

**OFFICE OF THE COUNCIL AUDITOR**  
Suite 200, St. James Building



April 14, 2005

Honorable Members of the Jacksonville City Council  
117 West Duval Street, Suite 425  
Jacksonville, Florida 32202

Dear Honorable Council Members:

**INTRODUCTION**

Pursuant to Section 5.10 of the Charter of the City of Jacksonville and Chapter 102 of the Jacksonville Municipal Code, we have reviewed the “Shipyards Project” (Project) as approved by Ordinance 2001-450-E and a Redevelopment Agreement between the City of Jacksonville, Jacksonville Economic Development Commission (JEDC), and TriLegacy Group, LLC (“Developer”) and present this audit letter thereon.

**REVIEW PROCESS**

In early 2004 the JEDC requested the assistance of the General Counsel’s Office to obtain an accounting from TriLegacy Group, LLC of the use of City funds. In turn the General Counsel requested the assistance of the Council Auditor’s Office.

As a basis for this letter we have performed the following procedures in order to support our observations and recommendations:

1. Reviewed the legislation associated with the Shipyards Project (Ordinances 2001-450-E and 2001-451-E) along with the City Council legislative file and the audio tapes of the June 4, 2001 Finance Committee meeting.
2. Reviewed the Redevelopment Agreement dated June 28, 2001 and the related documents associated with the City payments to TriLegacy.
3. Reviewed the Escrow and Settlement Agreement dated August 17, 2004 and the attached Exhibit A (letter from LandMar dated August 2, 2004 describing the process for LandMar to assume TriLegacy Group, LLC’s position in the Redevelopment Agreement).
4. Reviewed the “Draft Complaint and Demand for Jury Trial” dated August 11, 2004 – draft of a civil action by the City of Jacksonville and the Jacksonville Economic Development Commission against Carlton H. Spence, Jeffrey C. Spence, W. Hamilton Traylor, TriLegacy Group, LLC etc.
5. Reviewed certain documentation regarding the use of City funds for the Public Improvement portion of the Project as provided by TriLegacy Group, LLC. The documentation included invoices and bank statements from the bank account into

which the City funds were deposited. Most of the City funds were transferred to another bank account from which it appears that most of the actual payments were made to vendors for work performed. We were denied access to that bank account. From our review determinations were made regarding whether or not certain expenses were allowable expenditures per the Redevelopment Agreement.

6. Analyzed the “Shipyards Reconciliation” dated March 31, 2004 provided by TriLegacy as their accounting for all funds (City and private) spent on the entire Shipyards Project.
7. Reviewed all available documentation provided by the City’s General Counsel’s office, Public Works Department, the JEDC, and the Council Auditor’s Office regarding the Shipyards legislation and project.
8. Interviewed representatives from the JEDC, Public Works Department, the General Counsel’s Office, the City’s bond counsel and to a limited extent TriLegacy and the Steller Group.

### **BACKGROUND INFORMATION**

On April 25, 2001, the Downtown Development Authority (DDA) unanimously recommended to the Jacksonville Economic Development Commission (JEDC) that they approve a Redevelopment Agreement (Agreement) with TriLegacy Group, LLC for the “Shipyards Project”. The Project was to include 16.8 acres of public riverfront park and 11.6 acres of open water, 150 boat slips, 662 residential units, 100,000 square feet of commercial space, 1,000,000 square feet of office space, 3,915 parking spaces and a 350-room hotel. On May 3, 2001, the JEDC unanimously approved recommending to the City Council that the Agreement be approved. On June 12, 2001, the City Council unanimously enacted Ordinance 2001-450-E that approved the Redevelopment Agreement between the City of Jacksonville, JEDC, and TriLegacy Group, LLC. The Agreement was signed by the parties involved on June 28, 2001. This Agreement provided the TriLegacy Group with a \$40,000,000 economic development grant for the development of the Public Improvements and the Infrastructure Improvements set forth in the plans to redevelop 44.7 acres (approximately 16.5 acres of which are submerged lands) of property located on the former Jacksonville Shipyards site. The redevelopment plans included an estimated \$782,000,000 private capital investment that would take approximately ten years to complete. The City’s funding for the \$40,000,000 Agreement was provided by a tax-exempt bond issue authorized by Ordinance 2001-451-E. This ordinance authorized the issuance of an amount not to exceed \$49,000,000 principal amount of the City’s Excise Taxes Revenue Bonds, Series 2001B. Bonds in the actual amount of \$46,735,000 were issued on April 1, 2002.

The terms of the repayment of the debt amount are outlined in Exhibit F of the Redevelopment Agreement. The initial principal amount will equal the amount of the proceeds of the tax exempt bonds used to fund the Initial Project Grant disbursed to the Developer less the amount of any investment income used to fund the Initial Project Grant as provided in Section 4.13 of the Agreement. The principal amount shall be increased by the amount of capitalized interest as provided in the Payment Schedule. The Payment Schedule states that there will be no payments due during the first three years.

Accrued interest for the first three years will be capitalized and added to the principal amount. The principal amount (including the capitalized interest) shall be amortized over the remaining twenty-seven (27) years, with annual payments of principal and interest. After the first three years, TriLegacy was to pay the City the shortfall between the annual debt service payments (principal and interest) on the bonds and the incremental increase in ad valorem taxes. The debt service due from TriLegacy was to be reduced by the County operating ad valorem taxes produced from the project.

The City anticipated that annual project revenues would be levied and collected over the 2002 through 2031 tax years in amounts that could be sufficient to satisfy the obligation for repayment of the Debt Amount. On or prior to December 31, 2004, the Developer was to provide to the JEDC an irrevocable letter of credit, assignment of a certificate of deposit, or other cash-equivalent collateral as security for the Developer's obligation to pay any Debt Amount shortfall for the following year.

In addition to the Initial Project Grant of \$40 million, the City was to make an economic development grant (Deferred Project Grant) to the Developer in an amount not to exceed \$35 million on a net present value basis to the extent that funding is available after payment of debt service and reimbursement of Developer debt service shortfalls.

### **OVERALL CONCLUSIONS**

Certain possible deceptive actions by the Developer that led to the failure of the Shipyards project include the following:

- Submittal of a document from the CEO of TriLegacy, dated April 16, 2002 showing that the Fruehauf Mortgage was paid outside of closing (\$6.2 million), when in fact City funds received by TriLegacy on April 17, 2002 were used in part to pay off the mortgage. The City was to have had a first lien on the property before the City distributed the first \$17 million to TriLegacy.
- Submittal to the City of misleading "executed construction contracts" (a pre-requisite for payment of the second and third installments of City funds) that failed to obligate a contractor to the actual construction of the project (\$34 million City payments based on a contract that recited a \$32 million construction cost on the cover but in fact was only a \$250,000 construction manager contract). It should be noted that these contracts were never submitted to the General Counsel's Office for their review.
- Submittal to the City of misleading and inadequate Performance Bonds (a pre-requisite for payment of City funds) based on those construction contracts and the resulting failure of the bonds to protect the City's interest in the Project.
- Use of City funds for non-public improvements that was a violation of the legal use of bond funds and specifically disallowed per Section 4.3 of the Redevelopment Agreement. According to the City's bond counsel, the Redevelopment Agreement did not allow the use of these tax exempt funds for private use on the Shipyards Project or

outside the Shipyards Project, even if the funds were subsequently put into public improvements by the end of the project. All public money was to be spent in accordance with Exhibit C of the Agreement. Examples include payment of a mortgage (\$6.2 million), payments to Carlton Spence personally (at least \$7.2 million), to Mr. Spence's other companies not related to the Shipyards Project (at least \$1.9 million), and payment of expenses related to the private development part of the Project. Of the City's \$36.5 million, at the most only \$14 million is substantiated as allowable costs for Public Improvements which includes \$6.8 million for "soft costs". This resulted in \$22.5 million of misapplied/disallowed City funds.

