Council Auditor's Office
Final List of Things to Consider/Concerns for Lot J Proposal (2020-648)
Updated for Committee Meeting of the Whole on 12/3/20

We met with the Administration and Developer team 11/18/20 regarding our "Initial Concerns/Things to Consider" document that was handed out at the Committee of the Whole meeting on 11/5/20. At this meeting, responses to each of our concerns/points to consider were provided to us and we discussed each response to gain an understanding of their position or changes that would be occurring in the revised agreements. Based on our review of Revised Agreements we received on 11/25/20, we have updated our concerns/points as noted below.

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.

Administration/Development Team Response
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.

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:

- **Redevelopment Goal No. 2 – Increase rental and owner-occupied housing downtown, targeting key demographic groups seeking a more urban lifestyle.**
- **Redevelopment Goal No. 6 – Maintain a clean and safe 24-7 Downtown for residents, workers, and visitors.**
- **Redevelopment Goal No. 1 -Reinforce Downtown as the City's unique epicenter for business, history, culture, education and entertainment.**
- **Redevelopment Goal 3 -Simplify the approval process for Downtown development and improve departmental and agency coordination**

Council Auditor's Office Updated Response
Our comments still remain that the City is providing one of, if not the largest, investments in a public/private development with total funding of $233.3 million. The Jaguars have not revised their position on the extension of the lease, which expires in 10 years, which could impact the sustainability and viability of the Project. From a financial perspective, the following points from our review are noteworthy:

- **The City will borrow up to $208.3 million to fund the project. The interest costs for the $208.3 million of borrowed funds are estimated to be $157.5 million, for a total debt service cost of**

$365.8 million. This results in annual debt service of approximately $12.2 million. Taking into account the $25 million in REV/Completion grants, the total actual cost could be as much as $390.8 million.

- **Our office calculated the Return on Investment (ROI) to be $0.44 for every $1.00 provided by the City for the Project. These numbers were obtained utilizing the Johnson Consulting Report provided by the Developer.**

The City has still not conducted an independent market feasibility study specifically related to the Jacksonville downtown market to determine whether this project is sustainable and whether the market can support this project. We reviewed the study provided by the Administration that was issued in 2017. The purpose of the study was to evaluate the feasibility of developing a convention center based on the current market demand and to gain a key understanding of the key factors that are important to decision makers when choosing a destination for their future meetings, conventions and events. It concluded that the City should postpone the construction of a convention center until such time as it is part of a destination plan that will improve the overall attractiveness of Jacksonville as a convention, meetings and major indoor event destination. The study did not include a specific market analysis of Lot J to determine whether the market could support a project such as this one.

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.

Administration/Development Team Response

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.

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.

Council Auditor's Office Updated Response

We are not questioning the development team's expertise, but rather wanted to make City Council aware of the ad valorem revenue that could be generated if the facilities were owned by the Developer. Additionally, while the Developer would be responsible for all cost overruns with respect to the project, there is a reconciliation calculation that will be discussed later which applies all cost overruns on the Live! Venue and City Infrastructure in determining if the City's Contribution to the Hotel and Mixed Use Component is reduced.

In the revised agreements, based on our questions concerning who was responsible for paying operating costs of the residential garages, the City will now split the operating costs with the Developer and will not pay a management fee to the parking operator. Additionally, the City will still cover all maintenance expenses for the garages. The Agreement has been revised to reflect that the City will have access to 200 of the 600 residential garage spaces (minimum number revised in the agreement) and will be able to retain revenue it collects on these spaces. We have still not received a pro forma from the City on estimated annual revenues and expenses to determine the ROI on the garages and still question from a financial standpoint whether the City should own the two garages given that it is likely that the City will have an annual net cost for these garages.

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 a 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.

Administration/Development Team Response

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.

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.

