

Council Auditor's Office
Bill 2020-648
Overview of Lot J Development

Bill 2020-648 will authorize the borrowing from the City's Commercial Paper Facility and/or the issuance of Fixed-Rate Debt in the amount of \$208,300,000 for the Lot J Development. Additionally, the City will provide a \$12.5 million completion grant for the Hotel and a REV grant of up to \$12.5 million for the residential buildings, for a total City investment (i.e. maximum indebtedness) of \$233.3 million.

Bill 2020-648 will also authorize the Mayor to execute the following:

1. A development agreement between the City, DIA and Jacksonville I-C Parcel One Holding Company, LLC (a joint venture between Gecko Investments Florida, LLC and Jacksonville I-C Parcel One Holding Company Investors, LLC) which will be comprised of:
 - a. Infrastructure Improvements, which include approximately 700 spaces on a surface lot above the existing storm water retention pond and parking garages
 - b. Live! District Entertainment Venue which includes 75,000 square feet or more of retail, restaurants, service and other commercial space, and approximately 40,000 square feet of office space
 - c. Two mid-rise residential buildings comprised of 400 units in total and two garages that include 700 parking spaces
 - d. An upscale hotel with approximately 150 to 250 rooms
2. A lease between a Developer Subsidiary and City for the use, management, and operation of the Live! District
3. A parking agreement for the management of the parking in the project and Lots M, N, and P
4. A loan agreement, trust agreement and related documents for the loan from the City
5. Amendment #15 to the Jaguar Lease
6. Quit Claim Deeds and related closing documents
7. Easement agreements

Multiple waivers are included within the Ordinance to delegate powers from the Downtown Investment Authority (DIA) to the City Council and to allow for the Administration, rather than DIA, to publish and evaluate the notices and responses related to the disposition of the community development property required pursuant to Section 163.380, Florida Statutes and to waive the City's Procurement Code. These waivers include the following Sections of the Municipal Code:

1. Section 122.434 (Procedure for Disposition of Community Development Property)
2. Chapter 500 (Community Development Policies and Procedures)
3. Sections 55.108(2), (4), (8), (9), (10), (14) and (20) (Powers and Duties of the DIA)
4. Section 55.115 (Procedures for Acquisition and Disposition of Downtown Property)
5. Section 55.116 (Public Parking)
6. Chapter 126 (Procurement Code)- JSEB Provision is not waived

The Treasury Division estimates that the City's additional debt service as a result of the borrowing will total \$12.2 million per year. In total, it is estimated that interest costs on the \$208.3 million will be approximately \$157.5 million, for a total debt service cost over 30 years of an estimated \$365.8 million.

The proposed authorization of \$208.3 million in additional borrowing does not have an immediate impact on the debt affordability parameters. One measure, the debt per capita, is expected to rise above the target goal measure, but will stay below the maximum amount per Treasury. The other debt parameters stay above/below their target, as applicable with the authorized borrowing.

Summary of Lot J Components

Component	Owner	City Maximum Contribution	Developer Contribution	City Incentives	Revenue	Expenses
Infrastructure (including Surface Parking Lot and Parking Garages)	City	\$77,700,000 plus possible additional \$15,100,000	If additional Parking Garage is constructed, \$15,100,000 and any costs over \$30,200,000	N/A	Developer retains parking revenue from hotel, residential and valet City retains revenue from transient daily parkers and metered parking	City
Live!	City; Leased to Developer	\$50,000,000	\$50,000,000	N/A	Developer Ticket surcharge revenue deposited into a City fund for Live Facility Capital Projects	Developer
Mixed-Use	Developer, except City will own any portion of Live Component located within Mixed-Use Component	\$65,500,000	\$111,000,000 less portion of Breadbox Loan applied to Mixed-Use Component	\$12,500,000 REV Grant @ 75% over 20 years - and - Property conveyed at no cost	Developer retains all revenue	Developer
Hotel	Developer		\$118,000,000 less portion of Breadbox Loan applied to Hotel Component	\$12,500,000 Completion Grant paid in 5 annual installments - and - Property conveyed at no cost	Developer retains all revenue, including if land is sold prior to development of hotel	Developer