- Failure to make the private capital investment in Phase I of the Project (estimated at \$121.7 million) and the resulting failure to generate the necessary ad valorem taxes from the private development to pay the debt service on the City-issued bonds.

Some of the results of these actions include the following:

- Sufficient funding is not available from the Developer to complete the Public Improvements.
- According to the City's bond counsel, the tax exempt status of the City-issued bonds may be in jeopardy. The City will have to take actions to minimize losses related to the tax-exempt status of the bond issue and restore the funds misused by the Developer.

Even though the City appears to be a victim of the alleged deceptive actions by the Developer and the Developer's failure to perform the requirements of the Redevelopment Agreement, the City's exposure to loss may have been limited had more extensive and persistent monitoring of the Project been performed. If the JEDC had been more diligent in reviewing the documents submitted by the Developer or had held the Developer accountable to the Performance Schedule outlined in the Redevelopment Agreement, the JEDC may have raised contractual issues with the General Counsel's Office that may have delayed at least the second \$17 million payment.

Even though the Redevelopment Agreement's funding schedule, was not the traditional construction draw schedule, the pre-requisites for payments could have lessened the chances of the misuse of City funds had more extensive and persistent contract administration and monitoring been performed.

The following are the details concerning our review of the Shipyards Project.

## **PROJECT REVIEW**

### **Legislative Process**

The Council Auditor's staff member assigned to attend the JEDC meetings was aware of the Shipyards project when it was approved by the JEDC on May 3, 2001. Upon the introduction of Ordinance 2001-450 including the Redevelopment Agreement to the City

Council, the Council Auditor's Office began its review of the legislation and presented numerous questions to the JEDC staff regarding the Agreement. In some instances the questions raised were satisfactorily answered whereas in other instances, the questions raised remained as concerns regarding the proposed legislation.

At the Finance Committee meeting on June 4, 2001, a presentation was made by Paul Krutko, Director of the DDA for the JEDC. In addition to the project description, the following points were made:

- "\$782 million private investment – the largest private sector development in the history of downtown Jacksonville."
- "38% of the site will be public park and an additional 26% will be open water."
- "The entire waterfront will be accessible to the public including the residential piers."
- "The private development will occur in three phases; the initial phase will include converting the Sheds into residential units, the construction of residential units on the two western piers and the marina component – estimated private investment approximately \$127 million."
- "The City's investment is a \$40 million bond to pay for the park development and \$35 million in tax increment grants over 20 years – both paid for by the increased ad valorem property taxes generated by the development. No city funds outside the incremental increase in taxes generated from the project will be required."
- "JEDC estimates that the project will generate approximately \$502 million in new ad valorem taxes over thirty years - \$213 million to the public school system and \$260 million to the City and County".
- "The repayment of the bond is guaranteed by the developer, secured by a first mortgage on the private development portion of the site and other cash equivalent collateral equal to the City's outstanding project bond debt."

Some of the concerns of the Council Auditor's Office as a result of our review are delineated below.

### **Observations**

- *Lack of development experience of the Developer and affiliated companies.*
- *Lack of financial information regarding the experience of the developer or the financial capability to perform.* – When requested by the Council Auditor's Office to provide financial information regarding the developer's ability to complete the project, the financial information was declared to be proprietary by the Developer. Neither the Council Auditor's Office nor the JEDC was able to obtain this information. Attempts by the JEDC to obtain information from Dunn & Bradstreet about TriLegacy, LLC were unsuccessful. The Developer's affiliate, ICS Logistics, Inc. was to provide the City with a letter from their financial institution indicating they have credit available to fund the repayment of the initial \$2.5 million if the Redevelopment Agreement was terminated. The Council Auditor's Office was sent letters from three banks each stating that they had established credit lines in aggregate amounts of \$8 million with one or more entities owned by members of the Spence family.

- *Lack of a feasibility study on marketability of the project.* – No pro forma statements analyzing the feasibility of the proposed project were available for a review by the Council Auditor’s Office or the JEDC. The Developer’s response to a request for this information was that this information was also proprietary and did not want to make it a public record by giving it to the City.
- *Pre-Development Conditions* – The Council was asked to approve a Redevelopment Agreement prior to the required completion or waiver of nine “Pre-Development Conditions”. Most of these “conditions” dealt with relocation of easements, rezoning, and other matters related to the property and construction on the property; however, one matter was a Riverfront Public Improvements Operation and Maintenance Plan (O&M Plan) that required an agreement between the Developer and the City. JEDC responded that if the Pre-Development Conditions were not met and the Developer decided to terminate the Redevelopment Agreement, then the Developer would be required to provide guarantees for the repayment of the initial \$2.5 million of City funds. JEDC also agreed with the deferral or “waiver” of the O&M Plan as a Pre-Development Condition since it would require further Council approval and the Developer did not want the project to be delayed.
- *Additional Unknown Costs to the City* – Several questions were raised by the Council Auditor’s Office that had additional cost potential to the City. These included, in addition to the O&M Plan, cost related to a Traffic Improvement Plan, lengthening of Bay Street Bridge, and the potential building of parking garages.
- *Numerous other questions* - Numerous other questions were asked by the Council Auditor’s Office and responses were provided to the Council Auditor’s Office by the JEDC; however, not all of the Council Auditor’s concerns were elevated to the City Council at various committee meetings.

### **Redevelopment Agreement**

The Redevelopment Agreement was executed by the City and TriLegacy on June 28, 2001. To date there have been no amendments to the Agreement. Our observations regarding the Agreement include the following.

#### **Observations**

- *Lack of a standard form Redevelopment Agreement* – The Developer’s attorney generally originates and controls the redevelopment agreement. There is a lack of consistency as to content and organization causing the review of the document to be tedious and inefficient. This also contributes to the failure to include certain standard provisions that should be included in all agreements such as reporting, monitoring and audit provisions.
- *Length or term of the Redevelopment Agreement (RDA) and difficulty to apply some of the clauses as to the City or Developer’s obligations* - While clauses such as

Section 4.3 Use of Initial Project Grant are very clear, other clauses are difficult to apply. For example, Section 4.5 Application of Annual Project Revenues attempts to define how the Annual Debt Repayment Amount is calculated. The City/JEDC would have been required to develop a Debt Service loan schedule and amortization schedule to repay TriLegacy the debt service shortfalls with interest. The City/JEDC would also have to develop a Deferred Project Grant payment schedule that could extend out to 2032. This RDA is difficult to administer and the City has no controls or resources in place, either internally or externally, to administer these complex, long-term agreements.

- *Project Guarantees* - The Redevelopment Agreement was made with a Limited Liability Company (LLC) with no other guarantees or personal guarantees from the developers to the City in the event of a default. The City did have a first mortgage on the property in the event of default. The Agreement also required that public funds be used for public improvements.
- *No clear audit provisions* - During our review of the Redevelopment Agreement, we noted that the agreement did not give the Council Auditor or his designees the authority to audit TriLegacy's records related to the Agreement. The lack of a clear and separate audit provision did not afford the Council Auditor's office the opportunity to review all of the project records and payments and allowed TriLegacy to deny the Council Auditor's Office access to accounts and records that appeared to be relevant to the project.
- *Payment Schedule not contingent on construction progress (No draw schedule)*- A majority of the project grant payments were disbursed prior to the construction of the Public Improvements. Payments were not tied to any level of construction progress via a draw schedule as is typical of funding provided for a construction project.
- *No required project reporting by Developer* – The Redevelopment Agreement required no periodic project reporting from the Developer. Although the RDA (Section 5.6) allowed the Executive Director of JEDC and the Director of Public Works to monitor the project, the Developer was not required to submit periodic reports on the progress of the construction of the Public Improvements.
- *No specific limit as to the time period that costs could be incurred and charged to the City* – City funds were used to pay for expenses that were incurred prior to the approval of the Redevelopment Agreement. The Developer's original cost submittal included approximately \$1,032,000 of costs incurred prior to the date of the Redevelopment Agreement of which the City only allowed approximately \$84,000 after a review by the General Counsel's Office and the Council Auditor's Office.