Council Auditor's Office Updated Response

We stand by our concerns noted above regarding the potential for a large amount of City dollars to be invested in the project before the Developer puts in funding. The City needs to ensure that it is fully protected regarding the Completion Guaranty given that this is an uncommon development component. See comments below concerning the Project Completion Guaranty.

4. **Project Completion Guaranty:**

   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.

   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.

Administration/Development Team Response

The Developer has provided the City administration with evidence of the guarantor financial capacity.

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.

Council Auditor's Office Updated Response

We have several discussion points on the Completion Guaranty:

- **Subsequent to the last committee meeting of the whole (held on 11/19/20), on 11/20/20 we were provided a copy of a letter from the Chief Financial Officer (CFO) of one of Mr. Khan's companies since we were not privy to viewing it at our meeting with the Administration and Development Team on 11/18/20. In the letter, the CFO attested to the fact that the Gecko Guarantor, K2TR Family Holdings 2 Corp., reported total assets in excess of $229,000,000 on its 2019 Federal Corporate Income Tax Return. While the Developer has represented that there is no debt in this holding corporation, based on the letter we received we would be unable to verify that the Gecko Guarantor has tangible net worth of at least $229,000,000 as required in the revised agreement. Ideally, audited financial statements or an irrevocable letter of credit would be provided since they would provide a more independent verification of financial capacity. What has been provided to date does not meet the standard required by**

the Completion Guaranty of evidence of tangible net worth. Additionally, the Cordish side of the Development team is not required to provide any evidence that they have the financial capacity to fulfill the Completion Guaranty even though they are jointly liable with the Khan side of the Development team.

- **The Completion Guaranty only requires that evidence of tangible net worth be provided at three different times: on the date of the Guaranty, prior to the earlier to occur of the commencement of construction of the Live! Component and commencement of construction of the Mixed Use Component and prior to the commencement of construction of the Hotel Component. We recommend that financial evidence be provided at more frequent intervals.**
- **OGC has utilized an outside legal firm to review the Completion Guaranty given their expertise in this area. We contacted them to determine what is generally provided by a Guarantor as evidence of financial capacity to fulfill a guaranty. The attorney we spoke with indicated that he generally sees unaudited financial statements completed in accordance with Generally Accepted Accounting Principles (GAAP) provided as evidence.**
- **Although the Development Team indicated that Section 1.12 of the Development Agreement would be revised as we noted above in our second concern, it still states, "In the event a Completion Guaranty is terminated by any Guarantor for any reason other than the Substantial Completion of any Component of the Project or an Event of Default by the City, this 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 Development Agreement. This should be revised.**
- **Based on the Material Modifications that are permitted to be made to the Project, it is still not clear what the Guarantor is guaranteeing will be completed. For example, the Development Team indicated in their original responses to us that an example of a Material Modification could be the conversion of a hotel to an office tower. Language should be added to help clarify exactly what the Developer is guaranteeing will be constructed, including whether the minimums in the project scope are a true requirement of the agreement.**

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.

Administration/Development Team Response

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 stormwater 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.

Council Auditor's Office Updated Response
No pro formas for the Live! or Parking Garages/Surface Lots have been provided to date.

Based on the fact that the Developer is requesting the City contribute $50 million toward the construction of the Live! Venue, it would seem appropriate for the City to know how soon the Developer projects that it will recoup its costs put into the project. We do not know how the City investment of $50 million was determined, other than it has been compared to the Amphitheater, where the City participated with the Jaguars on a $1 for $1 basis. This is however, a completely different project with another company and it is structured as an economic development agreement rather than an amendment to the Jaguar lease.

With regards to the Parking Agreement, the City should have an idea of what net costs it is anticipated to be taking on each year. While the revised agreements provide some additional revenue opportunities to the City and less costs than in the original agreement, it is still likely that the City will have net costs related to the parking garages and surface lots, which are dependent on how the operation of the garages and surface lots are structured (i.e. staff versus automated equipment for example) and how active these parking areas become compared to now.