Sources and Uses
Option 1 - Project as Presented

<u>Sources</u>		<u>Uses</u>	
Live!	50.0	Live! Component	100.0
Infrastructure	77.7	Infrastructure	77.7
City Loan	65.5	Trust Deposit	13.1
Total City	193.2	Total City Owned	190.8
Developer	257.1	Residential North	55.0
Total Private	257.1	Residential South	56.0
		Hotel	118.0
		Total Private Owned	229.0
		Developer Expense*	30.5
Total Investment	450.3	Total Development	450.3

*Developer Expense is 7.5% of Infrastructure, Live!, Mixed-Use, and Hotel

Sources and Uses

Option 2 - Project with Additional City Infrastructure Costs

Sources		Uses	
Live!	50.0	Live! Component	100.0
Infrastructure	77.7	Infrastructure	77.7
City Loan	65.5	Trust Deposit	13.1
Additional Infrastructure*	15.1	Additional Infrastructure*	15.1
Total City	208.3	Total City Owned	205.9
Developer	258.2	Residential North	55.0
Total Private	258.2	Residential South	56.0
		Hotel	118.0
		Total Private Owned	229.0
		Developer Expense**	30.5
		Developer Expense on Additional Infrastructure***	1.1
Total Investment	466.5	Total Development	466.5

*Additional Infrastructure represents amount over \$77.7 million

**Developer Expense is 7.5% of Infrastructure, Live!, Mixed-Use, and Hotel

***Developer Expense on Additional Infrastructure is 7.5% of Additional Infrastructure

Sources and Uses

Option 3 - Project with Additional Parking Garage on Storm Water Pond

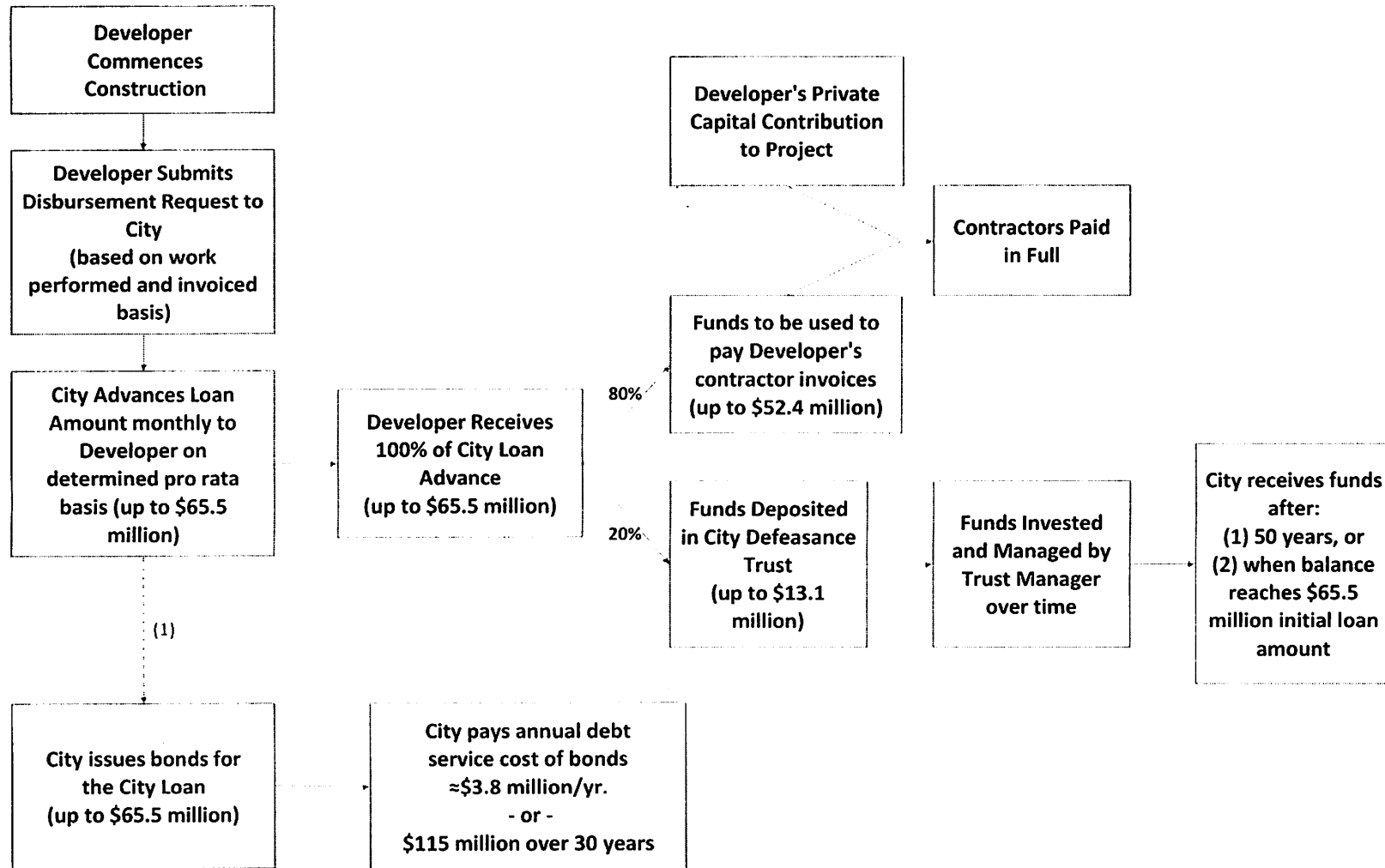
<u>Sources</u>		<u>Uses</u>	
Live!	50.0	Live! Component	100.0
Infrastructure	77.7	Infrastructure	77.7
City Loan	65.5	Trust Deposit	13.1
Additional Garage*	15.1	Additional Garage*	30.2
Total City	208.3	Total City Owned	221.0
Developer	259.4	Residential North	55.0
Additional Garage match*	15.1	Residential South	56.0
Total Private	274.5	Hotel	118.0
		Total Private Owned	229.0
		Developer Expense**	30.5
		Developer Expense on Additional Garage***	2.3
Total Investment	482.8	Total Development	482.8