## **Redevelopment Agreement Project Scope**

The Project Summary included as Exhibit D of the Redevelopment Agreement listed the following for Phase I of the Shipyards Project (August 2001 – January 2005):

- the conversion of two existing shed structures into approximately 72 for-sale condominium lofts (Phase 1A Residential Improvements),
- construction of approximately 120 for-sale condo flats and townhouses on the two west piers (the Phase 1B Residential Improvements),
- construction of approximately 150 boat slips and associated parking, and
- construction of approximately 16.8-acre river front park (or 38% of the project site), public amenities and an approximately 8,000-foot extension to the Northbank Riverwalk (the Riverfront Public Improvements). The approved “Shipyards Public Spaces” plans also include the fill-in of 5.14 acres for future development.

### **Observations**

Changes were made to the scope of the Project without any direct City approval or amendment to the Redevelopment Agreement.

- Due to cost and structural issues related to the sheds, the Developer changed the scope from 72 lofts to a 100-unit residential condominium complex. Also, the condo flats and townhouses could not be built on the two west piers because, according to the Developer, filling in the approximate 5.14 acres would cost much more than the \$4 million that had been allocated in the City’s \$40 million allocation. We were unable to find any evidence where the Developer and the JEDC agreed to any amendments to the scope of the project. No amendments have ever been brought to the City Council for their approval. The changes in the public improvement portion of the project should have resulted in an amendment to the approved funding and cost estimates; however, no amendments have been made.
- According to the approved “Shipyards Public Spaces” site plan, there are only 6.18 acres of “Public Open Space/Parks/Easement/Riverwalk” and 7.36 acres of City right of way instead of the 16.8 acres of river front park indicated in the Redevelopment Agreement and orally described to the City Council by the JEDC representative.

### **Project Monitoring and Reporting**

JEDC and Public Works were given the authority to monitor compliance by the Developer in Section 5.6 of the Redevelopment agreement which states, “*During all periods of design and construction, the Executive Director of the Agency (JEDC) and the City’s Director of Public Works shall have the authority (at no cost to the Developer) to monitor compliance by the Developer with the provisions of this Agreement, the Project Documents and the Concept Plans.*” In addition Section 3.12 and Exhibit E of the Redevelopment Agreement provide for a Performance Schedule with an Exhibit of specific dates and project completion dates. Also, Section 14 of Ordinance 2001-450-E required the JEDC to report to the Finance Committee of the City Council as to the status

of the Redevelopment Agreement at six-month intervals until the expiration or termination of the Agreement.

### **Observations**

- JEDC and the Public Works Department were given the authority to monitor compliance to the Redevelopment Agreement but clear monitoring milestones were not included in the Redevelopment Agreement. It also appears that monitoring plans were not developed by the JEDC or the Public Works Department. In our opinion sufficient monitoring was not performed that may have prevented City payments from being made when the developer failed to meet certain construction timelines for the private portions of the Project.
- Under the terms of the Redevelopment Agreement, TriLegacy was not required to submit any type of reports on the construction progress of the private or public projects after funds were received from the City.
- The JEDC did not make the required reports to the City Council Finance Committee as to the status of the project every six months as required by Ordinance 2001-450-E.
- The Developer was not held accountable to the Performance Schedule that was part of the Redevelopment Agreement. The Agreement includes a Performance Schedule (Exhibit E of the Redevelopment Agreement) that identifies the commencement and completion dates of projects; however, the Performance Schedule was not adhered to by TriLegacy nor monitored by the JEDC or City Public Works Department. We consider the Performance Schedule to have been a good monitoring tool.

According to the timeline identified in the Performance Schedule, the construction of the Riverfront Public Improvements would have started by March 2002 with Substantial Completion by December 2004. However, due to a six-week delay in the Pre-Development Conditions being satisfied or waived, the Start Date for the construction of the Riverfront Public Improvements was delayed until April 2002 with Substantial Completion by January 21, 2005. Other commencement and completion dates for the residential projects are shown on Attachment 1 to this letter.

Based on the substantial completion dates, the Riverfront Public Improvements should have been completed by January 2005, Phase 1-A Residential Improvements should have been completed by January 2004, and the commencement of construction of Phase 1-B should have been by July 2003, with substantial completion by January 2006. Based on these dates, it should have been obvious that TriLegacy was not going to meet the project schedule as required by their contract with the City prior to the City's payment of the second \$17 million which was paid on April 10, 2003. Thus with proper monitoring or review of the Performance Schedule, the JEDC could have consulted with the City's General Counsel's Office regarding the City's options to demand an accounting for the expenditure of City funds and the legality of withholding the disbursement of the second \$17 million until the private construction of Phase IA and IB appeared to be on schedule.

- Project monitoring should have resulted in contract amendments when changes to the project were made. The major changes we identified were as follows: (1) the sheds that were to have been Phase 1-A residential units were not able to be used due to cost and structural issues, (2) the condo flats and townhouses on the two west piers (Phase 1-B) could not be built, (3) the Developer decided not to fill the 5.14 acres of land that was included in the Project cost estimates at \$4 million in Exhibit C of the Redevelopment Agreement due to excessive cost, and (4) the space for the public improvements was reduced from 16.8 acres of public park to 6.18 acres plus 7.36 acres of City right-of-way.

#### **City Payments (Section 4.2 Redevelopment Agreement)**

Of the City's \$40,000,000 grant to the project, the First Installment of \$2,500,000 was to be paid to the Developer within 30 days after the satisfaction of the following conditions:

1. the approval of the Agreement by the City Council; and
2. the execution and delivery of a guaranty agreement by Jacksonville Riverfront Development (JRD) and ICS Logistics, Inc. (an affiliate of the Developer and JRD), to the City, guaranteeing repayment of the First Installment. The Guaranty would be released upon satisfaction of the conditions for the Second Installment.

The Agreement was approved by the City Council on June 12, 2001 and the required guarantees were executed and delivered to the JEDC on June 14, 2001. The First Installment of \$2,500,000 was paid by check to the Developer on July 9, 2001.

The Second Installment in the amount of \$17,000,000 was to be paid to the Developer within 60 days after the satisfaction of the following conditions:

1. the delivery of the final plans and specifications for the Riverfront Public Improvements and the approval thereof by the JEDC and the City's Director of Public Works,
2. the execution and delivery by JRD of a first-lien mortgage upon the project parcel (the Mortgage shall be held in escrow by the JEDC pending the payment of the Second Installment to the Developer; upon the payment of the Second Installment to the Developer, the Mortgage shall be released from escrow and delivered to the City),
3. the delivery to the JEDC of an as-built appraisal of the Project Parcel,
4. the obtaining of all permits and approvals (excluding any permits and approvals to be issued by the City) required for the commencement of construction of the Infrastructure Improvements and the Riverfront Public Improvements located on the eastern portion of the Project Parcel,
5. the delivery to JEDC of an executed construction contract (or construction contracts) between the Developer and a general contractor designated by the Developer and reasonably acceptable to the JEDC and the City's Director of Public Works for the construction of the Riverfront Public

- Improvements and the Infrastructure Improvements located on the eastern portion of the Project Parcel,
6. the delivery to the JEDC of a Performance Bond for the construction of the Riverfront Public Improvements and the Infrastructure Improvements located on the eastern portion of the Project Parcel,
  7. the delivery to the JEDC of a letter or other writing executed by the Developer confirming that the predevelopment conditions have been satisfied or waived.

