the time period in which the Developer is required to apply for the regulatory approvals even though this is not specified in the Development Agreement):
 1. Horizontal Infrastructure – 7 years from the effective date.
 2. Project Components other than Hotel – 8 years from the effective date.

3. Hotel Component – 12 years from the effective date.

ii. Developer RESPONSE:

1. In the latest draft, the Developer has agreed to commence the first step – environmental remediation – within 6 months from the effective date of the development agreement. Within 15 months from the effective date, the Developer agrees to complete the remediation, and within 33 months from the effective date, the Developer agrees to complete the work needed to obtain a Site Rehabilitation Completion Order. Our understanding from our environmental consultants is that this is the shortest time frame within which these items can be completed.
2. Once the Site Rehabilitation Completion Order has been obtained, the Developer will apply for permits and approvals within 18 months. Once permits and approvals are received, the Developer will have to complete construction of the project within 36 months.

o. 15) Specific Default/Claw back Provision:

1. The Development Agreement does not contain specific default/clawback provisions which have traditionally been included in previous economic development agreements:
 - a. There are no reversion rights of the City property should the Developer not proceed with any work on the Project site. If the City decided it did not want to enforce the Completion Guaranty, it should have rights to at least have the Property revert back to the City.
 - b. There are no specific actions the City can take if the Project is not completed in the allotted timeframes other than to act on the Completion Guaranty.
 - c. There are no specific penalties for constructing facilities (residential units, hotel rooms, commercial/office square feet, and parking spaces) that are smaller in size than what is proposed in the Agreement.
 - d. There are no specific clawback provisions to prevent the Developer from selling the Mixed- Use and Hotel Components for a profit even though the land will be conveyed at no cost and the Components could be funded with the City's \$65.5 million. Typically, in other economic development agreements where grant funds are provided as an incentive, there is a sliding scale payback over a five year period if the property is sold after the City provided grant funds to help pay for the improvements (i.e. if sold within one year of completion, 100% of the grant is paid back, within 2 years 80% is paid back, within 3 years 60% is

paid back, within 4 years 40% is paid back and within 5 years 20% is paid back). Additionally, when the City has provided a loan as an incentive, the remaining balance of the loan usually becomes due to the City if the property is sold.

e. Developer RESPONSE:

- i. The Developer agrees to not sell the Mixed-Use or Hotel Component to an unaffiliated third-party within 5 years of substantial completion.**

p. 16) REV Grant for Mixed-Use and Hotel Completion Grant:

- i. The Hotel Completion Grant of \$12.5 million does not have a minimum capital investment requirement to guarantee the product that is being proposed. However, the REV grant requires that at least \$95 million of private funding be made in the Mixed-Use Component to receive the REV grant of \$12.5 million.
- ii. The \$65.5 million Breadbox Loan can be utilized to build a portion of the Mixed-Use Component and/or the Hotel Component. The City is then giving grants on the completion of each component which is in essence giving a grant on the City funding.
- iii. Recommendation: Include a required and minimum private capital investment as it relates to the Hotel Component. If the required capital investment is not met, the Hotel Grant could be scaled down proportionately. If the minimum capital investment is not met, the Developer would not be eligible for the Hotel Completion Grant.
- iv. Recommendation: The REV Grant and/or Hotel Grant could be reduced by the percentage of the project component final costs for which the City Breadbox Loan was utilized. (i.e. If the Breadbox Loan covered 30% of the construction costs of the Mixed-Use Component, the REV Grant would be reduced by the same 30%.)
- v. Developer RESPONSE:**

- 1. The minimum capital concept is as set forth in the Minimum Developer Investment calculation. The City is protected under that provision. In addition, as it relates to the REV grant, this amount will ultimately be based on the actual ad valorem taxes generated from the Mixed-Use Component.**

q. 17) Disbursement Requests:

- i. The Developer will file Disbursement Requests on a work performed and invoiced basis no more frequently than once per month for Disbursement of City Funds for Public Costs. The requests shall contain the (1) unit price schedule of values including the cost of labor and materials, and (1) the amount of disbursement the Developer is seeking in accordance with the amounts set forth in the Budget.