*Additional Garage is shown as a possibility

**Developer Expense is 7.5% of Infrastructure, Live!, Mixed-Use, and Hotel

***Developer Expense on Additional Garage is 7.5% of Additional Garage

City Loan Mechanics



(1) As a result of the City advancing the Loan Amount to the Developer, the City will most likely issue bonds.

Return on Investment Calculation
 Lot J Projections
 Legislation 2020 - 648

	Administration	Council Auditor's Office
City's financial "Incentives" to Developer:		
Live! Investment		\$ 50,000,000
Infrastructure		92,800,000
Project Loan	\$ 65,500,000	65,500,000
Completion Grant	\$ 12,500,000	12,500,000
REV (Residential)	\$ 12,500,000	<u>12,500,000</u>
 Total	 \$ 90,500,000	 \$ 233,300,000
City's financial "Returns" from Project:		
Developer Contribution to City Owned Live!	\$ 50,000,000	\$ -
Ad Valorem Tax Projections	\$ 52,063,128	52,063,128
Local Sales Taxes from Project	\$ 20,725,505	20,725,505
Bed Tax	\$ 15,776,330	15,776,330
Employment Related Sales Taxes	\$ 953,853	953,853
Ticket Surcharges	TBD	-
Loan Repayment (NPV)	\$ 13,400,000	<u>13,100,000</u>
 Total	 \$ 152,918,816	 \$ 102,618,816
City's financial return/financial incentives (Project ROI)	1.69 : 1	0.44 : 1

Footnotes:

The value of the land is not included in the City's financial "incentives" to the Developer due to the unknown property that will be conveyed to the Developer.

The Financial Returns for Local Sales Taxes, Bed Taxes, and Employment Related Sales Taxes were derived based on data contained within the Johnson Consulting Study.