The Second Installment was paid to the Developer via a wire transfer on April 17, 2002.

The Third Installment in the amount of \$17,000,000 was to be paid to the Developer within 30 days after the satisfaction of the following conditions:

1. the obtaining of all permits and approvals (excluding any permits and approvals to be issued by the City) required for the commencement of construction of the Infrastructure Improvements and the Riverfront Public Improvements located on the western portion of the Project Parcel,
2. the delivery to the JEDC of an executed construction contract (or construction contracts) between the Developer and a general contractor designated by the Developer and reasonably acceptable to the JEDC and the City's Director of Public Works for the construction of the Riverfront Public Improvements and the Infrastructure Improvements located on the western portion of the Project Parcel,
3. the delivery to the JEDC of a Performance Bond for the construction of the Riverfront Public Improvements and the Infrastructure Improvements located on the western portion of the Project Parcel.

The Third Installment was paid to the Developer via a wire transfer on April 10, 2003.

The balance of the Initial Project Grant of \$3,500,000 was to be paid upon substantial completion of the Riverfront Public Improvements. Because of the Developer's failure to perform, this \$3.5 million continues to be held by the City.

### **Observations**

We question whether the developer met all of the conditions required for the release of the second and third payments as outlined in Section 4.2 of the Redevelopment Agreement.

- It appears from the documents that we have been given that the approval of the final plans was given by the Public Works Engineering Division on November 18, 2003. This approval was a requirement for the payment of the first \$17 million that was paid on April 17, 2002 and the second \$17 million that was paid on April 10, 2003.
- The review by the Council Auditor's Office and the Office of the General Counsel indicates that the "executed construction contracts" for the construction of the

Riverfront Public Improvements and the Infrastructure Improvements with Steller Group were only shells of contracts with no defined deliverables or estimated costs. In addition, the required Performance Bonds for the construction of the projects were based on these contracts, and therefore; did not act as a project protection for the City.

### **Project Grant**

Section 4.3 of the Redevelopment Agreement describes the use of the Initial Project Grant (the \$40 million). It states that the First Installment (\$2.5 million) was to be used for the “*payment (and to the extent previously paid, the reimbursement) of site engineering, design, planning, legal and permitting costs for the development of the Public Improvements and the Infrastructure Improvements. Any remainder of the First Installment and the balance of the Initial Project Grant shall be used for the payment of hard and soft costs of the development of the Public Improvements and the Infrastructure Improvements as set forth (in estimated amounts) in the schedule attached hereto as Exhibit C.*” In addition, because the bonds issued were tax-exempt and required that the funds be used for tax-exempt purposes, the Developer was required to maintain accounting records to enable the City to confirm that the proceeds of the Initial Project Grant were spent for purposes consistent with the expenditures of the proceeds of tax exempt bonds.

### **Observations**

For our review of TriLegacy’s expenditures, we requested that they categorize all of their expenditures according to Exhibit C (Cost Estimate for Site Development) of the Redevelopment Agreement. They provided us with a list of all invoices and checks that supported each of the required categories. The following are the results of our review.

- TriLegacy’s schedule of Public Improvements expenditures shows their claim that of the \$36.5 million of the City funds they received, they only spent approximately \$18.4 million on Public Improvements resulting in \$18.1 million being misapplied tax exempt funds or costs that were the responsibility of the Developer. Based on our review of the cost documents provided by TriLegacy, we determined that of the City’s \$36.5 million paid to the Developer, at best only \$14 million was spent on allowable public improvements and the balance of \$22.5 million was on non-public or disallowed costs. Included in the \$14 million is approximately \$6.8 million for “Soft Costs” (design, engineering, permitting, legal, construction overhead, etc.) (See Attachment 2 to this letter) The difference between TriLegacy’s claim of \$18.4 million and our \$14 million is due to our disallowance of \$1.7 million of soft costs (\$1.6 million to Agency Approval & Development – development fee which may include lobbying for the project and approximately \$84,000 to other vendors for other soft costs incurred prior to the date of the Redevelopment Agreement). In addition, we disallowed \$1.7 million of cost overruns since overruns were to be the responsibility of the Developer. An additional \$922,000 of TriLegacy cost is allocated to the private development based on the allocation percentage agreed to in Exhibit C of the Redevelopment Agreement. It should be noted that as part of the

City's settlement with TriLegacy, TriLegacy agreed to the \$14 million allowable cost amount.

- Even based on the financial information provided by the Developer, it appears that approximately \$19.8 million of funds may have been used to finance the private portion of the Project. (This includes the \$18.1 million that was either misapplied tax-exempt funds or costs determined to be the responsibility of the Developer, plus \$1.6 million to Agency Approval & Development, plus the \$84,000 paid to other vendors for other soft costs). These expenditures appeared to be inconsistent with the allowable use of the proceeds of tax exempt bonds.
- According to the City's bond counsel, the tax exempt status of the City-issued bonds may be in jeopardy. The City will have to take actions to restore the misused funds in order to preserve the tax-exempt status of the City bond issue.
- In order to determine the actual use of the City funds, we reviewed the bank account ("Riverparke") into which the two \$17 million payments were deposited. The following summarizes the majority of the use of these funds:

First \$17 million paid on April 17, 2002	
* Paid to Spence on April 17, 2002	\$7,225,000
* Paid to Fruehoff for mortgage on property on April 17, 2002	\$6,221,447
* Paid to Jacksonville Riverfront Development	<u>\$3,533,553</u>
Sub-total	<u>\$16,980,000</u>
Second \$17 million paid on April 10, 2003	
* Paid to Union Planters Bank on behalf of Industrial Cold Storage on 5/1/03	\$1,885,965
* Paid to Steller Group for Shipyards contract on 4/14/03 for unpaid invoices from 7/02 thru 3/03	\$6,483,786
* Paid to Jacksonville Riverfront Development	<u>\$8,646,214</u>
Sub-total	<u>\$17,015,965</u>
Grand Total	<u>\$33,995,965</u>

Jacksonville Riverfront Development's (JRD) bank account was purportedly used to pay expenses for the Shipyards project. In an effort to further determine the specific and appropriate use of City funds, we requested but were denied access to the JRD bank account and were barred from reviewing the back-up documentation required for a complete audit. However, we did obtain evidence of payments made to Bitter End Plantation (\$2,125,164), Beach Trading Co (\$2,705,000), and Spence (\$1,580,000) in April 2003. These appear to be payments to Mr. Spence and two of his other companies not related to the Shipyards Project.

**Debt Service**

According to the Agreement, TriLegacy is responsible for the repayment of the debt amount to the extent of any shortfall not covered by the incremental increases in ad valorem taxes. Based on the bonds issued in the amount of \$46,735,000 annual debt service payments of approximately \$3.1 million beginning in FY 2004/05 will be due. Debt service payments will be offset by the City portion of increased ad valorem taxes generated from the private portion of the Project. The City anticipated that the City portion of ad valorem taxes generated from the private portion of the Project would be sufficient to pay the debt service amount in fiscal year 2008/09. However, if this was not the case, TriLegacy would continue to be responsible for any deficiency. Per Section 4.5 of the Redevelopment Agreement, for the 2002, 2003 and 2004 tax years, all municipal and county ad valorem taxes, exclusive of any amount from any debt service millage or BID (Business Improvement District) millage, actually paid by any taxpayer with respect to all real property and tangible personal property comprised and located in the Project and the Project Parcel was to be held by the City in a reserve for the payment of the debt service. For FY 2002, 2003, and 2004, the City paid the debt service interest payments from the bond's capitalized interest (interest during construction).