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.

Administration/Development Team Response
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 stormwater detention pond to be drained. They are knowledgeable about the subsurface conditions in Lot J.

Council Auditor's Office Updated Response
The Developer has provided the infrastructure estimates to our office (exclusive of environmental remediation costs) and these costs total approximately $60 million. The Developer has also indicated they are having conversations with Public Works and JEA concerning the Infrastructure estimates. Any comments on the estimates would need to come from Public Works and JEA. Since the City is being asked to borrow $208.3 million as part of this Project, detailed estimates should be available for all components of the Project to ensure that this amount of borrowing authorization is truly warranted.

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.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
Based on the revised agreements, it appears that our concern has been addressed as indicated above in the Administration/Development Team response.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
The Developer has partially addressed our concern by removing the cost of the Residential Parking Garages (which are paid for with City funding) in determining the Minimum Developer Investment. However, we have raised questions on the language in the revised agreements related to the inclusion

of the 7.5% Developer Expenses and the costs of tenant improvements incurred by third party tenants or subtenants. The "Minimum Developer Investment" of $229 million stated in the agreement should only include hard costs for the project – i.e. $111 million for the Mixed-Used and $118 million for the Hotel Component as reflected in the Sources and Uses. We recommend that this language be adjusted to reflect this. Otherwise, the Minimum Developer Investment is understated and the Developer will be given an opportunity to meet its target investment amount by including the Developer Expenses rather than through actual construction costs.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
This calculation of whether the City is owed a reduction/credit in the amount of City funding is only triggered when the Direct Costs for the Hotel and Mixed Use Component fall below $229 million. This provision should protect the City in the event that the Developer scales back the project or can complete the project for less. By allocating all Cost Overruns for the Live! and Infrastructure in the calculation to determine whether the City will receive a credit/reduction, the City will lose the benefit of a full reduction/credit, which would cause the City's overall percentage invested in the project to increase compared to what it would have been. Our recommendation remains the same. Cost Overruns should not be applied in the calculation to determine whether a "credit/reduction" it is owed to the City. The City could lose out in the end on millions of dollars in reduced City funding that it will not realize in certain scenarios where there are lower costs for the Residential Mixed Units and Hotel and there are either Cost Overruns on the Live! Component or Infrastructure or the REV Grant is eliminated. Additionally, to apply Cost Overruns conflicts with the message conveyed to the City Council, which is that the City is not responsible for any Cost Overruns. While the City would not "pay" for these Cost Overruns, Cost Overruns could result in the City contributing more to the Project than it would otherwise.

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

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
The above change was not made in the revised agreements. Therefore, our concern still remains. The language should be clarified that the Developer does not have an option to pay the shortfall to the City and that additionally, the City should have the option of determining how to apply this credit rather than the Developer.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
The Developer has indicated that they selected the Manager of the Trust because he is the person who created the Breadbox Loan concept. The Administration has also indicated that he will receive a licensing fee for being selected as the Manager of the Trust. This licensing fee along with all other fees, will be paid from the $13.1 million initial balance and future years' balances that is intended to mature to $65.5 million at the end of 50 years. Although the Administration has negotiated a fee structure, the fees are included in a document to which the City is not a party. Therefore, these fees could be changed by the other parties without the City's consent.

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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

While the change made to the definition of "Budget" is appropriate, this does not address the issue concerning Material Modifications. Our recommendation concerns whether Material Modifications, such as replacing a hotel with an office tower, should also require the approval of the City Council. The Revised Agreement does not address this issue and continues to provide the Developer the flexibility to make significant changes to the project that could result in a different project than what the City Council is currently approving. The City Council could require that new uses or significant reductions in scope come back to City Council for approval.

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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

Because the Developer does not agree that any enhanced language is needed as it relates to the design and construction criteria for buildings located in a flood prone area, the Revised Agreements do not include any language that would provide for the buildings to be designed and constructed beyond the current building code standards.