Council Auditor's Office
Bill 2020-648
Highlights from the Development Agreement

Financial Related

1. The City will fund up to \$77.7 million for the Infrastructure Improvements.
 - a. The City will contribute an additional \$15.1 million to pay for Project Costs with respect to:
 - i. Any Parking Garage constructed at Developer's election (City limited to \$15.1 million), and/or
 - ii. Any increased costs associated with environmental contamination, subsurface conditions, the requirements with respect to the Storm Water Retention Pond Area and the engineering related to accommodating the existing guide wire anchor and resulting from conditions outside Developer's control. (Section 11.2)
 - b. If Infrastructure Improvements total less than \$77.7 million, the City shall retain 100% of such cost savings. (Section 8.9(a))
2. The City will fund up to \$50 million for the Live! Component on a dollar for dollar basis. (Section 6.7)
 - a. The Developer is responsible for any cost overruns (Section 6.7)
 - b. If Live! Component is less than \$100 million, the City shall retain 50% of such cost savings. (Section 8.9(b))
3. The City will issue a Breadbox Loan to the Developer for the Hotel and Mixed-Use Components of up to \$65.5 million (Article 10). City Funds will be disbursed on a pro rata basis based on work performed and invoiced basis for the Hotel and Mixed-Use Component. (Section 8.4)
4. The Developer shall be responsible for cost overruns in excess of the City Funds (\$208.3 million). (Section 8.8)
5. The Developer shall have the right to reallocate City Funds between the Components (Section 8.7)
6. After Project completion, a reconciliation will be performed to determine if the Minimum Developer Investment (\$229 million) was met. If it has not been met, a calculation concerning cost overruns will be made to determine any reduction in the City's contribution to the Mixed-Use and Hotel Components. (Section 8.9(c))
7. The REV Grant and Completion Grant are subject to future appropriation. (Section 7.1(c))
8. The Base Year value for the REV Grant is calculated based on the Property Appraiser's 2020 assessed value in lieu of the City obtaining an appraisal for the conveyed property (Section 14.4)
9. If the Developer fails to invest at least \$111,000,000 of private funding in the Mixed-Use Component, the REV Grant will be proportionately reduced. If the Developer fails to invest at least \$95,000,000, the REV Grant will be terminated. (Section 14.6)
10. The Developer can assign its right to receive the REV Grant payments to a lender if the Developer pledges the REV Grant as collateral for a loan. (Section 14.3)
11. The Hotel Completion Grant of \$12.5 million will be paid in five equal installments over a five-year period upon Substantial Completion of the Hotel Component. (Section 14.7)

Completion Guaranty Related

12. The Cordish Family I, LLC (Guarantor on behalf of Cordish), will guarantee to the City Substantial Completion of each Component of the Project, except the Hotel Component. (Section 2)
13. K2TR Family Holdings 2 Corp (Guarantor on behalf of the Jaguars), will guarantee to the City Substantial Completion of the Hotel Component. (Section 2)
14. Guarantor has the right to assign the Guarantor Obligations to a substitute guarantor only if the substitute guarantor executes and delivers a written assumption of the obligations on the same terms and conditions as this guaranty and the City consents to the assignment. (Section 11)

Council Auditor's Office
Bill 2020-648
Highlights from the Development Agreement

15. Upon the later to occur of Substantial Completion of any Component of the project and the final completion of all warranty work related to a Component, the Guarantor Obligations with respect to such Component shall automatically terminate. (Section 22)

Development Related

16. The City will convey the property for the Hotel and Mixed Use Components to the Developer at no cost. (Section 6.1)
17. Once conveyed, the City will have no further ownership rights in the Conveyed Property. (Section 6.5)
18. The Master Development Plan is still conceptual and changes can be made to the Plan prior to closing. After closing, Developer may not add any new uses to the Master Development Plan without the applicable regulatory approvals. (Section 3.3)
19. The schedule of required construction of the improvements for each component is as follows (excluding possible one-year extension): (Section 13.7)
 - a. Horizontal Infrastructure Improvements:
 - i. Apply for all Regulatory Approvals within 24 months of effective date
 - ii. Complete construction within 48 months of receiving Regulatory Approvals
 - b. Live! and Mixed-Use Components:
 - i. Apply for all Regulatory Approvals within 36 months of effective date
 - ii. Complete construction within 48 months of receiving Regulatory Approvals
 - c. Hotel Component:
 - i. Apply for all Regulatory Approvals within 60 months of effective date
 - ii. Complete construction within 72 months of receiving Regulatory Approvals
20. A perpetual air-rights easement is granted to the Developer for a potential elevated pedestrian bridge (Section 5.3(f))
21. A perpetual access and use easement is granted to the Developer to access and utilize the Live! Plaza (Section 5.3(b))
22. The Developer will engage a construction engineering consultant:
 - a. For standard inspections of the Infrastructure Improvements and the Live! Component
 - b. Evaluating and approving the Budget
 - c. Monitoring the progress of construction and approving the draw requisitions from the Developer for all portions of the Projects (Section 9.2)
23. The City will work to terminate or modify the Antenna Easement on the Storm Water Retention Pond Area to the end that it no longer encumbers the area. (Section 5.3(g))

Parking Related

The Administration has indicated that they are still in negotiation with the Developer regarding the Parking Agreement and changes are forthcoming. As drafted currently, the below are highlights from the Parking Agreement.