- ii. For Disbursement of City Funds for Non-Public Costs, the Disbursement Request shall provide a status update verifying the (1) total dollars spent to date on the applicable Component, and the (2) percentage of completion of the applicable Component. The City will not see the specifics supporting the costs of the Developer Improvements for which City Funds could be used.
- iii. Recommendation: The Administration has informed us that these specifics are being discussed with the Developer. However, the City should receive the same level of documentation for all disbursement requests in which City Funds are being used.
- iv. **Developer RESPONSE:**
 - 1. **The agreement provides that the City will have documentation for all disbursement requests in which City Funds are used. The City will receive a certified pay application with line-item detail and backup for all City-owned assets and will receive a letter from the Developer certifying the amount spent on the private assets.**

r. 18) Lost Revenue Opportunities/City Costs:

- i. (added) Although the Developer is responsible for paying for all costs to operate Live!, the City is investing \$50 million and providing a full tax abatement to the operator of the Live! Component, yet the City does not receive any portion of the revenues generated.
 - 1. **Admin RESPONSE:**
 - a. **While the City is not retaining all of the revenues generated from Live!, the administration has negotiated to split revenues from the FL/GA weekend as well as retain the right to utilize/host events at the venue to create revenue.**
- ii. (added) While the City is responsible for paying a large portion of the costs related to parking since it will be City owned operations, the Developer retains the majority of the parking revenue and will also pay no property taxes.
 - 1. **Admin RESPONSE:**
 - a. **Currently the City generates virtually zero revenue from Lot J as a parking lot and it is currently owned by the city with a lease on it retained by the Jaguars. This development creates several new revenue streams from parking, such as Jaguars/Stadium events as well as transient parking throughout the development and in the newly constructed garages.**
 - i. **Follow-up Question: What is the proforma on these revenues? Please provide comparison as it relates to Ownership vs. Non-Ownership of the Parking Garage.**
- iii. The Developer appears to have the right to sell the land conveyed to it at no cost at any time as it relates to the Hotel Component. For the Mixed-

use Component, the Developer can sell the property upon substantial completion. The City does not receive any of the profit from a sale of these properties.

1. Admin RESPONSE:

a. The Developer has agreed to not sell the development for a minimum of 5 years.

- iv. The City is providing a “loan” of \$65.5 million that is intended to be put towards the construction of the Mixed-Use and Hotel Components. In a previous economic development deal, a 1% surcharge was required to be charged as part of the hotel bill for a customer to help pay back a portion of the loan. This revenue is remitted to the City. Additionally, we have also seen where a private developer passed on the costs of infrastructure to the customer by charging a public infrastructure fee (which was a certain percentage of the total purchase). Could any of these options be required of the Developer either in lieu of a lower loan amount or to allow the City to recoup some revenue to help pay back the loan amount?

1. Admin RESPONSE:

a. Yes, these are policy considerations for City Council.

- v. Based on the Developer’s estimated construction costs and the traditional model used by the City to calculate Return on Investment (ROI), it appears that the 75% REV Grant capped at \$12.5 million for the Mixed-Use Residential at the end of 20 years could total nearly \$19 million. Could the City increase the REV Grant to a not to exceed amount of \$19 million and reduce the loan amount of \$65.5 million by \$6.5 million?

1. Admin RESPONSE:

a. This is a policy decision for City Council, but no party affiliated with this development agreement has agreed to this in negotiations. So, it would need to be accepted by the development team.

- vi. Based on the Developer’s estimated construction costs and the traditional model used by the City to calculate Return on Investment (ROI), it appears that if a 75% REV Grant over 20 years is utilized for the Hotel Component (rather than a Completion Grant of \$12.5 million over 5 years) it could total nearly \$20 million. Could the City eliminate the Completion Grant of \$12.5 million and instead provide a REV Grant amount for the completion of the Hotel Component of the Project for a not to exceed of \$20 million and reduce the City loan amount by the difference of \$7.5 million?

1. Admin RESPONSE:

a. This is a policy decision for the City Council, but no party affiliated with this development agreement has agreed to this in negotiations. So, it would need to be accepted by the development team.

s. **19) Potential Future Cost.**

- i. The Development Agreement specifies that the City will use reasonable efforts to ensure that the large antenna is moved from the area it impacts, which is a portion of the surface parking lot. This cost is not included within any of the City's funding.
- ii. Recommendation: The City should determine the options and possible cost to relocate the antennas as part of this agreement. All known costs and impacted elements should be considered when evaluating this development agreement.
- iii. **Developer RESPONSE:**
 1. **With any future development rights on the storm water pond to be negotiated in the future, the Developer agrees this provision can be removed.**
 2. **Follow-up Question: Auditors has this been changed to your satisfaction?**