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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

As indicated previously, given that the City will be covering all maintenance/capital repairs for the residential garages and surface lot, as well as the full cost of operations for the surface lot and half the cost of operations of the two residential garages, it would appear that these costs could outweigh the projected revenue. Under the revised agreements, the City is slated to receive daily transient parking revenue for the surface lot and the 200 spaces allocated to it in the residential garages (which could likely be minimal based on the planned complimentary program for customers) and Jaguar Game Day revenue. While the revisions are an improvement over the original agreement, financially it is still

questionable why the City would agree to retain ownership of the Residential Garages, thereby foregoing ad valorem revenue, and also potentially incur a net cost in parking operations each year.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
Section 6.22 of the revised parking agreement states that, "Neither party may cancel, rescind, or otherwise terminate its obligations under this agreement because of the other party's breach." So as an example, if the Developer failed to remit parking revenue owed to the City, it does not appear that the City would have the right to terminate the agreement. Language should be added to protect both parties in the event of breach of contract.

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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
There are no specific performance requirements for the Tenant during the course of the initial lease term and the agreement can only be terminated in the event of default (which includes items such as bankruptcy of the tenant, transfer of the lease that is not permitted, or if the facilities are permanently abandoned). While we understand that the Developer has a financial incentive to have

the building occupied at maximum capacity, the City is not able to take action if for example after 15 years, the building is at 25% occupancy. We recommend that performance requirements, such as certain sales targets or occupancy requirements, be included that would allow the City to terminate the lease if it is not in the City's best interest to continue from a financial perspective.

Additionally, there is no financial penalty such as a liquidated damages provision if the Developer (as Tenant) were to abandon the premises and walk away from the lease. If the tenant defaults out of the lease due to abandonment of the premises, the City can sue for damages and/or specific performance, with the recovery for damages (primarily for maintenance/repair and insurance costs) limited if at all by the assets of the then current Tenant.

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
    ii. Any day on which there is a scheduled Jaguars game, the TaxSlayer Bowl, the Jazz Festival, any festival concert that uses Metropolitan Park or any Stadium Parking, Monster Jam, or any concert or other event using 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.

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
Under the revised agreements, the City is now entitled to half of the Net Ticket Revenues for Florida-Georgia Facility Events which would include revenues generated by any and all ticket sales and any other admission charges (including without limitation, cover charges, but excluding admission or cover charges imposed by a Subtenant for access to its subleased premises) less all costs and expenses incurred by Tenant that are solely attributable to the use of the Facility Premises for Florida-Georgia Facility Events. This net revenue sharing is now in lieu of the City having the ability to utilize the facility on the day of the Florida-Georgia game. This however, does not negate the fact that there are still many blackout dates whereby the City will not have access to utilize the Live! Facility.

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.

Administration/Development Team Response
This is necessary for the Developer to obtain construction financing with respect to the facility and is a customary provision in leases.

Council Auditor's Office Updated Response

The language remains the same that if the Tenant defaults and the Mortgagee steps in, the City will have no input as to who would 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

Administration/Development Team Response

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.

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.

Council Auditor's Office Updated Response

Although it is the goal of the Developer as indicated above to complete remediation within 15 months of the effective date and to complete the work needed to obtain a Site Rehabilitation Completion Order within 33 months from the effective date, these timeframes are not requirements in the Revised Agreements. Additionally, there is no timeframe for obtaining permits and approvals- only that the Developer apply for permits and approvals within 18 months of obtaining the Site Rehabilitation Completion Order. As a result, the Project could still take longer than seven years as indicated above in the Developer's response if environmental remediation takes longer than anticipated and if permits and approvals take longer than anticipated, with no penalties to the Developer.

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.