24. Parking Garages can be City owned or Developer owned at the election of the Developer. Ownership determines how funds are applied to pay for the construction of the garages (Section 11.3)
25. The City will own the Surface Parking Lot to be constructed on the existing storm water retention pond (12.1)
 - a. The City will pay for all costs of operation, repair and maintenance of Surface Parking Lot. (Section 12.1 of Development Agreement and Section 4.4 of Parking Agreement)
 - b. The City will engage and pay a Parking Operator to manage the Surface Parking Areas (defined as Surface Parking Lot and Lots M, N and P) on its behalf. (Section 4.1 of Parking Agreement)

Council Auditor's Office

Bill 2020-648

Highlights from the Development Agreement

- c. The Surface Parking Areas will support existing City obligations to the Jaguars, TaxSlayer Bowl, Florida/Georgia game, and any other major event parking requirements. (Section 12.2 of Development Agreement and Section 4.1 of Parking Agreement)
 - d. The City will retain revenue from transient daily parkers and attendees of Jaguars NFL games, the Florida/Georgia game, the TaxSlayer Gator Bowl Game, Monster Jam, other stadium events, events at the Baseball Grounds, events at Vystar Veterans Memorial Arena and events at Daily's Place. (Section 12.6 of Development Agreement)
 - e. The Surface Parking Areas will be used for Hotel, Valet, and Validated parking with those revenues to be retained by Developer. (Sections 3.2 and 3.4 of Parking Agreement)
26. The City will own the Residential Parking Garages. (Sections 5.3(e) and 12.1 of Development Agreement)
- a. City will pay for all costs of operation, repair and maintenance (Section 12.1 of Development Agreement)
 - b. The Developer will operate the Residential Parking Garages at City's cost. (Section 4.2 of Parking Agreement)
 - c. The Developer will retain all revenue from residents utilizing the Residential Parking Garages. (Section 12.3 of Development Agreement and Section 3.3 of Parking Agreement)
27. Hotel guests and Customers will be eligible for complimentary validated parking at all available parking spaces in the Residential Parking Garages, Surface Parking Areas including Lots M, N, and P, and any adjacent parking lot owned by the City not otherwise in use. (Section 3.5)
- a. If Developer chooses to offer a discounted (versus complimentary) validation program, revenue will be deposited into a marketing fund managed by the Developer and used to promote the Lot J Complex. (Section 12.4 of Development Agreement and Section 3.5 of Parking Agreement)
28. City will cooperate with Developer to secure alternate parking arrangements for customers, hotel guests and employees during Stadium Events. (Section 3.9)
29. The Developer has the right to mortgage or pledge its rights, title and interest in and to the Project. (Section 6.10)
30. The term of the agreement will continue in effect as long as the Development Area is used and occupied by any portion of the Lot J Complex. (Section 2.2)

Live! Lease Related

31. The lease agreement is between the City of Jacksonville (Landlord) and an affiliate of The Cordish Companies (Tenant) for \$100 a year.
32. The initial term of the lease is 35 years. The Tenant has four 10 year renewal options. The Tenant shall have no right to exercise the third and fourth renewal term unless the facility is at least 85% occupied and the facility is in compliance with the facility standard of care. (Section 5)
33. The Tenant has the exclusive right to use, occupy, manage, sublease and license and operate the facility. (Section 6)
34. Tenant shall be responsible for the payment of all costs and expenses incurred in its management, operation and use of the facility, including costs associated with operating events and all utility costs. Landlord shall use reasonable efforts to assist Tenant to secure utilities for the facility at rates comparable to reduced bulk rates applicable to landlord facilities. (Section 8)
35. Tenant shall have the sole and exclusive right to collect, receive and retain all operator revenues. (Section 9)
36. Landlord shall have the right, at its sole cost and expense, to use the facility:
- a. On weekdays (Monday through Friday) prior to 3:00 p.m.
 - b. On the day before and the day of the Florida/Georgia Game