<u>Fiscal Year</u>	<u>Source Incremental Ad Valorem Taxes</u>	<u>Source Debt Service Reserve (Capitalized Interest)</u>	<u>Debt Service Payment to Sinking Fund</u>
2001/02		\$1,150,386	\$1,150,386
2002/03		\$2,300,773	\$2,300,773
2003/04		\$2,300,773	\$2,300,773
2004/05	<u>\$264,796 (A)</u>	<u>                    </u>	<u>\$3,150,773 (B)</u>
Total	\$264,796	\$ 5,751,932	\$8,902,705

(A) Ad Valorem taxes for 2002/03, 2003/04 and 2004/05 (Tax Years 2002, 2003 and 2004 per Section 4.5 of Redevelopment Agreement)

(B) Gross Debt Service Payment for which TriLegacy is responsible.

**Observations**

- The private development has not been completed so sufficient tax revenues have not been generated to pay the debt service payment of \$3,150,773. TriLegacy was to pay the City \$2,939,274 (net debt service deficit after applying the ad valorem taxes generated from the Project of \$264,796 reduced by the unpaid 2004 taxes of \$87,216, along with accrued interest in the sinking fund of \$33,919) in FY04/05 for debt service. Due to the default by TriLegacy, this payment will not be received.

- Neither the City nor TriLegacy have adhered to the requirements of this section. The City failed to establish a separate reserve account for the incremental ad valorem taxes or to properly calculate and budget the payment due from TriLegacy in FY2004/05. The City had originally proposed a budget of \$2,000,386. TriLegacy has failed to make the payments owed to the City or obtain the Liquidity Collateral as required by Section 4.6 of the Redevelopment Agreement.

### **Private Capital Investment**

According to the Project Summary included as Exhibit D of the Redevelopment Agreement, the private capital investment during Phase 1 of the Project was estimated to be \$121.7 million while the public improvements were estimated to cost \$40 million for a total of \$161.7 million.

### **Observation**

- None of the \$121.7 million of private projects were ever completed, not even the Phase 1-A Residential Improvements required to be completed by January 2004.

## **CURRENT STATUS OF PROJECT**

### **Project Default/Settlement Agreement**

To date the City has disbursed \$36,500,000 of the \$40,000,000 project appropriation to the Developer in three separate payments (\$2.5 million, \$17 million and \$17 million). Based on a lack of compliance with the Redevelopment Agreement, on August 17, 2004, the City entered into an Escrow and Settlement Agreement with TriLegacy Group LLC. According to the Settlement Agreement, TriLegacy will no longer be the developer of the Shipyards Property. Under the agreement, either: (1) a new developer, LandMar, will take over the property and meet the new Redevelopment requirements as approved by the City Council, or (2) the City will receive the deed to the property and a deficiency amount, if any, up to \$14 million. The deficiency amount is equal to: (1) the net outstanding bond debt of \$43.235 million (*\$46.735 million bond proceeds less \$3.5 million still held by the City*) minus (2) the appraised value of the property as determined by three appraisals. The first of these appraisals, dated March 1, 2005, set forth the appraised value of \$36 million. . The City agreed to cap the deficiency at \$14 million.

LandMar has 120 days from August 17, 2004 (or until December 15, 2004) to close on the Shipyards Property and become the new developer. To become the new developer, LandMar must meet the requirements of the current Redevelopment Agreement which requires: (1) LandMar to provide the City with a \$22.5 million letter of credit to secure completion of the public improvements, build out the public improvements, and be responsible for \$3.1 million in annual debt service, as required by the original Redevelopment Agreement, or (2) LandMar may propose a substantive change to the original 2001 Redevelopment Agreement which would be subject to City Council approval.

If LandMar does not close on the property in 120 days (December 15, 2004), the City of Jacksonville will receive (within 45 days or January 29, 2005) the deed to the 45-acre riverfront property, which is currently in escrow, and up to \$14 million in a deficiency judgment based on the appraised value of the property. The deficiency is personally guaranteed by Carlton H. Spence and Jeffrey C. Spence. If the deficiency amount is less than \$7,000,000, then the deficiency amount will be paid in equal annual principal payments of \$500,000, beginning September 30, 2005 and on each September 30 thereafter until paid in full. If the deficiency amount is \$7,000,000 or more, the deficiency will be paid in annual principal payments equal to the greater of (i) \$500,000 or (ii) 1/20<sup>th</sup> of the deficiency amount, beginning September 30, 2005 and on each September 30 thereafter until the principal amount of the deficiency is paid in full. Interest on the deficiency amount will accrue from the date of the Settlement Agreement at the rate of 4% per annum on the outstanding principal balance of the deficiency amount and will be payable one year after the date of the last regularly scheduled principal installment unless the principal installments are paid when due or the deficiency amount is paid off in full before the scheduled maturity date at which time the accrued interest will become null and void.

The Settlement Agreement also had a provision whereby the City could extend the 120 day time period. Ordinance 2005-101-E has been approved granting an extension to the closing date to April 30, 2005. If the Agreement is not closed or extended by the City at that time, the deed to the property would be delivered to the City on May 1, 2005.

### **Observations**

- The Settlement Agreement entered into on August 17, 2004, was not approved by the City Council; however, according to the General Counsel, City Council approval was not required.
- On January 25, 2005, the City Council approved Ordinance 2005-101-E that extended the term of the settlement agreement (transfer of the Deed to the City) from January 29, 2005 to May 1, 2005. This ordinance gave the involved parties ninety (90) additional days to work out the revised redevelopment agreement terms with LandMar Group, Inc.

### **RECOMMENDATIONS**

- 1) The Office of the General Counsel should draft and control all terms of the various Redevelopment Agreements. The legal expertise of the General Counsel's Office should be used to improve, standardize and clarify contract terms. As the City's legal representative, they can insure that the City can effectively defend its contractual rights.
- 2) Any substantial change in the scope of the project should require an amendment to the redevelopment agreement and the approval of the City Council. "Substantial change" should be defined in the agreement.

- 3) Clear audit provisions should be included in every contract to insure that the City oversight departments and the Council Auditor's Office have the right to audit all records related to the project.
- 4) The agreement should require that specific periodic progress reports be made to the JEDC, and available as needed to the Mayor and the City Council. These reports should include the construction progress of the project as well as financial data regarding the expenditure of both City and, when an integral part of the Agreement, the private dollars as well.
- 5) The Developer's responsibility in the event of default should be clearly delineated. The City should have no further obligation to the Developer while there is an uncured default. Where appropriate, the contract should include liquidated damages in the City's favor.
- 6) When applicable, clear, concise monitoring milestones should be included in the Redevelopment Agreement.
- 7) If negotiating the Redevelopment Agreement or if the monitoring of an agreement requires specialized expertise that the City does not have, the City should obtain the necessary resource from the appropriate professionals outside of the City government.
- 8) For construction projects, City payments should be made on a reimbursement basis (construction draw schedule) based upon the receipt of actual sub-contractor/vendor invoices and measurable contractor construction progress.
- 9) There should be a limit as to the amount of soft costs and allocation of costs that will be reimbursable by the City. Development fees, management fees and similar items should be prohibited. Both soft and hard costs incurred prior to the redevelopment agreement should be disallowed as reimbursable by the City or specifically addressed and defined as part of the Redevelopment Agreement.
- 10) The JEDC/City should perform due diligence to ensure that the developer has the necessary experience and financial wherewithal to complete the obligations under the agreement. This should include the review of the developer's financial information, project development plans and project pro formas. If the developer considers this information proprietary or too sensitive for public knowledge, then the project may not require the public funds.
- 11) The JEDC/City should be required to review all feasibility studies and pro formas to ensure the viability of the project for which City funds are being requested.
- 12) The Office of the General Counsel should also be required to receive and review all legal documents related to the project i.e. contracts, performance bonds,

documents regarding collateral, etc. as to their legality and compliance with the agreement in order to insure that the City's interests are properly protected and that the City can collect on any collaterals or guarantees over the length of the agreement.