Administration/Development Team Response

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

Council Auditor's Office Updated Response

The Revised Agreements still allow for the Developer to transfer the development rights to the Hotel Component to an unaffiliated third-party if a hotel developer requires ownership of the Hotel Component as a condition to construct the hotel. This would seem to allow the Developer to still potentially profit from the transfer of such development rights to an unaffiliated third-party. The City should share in any profits realized by the Developer given that the land is being conveyed at no cost to the Developer.

On the Mixed Use Component, the Developer has chosen an alternative method of agreeing to not sell to an unaffiliated third-party within five years of substantial completion rather than allow any dollars to be clawed back by the City.

The other clawback provisions noted above in a-c were not addressed in the Revised Agreements. The City Council could still consider these other items as potential clawbacks.

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%.)

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

As discussed in number 8 above, the minimum developer investment as structured in the revised agreement requires the Developer to provide the City with certification that the Direct Costs (inclusive of the 7.5% Developer Expense) of the Hotel and the Mixed-Use Components equal or exceed $229,000,000. The statement that the City is protected under this provision is not completely accurate in that costs not attributable to the direct project construction (i.e. Developer Expenses) count toward the "Minimum Developer Investment".

While the REV Grant will be based on the actual ad valorem taxes generated from the Mixed-Use Component, this does not change the fact that the $65.5 million Breadbox Loan can be utilized to build a portion of the Mixed-Use Component and that the City is giving a REV grant on top of the City Loan Funds being put toward the project. While the Administration has indicated this is the policy decision they made, the base (used in the REV Grant calculation) could be increased by the amount of City Loan Funds provided on the Mixed Use Component.

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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

The Developer does not agree with providing line-item detail and back-up for the components of the project that will be owned by the Developer, even though the City will be providing funding totaling $52.4 million. The same level of support should be provided on the $52.4 million as the rest of the public dollars. We recommend that language be added to address the Disbursement of City Funds for Non-Public Costs (i.e. for Hotel and Mixed Use).

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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

The revised agreements entitle the City to 50% of net ticket revenues from the FL/GA weekend after accounting for all costs incurred as a result of the FL/GA Facility Event. This change appears to have resulted in the City not being able to utilize the Live! facility on the day of the FL/GA game which is now included as a blackout date.

    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.

Administration/Development Team Response

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.

Council Auditor's Office Updated Response

Again as stated earlier, the Jaguar games will generate additional revenue the City has not previously received. Transient Daily Parking is difficult to project given that the Development Agreement contemplates a complimentary parking program for customers. Additionally, the Developer will pay no property taxes, while the City will still pay all maintenance/capital expenses and half of the operational costs of the garages and one hundred percent of the operational costs of the surface lots.

    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.

Administration/Development Team Response
The Developer has agreed to not sell the development for a minimum of 5 years.

Council Auditor's Office Updated Response
Again, as previously mentioned, the Revised Agreements still allow for the Developer to sell the Hotel Component to an unaffiliated third-party not only within 5 years of substantial completion but also to sell the land prior to construction to an unaffiliated third-party. This could allow the Developer to receive a potential profit given that the land is being conveyed at no cost to the Developer. On the Mixed-Use Component, the Developer has chosen an alternative method of agreeing to not sell to an unaffiliated third-party within five years of substantial completion rather than allow any dollars to be clawed back by the City.

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?

Administration/Development Team Response
Yes, these are policy considerations for City Council.

Council Auditor's Office Updated Response
Agreed- this is a policy decision that City Council could consider.

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?

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

Council Auditor's Office Updated Response
Agreed- this is a policy decision that City Council could consider.

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?

Administration/Development Team Response
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.

Council Auditor's Office Updated Response
Agreed- this is a policy decision that City Council could consider.

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.

Administration/Development Team Response
With any future development rights on the stormwater pond to be negotiated in the future, the Developer agrees this provision can be removed.

Council Auditor's Office Updated Response
The Revised Agreements did strike this language. However, it is unclear when this issue will come back before the City Council and whether the City will bear any costs related to the relocation of the antennas in the future.