Council Auditor's Office
Bill 2020-648
Highlights from the Development Agreement

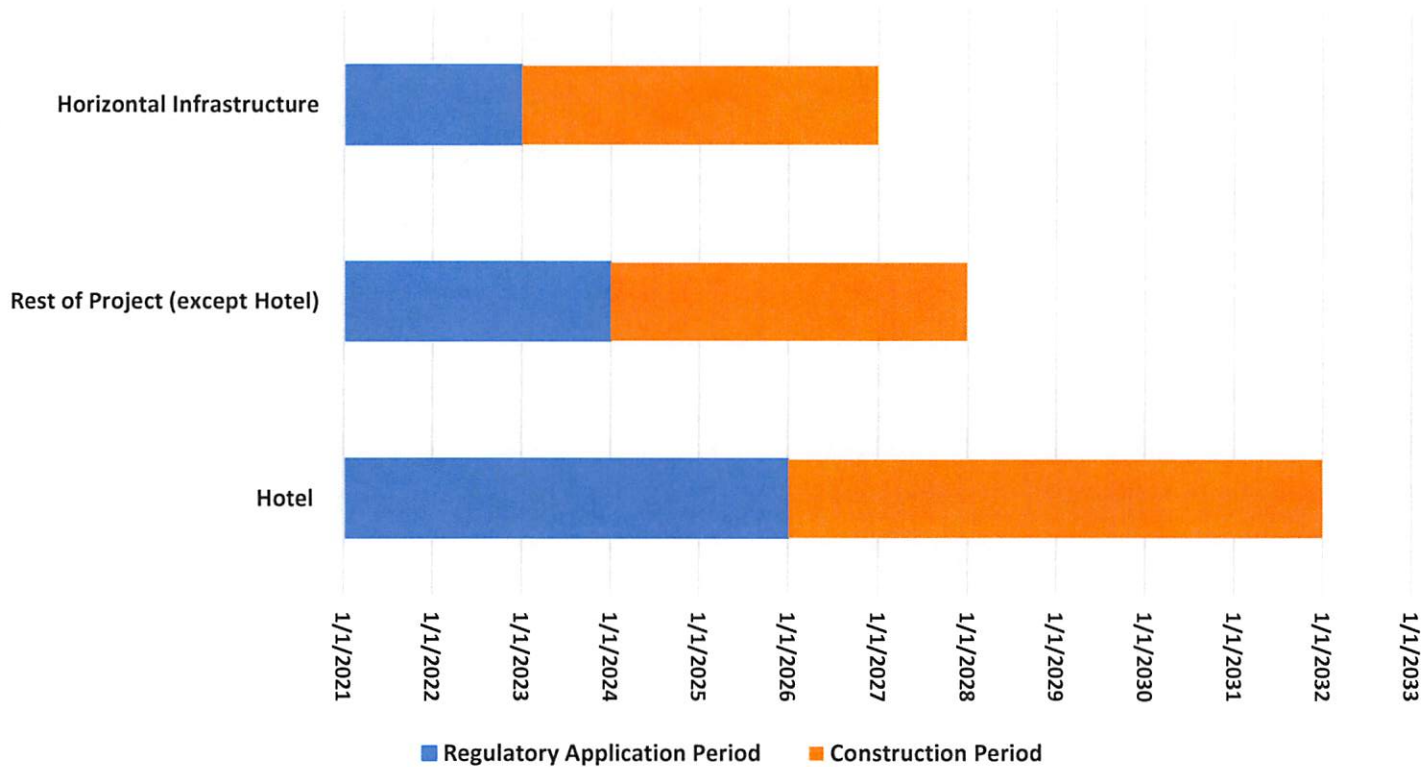
- c. As otherwise requested by Landlord with ninety days' prior written notice to Tenant, subject to Tenant's prior written approval excluding Blackout Dates. (Section 11)
37. Blackout Dates means:
- a. Any holiday for which any government offices are permitted or required to close for business
 - b. Any day on which there is scheduled a JFL pre-season, regular season, or post-season game, the TaxSlayer Bowl, the Jacksonville Jazz Festival, Welcome to Rockville or any other festival concert that uses Metropolitan Park or any stadium parking, Monster Jam, or any concert or other event using the stadium seating bowl
 - c. Any period up to 10 consecutive days identified by Tenant that includes a date set forth in the two bullets above. (Section 11)
38. No admission fees will be charged for Landlord events and Tenant shall be entitled to all revenues from Landlord Event. (Section 11(c))
39. Landlord shall have the right, at its sole cost and expense, to install temporary signage and to retain revenues from the sale of such signage to sponsors. (Section 11(d))
40. During the term of the lease the Tenant shall always, at its own expense, repair and maintain the facility, including undertaking all necessary Capital Repairs. (Section 12(a))
41. For all advance sale paid tickets for events, the Tenant shall be responsible for collecting a ticket surcharge for each ticket sold. The initial amount of the ticket surcharge shall be equal to the ticket surcharge charged for concerts at the VyStar Veterans Memorial Arena. All surcharges collected shall be deposited into a dedicated account held by the Landlord to be applied to pay the costs of Capital Projects in accordance with the approved Capital Plan. If funds are insufficient to pay the costs of Capital Projects, Tenant shall be responsible for all excess costs. (Sections 12(b) and (c))
42. The Tenant shall have the right to mortgage or pledge its interest in this lease. (Section 20(a))