Respectfully Submitted,

Richard Wallace, CPA  
Council Auditor

Attachment 1: Performance Schedule Exhibit E Redevelopment Agreement

Attachment 2: Cost Estimates Exhibit C of Redevelopment Agreement

<b>Council Auditor's Office</b>			
<b>Shipyards Project - Redevelopment Agreement</b>			
<b>Exhibit E - Performance Schedule</b>			
	Calculated Date	Calculated Date based on Revised Actual "Start Date"	
("Day X"):	6/12/2001	6/12/2001	The date the Agreement is approved by City Council
Day X + 30 days	7/12/2001	7/9/2001	Payment of First Installment (subject to the satisfaction of the conditions in Section 4.2(a) of the Agreement.)
Day X + 180 days ("Day Y" or the "Start Date")	12/9/2001	1/21/2002	Satisfaction (or the Developer's waiver) of the Pre-Development Conditions (Per letter from TriLegacy dated 1/21/02)
Day Y + 90 days	3/8/2002	4/20/2002	Commencement of construction of the Riverfront Public Improvements
Day Y + 120 days	4/7/2002	5/19/2002	Commencement of construction of the Phase I-A Residential Improvements
Day Y + 540 days	5/31/2003	7/11/2003	Commencement of construction of the Phase I-B Residential Improvements
Day Y + 2 years	12/9/2003	1/21/2004	Substantial completion of Phase I-A Residential Improvements
Day Y + 3 years	12/9/2004	1/21/2005	Substantial completion of the Riverfront Public Improvements
Day Y + 4 years	12/9/2005	1/21/2006	Substantial completion of Phase I-B Residential Improvements
Day Y + 5 years *	12/9/2006	1/21/2007	Commencement of construction of other residential and retail Improvements
Day Y + 6 years *	12/9/2007	1/21/2008	Commencement of construction of office building Improvements
Day Y + 10 years *	12/9/2011	1/21/2012	Commencement of construction of hotel Improvements
(* These are estimated dates that may be modified by the Developer to accommodate market conditions and are not mandatory deadline dates.)			

**Cost Estimates for Site Development  
The Shipyards**

**Schedule C to the Redevelopment Agreement**

-----Sector Breakout-----

See Worksheet for Details	Item	Total Budget	Actual Cost per Trilegacy	Disallowed by CAO	Actual Cost per CAO	Public Budget	Actual Cost per CAO	%	Private Budget	%	Actual Cost per CAO
	<b>RIVERWALK AND RELATED SITE INFRASTRUCTURE</b>										
(A)	Bulkhead, new 60 feet no cap	\$ 10,000,000	\$ 5,394,135.00		\$ 5,394,135.00	\$ 10,000,000	\$ 5,394,135.00	100.00%	\$ -	0.00%	\$ -
(B)	Dike and Temporary dewatering	\$ 1,200,000			\$ -	\$ 1,200,000	\$ -	100.00%	\$ -	0.00%	\$ -
(C)	Riverwalk Paving, Railing, Cap and Specialty Lighting	\$ 3,300,000			\$ -	\$ 3,300,000	\$ -	100.00%	\$ -	0.00%	\$ -
(D)	Riverwalk (below grade at residential)	\$ 2,000,000			\$ -	\$ 2,000,000	\$ -	100.00%	\$ -	0.00%	\$ -
(E)	Riverwalk Landscaping	\$ 1,050,000	\$ 74,710.61		\$ 74,710.61	\$ 1,050,000	\$ 74,710.61	100.00%	\$ -	0.00%	\$ -
(F)	Fountains, Plazas and Site Furnishings	\$ 3,500,000	\$ 117,218.40		\$ 117,218.40	\$ 3,500,000	\$ 117,218.40	100.00%	\$ -	0.00%	\$ -
(G)	Main Site Utilities (electric, water, sanitary, lighting, easement relocation)	\$ 2,437,500			\$ -	\$ 1,462,500	\$ -	60.00%	\$ 975,000.00	40.00%	\$ -
(H)	Master Stormwater for Public Elements	\$ 1,500,000	\$ 553,173.00		\$ 553,173.00	\$ 1,500,000	\$ 553,173.00	100.00%	\$ -	0.00%	\$ -
(I)	Bulkhead Penetration and Limited Piping for future stormwater system	\$ 160,000			\$ -	\$ 160,000	\$ -	100.00%	\$ -	0.00%	\$ -
(J)	A-3 Fill (raise site and extend land area)	\$ 4,050,000	\$ 327,330.41		\$ 327,330.41	\$ 4,050,000	\$ 327,330.41	100.00%	\$ -	0.00%	\$ -
(K)	Remove portion of existing piers (for fill areas)	\$ 172,500			\$ -	\$ 172,500	\$ -	100.00%	\$ -	0.00%	\$ -
(L)	Demolition, Buildings	\$ 220,000	\$ 1,946,792.21	\$ (1,726,792.21)	(A) \$ 220,000.00	\$ 220,000	\$ 220,000.00	100.00%	\$ -	0.00%	\$ -
(M)	Demolition, Paving	\$ 910,000	\$ 811,411.00		\$ 811,411.00	\$ 546,000	\$ 486,846.60	60.00%	\$ 364,000.00	40.00%	\$ 324,564.40
(N)	Clearing, Grubbing, and Rough Grading	\$ 243,750			\$ -	\$ 146,250	\$ -	60.00%	\$ 97,500.00	40.00%	\$ -
(O)	Realignment of Shop Road	\$ 320,000			\$ -	\$ -	\$ -	0.00%	\$ 320,000.00	100.00%	\$ -
(P)	Hogans Creek Bridge Crossing	\$ 1,000,000			\$ -	\$ 1,000,000	\$ -	100.00%	\$ -	0.00%	\$ -
(Q)	Stabilization and Grassing	\$ 56,875			\$ -	\$ 34,125	\$ -	60.00%	\$ 22,750.00	40.00%	\$ -
(R)	Sedimentation and Erosion Control	\$ 500,000			\$ -	\$ 300,000	\$ -	60.00%	\$ 200,000.00	40.00%	\$ -
(S)	Relieving Platform for Bridging Piers	\$ 720,000			\$ -	\$ 360,000	\$ -	50.00%	\$ 360,000.00	50.00%	\$ -
(T)	Bay Street streetscape improvements, internal traffic infrastructure	\$ 450,000			\$ -	\$ 450,000	\$ -	100.00%	\$ -	0.00%	\$ -
(U)	Piers for Relieving Platform, 60 feet	\$ 1,050,000			\$ -	\$ 525,000	\$ -	50.00%	\$ 525,000.00	50.00%	\$ -
(V)	Office Parcel loop Road and internal traffic improvements	\$ 800,000			\$ -	\$ 800,000	\$ -	100.00%	\$ -	0.00%	\$ -
	<b>SUB-TOTAL</b>	\$ 35,640,625	\$ 9,224,770.63	\$ (1,726,792.21)	\$ 7,497,978.42	\$ 32,776,375	\$ 7,173,414.02	91.96%	2,864,250.00	8.04%	324,564.40
(W)	Soft costs (design, engineering, permitting, legal construction overhead & Management, etc.)	\$ 7,128,125	\$ 9,142,457.94	\$ (1,701,361.82)	(B) \$ 7,441,096.12	\$ 6,555,275	\$ 6,843,094.27	91.96%	\$ 572,850	8.04%	\$ 598,001.85
	Contingency (15%)	\$ 5,346,094			\$ -	\$ 4,916,456	\$ -	91.96%	\$ 429,638	8.04%	\$ -
	<b>Total</b>	\$ 48,114,844	\$ 18,367,228.57	\$ (3,428,154.03)	\$ 14,939,074.54	\$ 44,248,106	\$ 14,016,508.29	91.96%	3,866,738.00	8.04%	922,566.25
	NOTES:										
	Estimates are in 2001 constant dollars										
	Estimate does not include marina dock construction										
	Estimate does not include improvements to Bay St. Bridge										
	Estimate does not include land costs										
	<b>(A) Costs in excess of budget</b>										
	<b>(B) Disallowed costs as follows:</b>	<b>Initial CAO Adj.</b>	<b>Agreed Upon</b>	<b>Difference</b>							
	Agency Approval & Development - prior to 6/28/01	\$ 273,399.16	\$ 273,399.16	\$ -							
	Agency Approval & Development - after 6/28/01	\$ 1,344,098.76	\$ 1,344,098.76	\$ -							
	Total Agency Approval & Development	\$ 1,617,497.92	\$ 1,617,497.92	\$ -							
	Other Soft Costs invoices prior to 6/28/01	\$ 759,061.70	\$ 83,863.90	\$ 675,197.80							
	Total Disallowed Soft Costs	\$ 2,376,559.62	\$ 1,701,361.82	\$ 675,197.80							

