Council Auditor's Office Recommendations that Remain Open (Developers Disagree with Recommendations):

Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 1.12 Developer Obligations	City obligated to make disbursements that are conditioned upon the timely and faithful performance by the Guarantors of their respective obligations under each Completion Guaranty, but if there is a default the City could withhold any disbursements.	The language was struck from this section **Recommendation:** Include language that was struck regarding City disbursements.	Developer/Administration Amendment	Developer disagrees.
Section 8.9(c) Cost Savings	Included residential parking garages as part of the Minimum Developer Investment	1. Excludes residential parking garages 2. Includes costs of tenant improvements incurred by third party tenants or subtenants 3. The discount rate of the Hotel Completion Grant is increased from 3.5% to 6.75% 4. In the event there is a Shortfall, and the REV grant is terminated then the full $12.5 million will still be applied as a credit for the	1. Auditor Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 4. Developer/Administration Amendment 5. Developer/Administration Amendment 6. Developer/Administration Amendment **Recommendations:** 1. The Minimum Developer Investment should not	1. Developer disagrees.

Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
		Developer against the shortfall. 5. At the election of the Developer, the Shortfall can be deposited into the Facility Capital Fund 6. Clarifies that any reconciliation is subject to resolution of contractor litigation	include the 7.5% Developer expense or the amount should be increased from $229 million to $257.1 million as reflected on the Sources and Uses schedule. 2. Costs of tenant improvements should not be included as part of the Minimum Developer Investment. 3. The Developer should not determine how the Shortfall is paid or deposited to the City. 4. Remove cost overruns from reconciliation calculation. Developer/Administration Amendment	2. Developer disagrees. 3. Developer disagrees. 4. Developer disagrees.
Section 14.6 Mixed-Use Component Minimum Investment	Minimum investment of $95M is based on private funding	Minimum investment of $95M based on Direct Costs	**Recommendation:** Revise language to base minimum investment on private funding.	Developer disagrees.

Council Auditor's Office

Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 16.9 Limitation on Conveyance of Components	No limit on Developer right to transfer after completion	1. Developer agrees not to transfer Hotel or Mixed-Use Components for 5 years after substantial completion 2. Allows the Developer to transfer development rights to the Hotel Component to a hotel developer if a hotel developer requires ownership of the Hotel Component. **Recommendation:** The City should share in any profits realized by the Developer from the transfer of development rights to the Hotel.	Auditor Amendment *[signature]*	Developer disagrees.

Guaranty – None

Live! Lease

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 5 Lease Term	1. The initial term was 35 years with four 10-year renewal options 2. Tenant can exercise renewal options 180 days prior to the termination of the Lease Term 3. Tenant could not exercise the third and fourth renewal option unless occupancy was at 85% and the facility is in compliance with the Facility Standard of Care	1. The initial term is 50 years with two 10-year renewal options 2. Tenant can exercise renewal options 180 days but no more than 5 years prior to the expiration of the then-current lease term 3. Provides that occupancy must be 75% to renew. Provides that the Renewal Term shall be on the same terms and conditions as set forth in the Lease. **Recommendation:** We recommend that performance requirements, such as certain sales targets or occupancy requirements, be included throughout the term of the lease.	1. Developer/Administration Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment	Developer disagrees.

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Parking Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 6.22 Termination	Termination of the parking agreement is not a remedy available to the City if Developer breaches parking agreement	Clarifies neither party may cancel, rescind or otherwise terminate its obligations under the parking agreement because of the other party's breach	Developer/Administration Amendment	
		Recommendation: Language should be added to protect both parties in the event of breach of contract.	Developer disagrees.

Air Rights Easement - None

Perpetual Access and Use Easement – None

Sources and Uses

Sources		Uses	
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

Note:
The City could contribute up to $15.1 million for cost overruns associated with environmental and subsurface issues as part of Infrastructure Costs. Developer Expense would increase by 7.5% of the portion of the $15.1 million, if any, that is spent. Consistent with the agreement, the City would not be responsible for paying this Developer Expense.