Jaguar Lease Related

Part of the amendment involves a clean-up to Amendment #14 and the remainder is relevant to the Lot J Development.

43. There are revisions to Amendment #14 of the Lease to remove a paragraph regarding construction of up to three video board marquees and changes to a paragraph concerning the repairs, maintenance and improvements of the Covered Flex Field and the Amphitheater which include the following:
- a. Removed references to marquees and replaced with "Digital Sign"
 - b. Clarified that the digital sign shall be maintained and repaired solely by the City using funds from the surcharge fund or the Sports Complex Capital Maintenance Fund.
 - c. Reduced the parking surcharge from \$3.00 to \$1.29
44. Removes Lot J from the Demised Premises, reducing the parking spaces from approximately 6,400 to 5,100 spaces. (Section 3)
45. States that if parking is constructed on the storm water retention pond, such parking shall be deemed to be a part of the Parking Facility for JFL Operative Period Events, JFL Non-Operative Period Events and Designated Events. (Section 4)

Allowable Project Timelines



Notes:

1. Assumes Effective Date of 1/1/21
2. Assumes Regulatory applications are made on the last day for which they can be applied, which could impact the actual time frame shown above and extend these further
3. Chart does not include any time period for Regulatory Approvals
4. Does not include possible one-year extension and would extend further

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

1. City Funding/Market Feasibility Study:

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:

- a. 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.
- b. 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.

2. Ownership of Facilities:

a. 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.

b. 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.

3. Potential Timing of City Funding:

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.

4. Project Completion Guaranty:

There are items within the Completion Guaranty that should be considered:

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

- 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.

Recommendations:

- a. We recommend 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.
- b. We recommend that only the City have the power to terminate the Completion Guaranty, not the Guarantor.

5. Pro Forma for Live! And Parking Operations:

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.

6. Detail for Project Cost Estimates:

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.

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.

7. Reallocation of City Funds:

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.

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

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.

8. Cost Savings:

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.

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:

- a. 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.

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.

- b. 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.

Recommendation:

The City should not have to cover Cost Overruns as part of the calculation to determine the "credit/reduction" it is owed.

- c. 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.

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

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

the City for any shortfall. Rather, the City should decide how any payment for a shortfall should be applied.

9. Manager/Trustee of the Breadbox Loan:

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.

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.

10. Modifications to Master Development Plan:

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.

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.

11. Design Standards:

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.

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.

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

12. Parking Agreement:

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.

- a. 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.

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.

- b. 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.

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.

13. Live! Lease:

- a. 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%.

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.

- b. The City, acting as Landlord, does not have the right to utilize the Live! Facility on Blackout Dates which are defined as:
 - i. Any holiday for which any government offices in Jacksonville, FL are permitted or required to close for business

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

- ii. 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, Monster Jam, or any concert or other even use the Stadium seating bowl; and
 - iii. Any period of up to ten consecutive days identified by Tenant that includes a date set forth in (i) and (ii) above.
- c. 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.

14. Performance Time Periods:

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):

- a. Horizontal Infrastructure – 7 years from the effective date
- b. Project Components other than Hotel – 8 years from the effective date
- c. Hotel Component – 12 years from the effective date

15. Specific Default/Clawback Provisions:

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.

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

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

- a. 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.
- b. 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.

Recommendation:

- a. 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.
- b. 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%.)

17. Disbursement Requests:

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 (2) the amount of disbursement the Developer is seeking in accordance with the amounts set forth in the Budget.

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.

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.

18. Lost Revenue Opportunities/City Costs:

- a. 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.
- b. 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.

Council Auditor's Office
Initial Concerns/Things to Consider on Lot J Proposal

- c. 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.
- d. 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?
- e. 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?
- f. 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?

19. Potential Future Cost:

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.

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.