Attachment 2

# JEDC

JACKSONVILLE  
ECONOMIC DEVELOPMENT  
COMMISSION

April 14, 2005

Richard A. Wallace  
Council Auditor  
117 West Duval Street, Suite 200  
Jacksonville, FL 32202

Re: Audit Letter: Shipyards Project

Dear Mr. Wallace:

Thank you for the opportunity to review the audit letter dated April 14, 2005 ("Audit Letter") from the Council Auditor's Office on the TriLegacy Group, LLC agreement to develop the Shipyards property. The following response letter and attachments provides JEDC staff with an opportunity to comment on many of the "conclusions" and "observations" set forth in the seventeen pages of the Audit Letter. A detailed comment to certain conclusions and observations contained in the Audit Letter is attached hereto as Exhibit "A". The purpose of this response letter is to generally provide JEDC staff response to several substantive issues outlined in the Audit Letter.

## **BACKGROUND INFORMATION:**

The Shipyards Project, as described in the relevant Shipyards Redevelopment Agreement dated June 28, 2001, involved a downtown, riverfront project site of over 40 acres owned by the Developer, TriLegacy Group, LLC. The property was privately owned and, as a result, was not part of a Request for Proposal process. The project presented by the Developers provided a significant opportunity to take blighted, polluted and unproductive industrial property and connect it in a very positive manner with significant public investments in both the sports and entertainment complex area and an increasingly dynamic core city. The Developer team included Jeff and Carlton Spence, Henry Lambert (who had a significant real estate development resume) and the highly regarded architects, landscape architects and planners-Sasaki Associates. This team was well received and praised by all whose approval was necessary, as evidenced by unanimous approval by the DDA, JEDC, and the Jacksonville City Council at the time.

The Developer provided an aggressive development plan which included over \$700 million in anticipated private capital investment and multiple phases of proposed private development and the riverfront park's proposed Public Improvements (approximately \$40 million). In 2001, the JEDC and City Council understood that the Shipyards Project would be a critical "Super Bowl" link between the core city and the sports &

Cecil Field Development    Downtown Development    Enterprise Zone    Film & Television    International Development  
Jacksonville Economic Development Co.    JIA Community Redevelopment Area    Northwest Area Economic Development  
Research & Development    Sister Cities    Small Business    Sports & Entertainment

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entertainment complex. Upon approval of the project, it was understood that an aggressive performance and construction schedule was necessary in order to complete the Public Improvements and the Phase IA Residential Improvements prior to the Super Bowl. As a result of the aggressive performance schedule, the JEDC and City Council approved an initial draw schedule that allowed the Developer to draw up to \$36.5 million to fund construction of \$40 million dollars in Public Improvements. The last City payment to Developer was made to the Developer on April 10, 2003. As of April 10, 2003, the Public Improvements were under construction (including significant bulkhead, fill dirt and concrete work) and the Phase IA Residential Improvements construction for One Shipyard Place had also commenced (site preparation). Less than 10 months after the last developer draw and as a direct result of ongoing JEDC monitoring efforts, the JEDC staff raised issues concerning use of City funds with the Developer. In early 2004, the JEDC brought these issues to the attention of the Office of General Counsel for investigation and response (see “Escrow and Settlement Agreement” discussed in the next paragraph). Review by the Council Auditor’s Office as recited in the Audit Letter reflects that the Developer spent approximately \$14 million of the \$36.5 million on construction of the Public Improvements.

Finally, the Escrow and Settlement Agreement (resulting from the JEDC requested investigation by the Office of the General Counsel) requires the Developer to convey the project site to the City and also to pay up to \$14 million to the City to make the City whole in the event that the property is appraised at less than \$43.235 million. In other words, the “Appraised Fair Value” (a three appraisal process) under the Escrow and Settlement Agreement would have to come in at less than \$29.235 million for the City to suffer a “loss”. It should be noted that the recently released appraisal by the City’s selected MAI appraiser indicates that the as-is value of the project site is \$36 million. Since the City appraisal is above \$29.235 million, it would appear at this point in time that any potential economic loss to the City would be minimal. Alternatively, the Escrow and Settlement Agreement allows the City to negotiate with another developer, LandMar Group, LLC, to take over the Shipyards Redevelopment Agreement pursuant to a redevelopment agreement approved by the City Council.

This response letter generally addresses several of the observations listed in the Audit Letter regarding the JEDC and the Shipyards Project. Attached Exhibit “A” addresses the specific issues discussed in this response letter in greater detail and other issues raised in the Audit Letter. The following is a summary of the Audit Letter’s observations regarding the JEDC and the Shipyards Project and the JEDC staff’s response.

- I. The Audit Letter implies that JEDC failed to extensively and persistently monitor the Shipyards Redevelopment Agreement;
- II. The Audit Letter states that it was unreasonable for JEDC to have disbursed the last draw of \$17 million on April 10, 2003;

- III. The Audit Letter states certain concerns regarding the Developer's lack of both financial strength and development experience, and in the "OVERALL CONCLUSIONS" section, summarizes the impact of these negative issues as being insufficient funding for the Developer to complete the project; and
- IV. The Audit Letter suggests that "major" changes in the Project were made without securing contract amendments.

***I. The Audit Letter implies that JEDC failed to extensively and persistently monitor the Shipyards Redevelopment Agreement.***

The Shipyards Redevelopment Agreement was executed on June 28, 2001. Almost twenty-two (22) months elapsed from the execution of the Shipyards Redevelopment Agreement until the disbursement of the last draw paid by the City on April 10, 2003. As previously mentioned, there was approximately forty-two (42) months between execution of the Shipyards Redevelopment Agreement and the Super Bowl. According to the Developer's representatives and the construction schedule in the Shipyards Redevelopment Agreement, the Public Improvements and Phase IA Residential Improvements of the residential development were to be complete by the time Jacksonville hosted the 2005 Super Bowl. Within the initial 22 month period from the date of execution of the Shipyards Redevelopment Agreement until the disbursement of the April 10, 2003 draw, the JEDC engaged in extensive and persistent project monitoring efforts in the following areas:

- 1. Periodic Project status meetings/telephone calls between Developer representatives and representatives of the JEDC and Public Works. These meetings involved:
  - A. Review of issues related to permits from the state and federal government concerning water way construction and fill items;
  - B. Review of issues related to the Bay Street widening project along the project site's northern boundary;
  - C. Review of issues related to the closure of Shop Road; and
  - D. Construction schedule status meetings/telephone calls.
- 2. Monitoring and review of project checklist items between Developer representatives and JEDC staff as to:
  - A. The JEDC monitored receipt of all required checklist items and routed the applicable documents to the appropriate City departments; [Note: "checklist items" are the required deliverables outlined in the Shipyards Redevelopment Agreement that the Developer was required to provide prior to the release of City funding. The checklist is attached hereto as Exhibit "B". At all times, JEDC staff circulated this checklist and the associated items provided by the Developer to all appropriate City departments for review and approval before authorizing the disbursement of any funds.]

- B. Meetings and telephone calls with Developer representatives as to the status of checklist items;
  - C. Recommending necessary revisions to items submitted by Developer resulting from the review of checklist items by City departments (i.e., performance bond and Riverfront Public Improvement plans); and
  - D. Negotiation of operation and maintenance (“O&M”) issues and the preparation of various draft agreements on O&M.
3. Internal City review of checklist documents with City departments, including:
- A. Securing review of site plans for Public Improvements by Public Works and the City’s riverwalk consultant;
  - B. Sending copies of all applicable checklist items to the Office of the General Counsel, Administration and Finance Department, and Public Works Department for review and approval (where required by the Shipyards Redevelopment Agreement) before authorizing disbursement;
  - C. Securing the required approval of all checklist items in accordance with the Shipyards Redevelopment Agreement from all required City departments and outside consultants; and
  - D. Securing revisions to all checklist items from Developer as recommended by Public Works department and other relevant City departments.
4. Numerous status meetings and telephone calls between Developer’s Chief Financial Officer and JEDC staff regarding such items as construction financing, construction commencement date and pre-sale information.
5. Status meetings between Developer representatives and JEDC staff to discuss JEA electric lines and other related utility issues.
6. Status meetings between Developer representatives and JEDC staff to discuss project cost over-run issues and other matters which resulted in the JEDC staff’s initial request for investigation by the Office of the General Counsel to review the use of funds issue.

Notwithstanding the preceding, with the additional information gained subsequent to the JEDC’s request that the Office of the General Counsel investigate how City funds were used, JEDC staff agrees that the executed construction contracts and Performance Bonds submitted by the Developer were structured to be misleading and facilitated the misapplication of City funds by the Developer. JEDC acknowledges that additional monitoring by JEDC and all applicable City departments may have brought this matter to the attention of both JEDC and the Office of the General Counsel earlier. Please see further discussion of these issues in Exhibit “A”.

***II. The Audit Letter states that it was unreasonable for JEDC to have disbursed the last draw of \$17 million on April 10, 2003.***

As previously indicated, the last City draw payment was made on April 10, 2003. The Audit Letter "Observation" states that based upon the status of the construction in April of 2003, "...it should have been obvious that Trilegacy was not going to meet the project schedule as required by their contract with the City prior to the City's payment of the second \$17 million..." Based upon the approved Performance Schedule (Exhibit E to Shipyards Redevelopment Agreement), the construction period for the Riverfront Public Improvements was 33 months (commencing on April 20, 2002), with a substantial completion date of January 21, 2005. For the Phase I-A Residential Improvements, the construction period was 20 months (commencing on May 19, 2002), with a substantial completion date of January 21, 2004. For the Phase I-B Residential Improvements, the construction period was 31 months (commencing on July 11, 2003), with a substantial completion date of January 21, 2006. The Public Improvement draw schedule was tied to defined milestones. Despite numerous requests for expedited funding by the Developer, the JEDC staff required that the Developer satisfy all performance schedule draw requirements and delivery of all checklist items (see Exhibit "B" attached hereto) to the satisfaction of the applicable City departments. The three payments to the Developer were spread out over almost two years from the date the Shipyards Redevelopment Agreement was executed.

As of the April 10, 2003 draw payment request, the JEDC staff was not aware of any reason to deem the Developer in default of the Shipyards Redevelopment Agreement. Moreover, based upon the information available to JEDC staff at the time, it was not apparent that the Developer would be unable to meet the deadlines set forth in the performance schedule attached to the Shipyards Redevelopment Agreement. The Riverfront Public Improvements were under construction as evidenced by substantial bulkhead construction efforts and supporting documentation provided to JEDC staff on or before April 10, 2003. At that time, the Developer represented to JEDC staff that the Riverfront Public Improvements would be completed prior to January 21, 2005. As of April 10, 2003, construction had commenced on the Phase I-A Residential Improvements, and Developer represented that this element would be completed in the fall of 2004, which would be well before the 2005 Super Bowl and would put these improvements on the City's tax rolls as of January 1, 2005. Each of the foregoing dates and time frames were consistent with the performance schedules as outlined in the Shipyards Redevelopment Agreement. Moreover, the Shipyards Redevelopment Agreement was structured to recognize that delays in the construction schedule may occur, and provided specific monetary remedies in the event the mandatory residential elements (Phases I-A & I-B Residential Improvements) weren't completed on time. Sections 7.2 (a) and (b) of the Shipyards Redevelopment Agreement, states, in relevant part, that:

"(a)...Notwithstanding anything to the contrary contained herein, **if the default by the Developer is the delay or failure to commence or Substantially Complete construction of either the 'Phase I-A Residential' Improvements or the "Phase I-B Residential" Improvements in accordance with the Performance Schedule and this Agreement, then the remedies of the City and the Agency shall be limited to those set forth in paragraph (b) below.** "

"(b)...**If the Developer fails to commence or Substantially Complete construction of the "Phase I-A Residential" Improvements and/or the "Phase I-B Residential Improvements" in accordance with the Performance Schedule and this Agreement, then the Developer's share of any Excess Annual Project Revenues, as set forth**

**in Section 4.9, shall be adjusted** for each applicable year by multiplying the Developer's respective percentage share by 0.875..."

In summary, as of April 10, 2003, the Shipyards Project was a work in progress, with the Developer giving every indication that it was prepared to deliver the required Riverfront Public Improvements and the mandatory Residential Improvements (Phase I-A & I-B) according to the schedules provided in the Shipyards Redevelopment Agreement. As of April 10, 2003, completion of the Riverfront Public Improvements prior to the Super Bowl was still reasonably anticipated and this completion date would be in full compliance with the Shipyards Redevelopment Agreement. As of April 10, 2003, completion of Phase I-A Residential Improvements by the fall of 2004 was reasonably anticipated and this completion date would be a non-substantive delay from the Performance Schedule's completion date of January 21, 2004, especially when the above quoted provisions of Section 7.2 are taken into account. The conclusion reached in the Audit Letter that JEDC should not have disbursed the last \$17 million draw can only be attributed to "20/20 hind-sight" and the eventual investigation called for by JEDC staff and carried out by the Office of General Counsel.

***III. The Audit Letter raises certain concerns regarding the Developer's lack of both financial strength and development experience, and suggests the impact of these negative issues as being insufficient funding for the Developer to complete the project.***

The Audit Letter raises certain concerns regarding the Developer's lack of both financial strength and development experience. The Audit Letter's "OVERALL CONCLUSIONS" section states that Developer's lack of financial strength and development experience resulted in the Developer's inability to complete the project. The Developer's ability to financially support a project is an important consideration in any project of this magnitude in order to insulate the City from any future risk. In analyzing this issue, it is important to first understand the security provisions in the Shipyards Redevelopment Agreement before drawing conclusions regarding the City's potential for future loss.

The Shipyards Redevelopment Agreement required that the City receive a first mortgage on the project site and construction of certain Public Improvements. In addition to the first mortgage, TriLegacy was required to make all debt shortfall payments to the City to cover the City's payments on the bonds issued by the City to fund the Public Improvements. These debt shortfall payments were required to be paid by the Developer until such time as Developer's private improvements generated enough incremental property taxes to the City to meet or exceed the annual amount of the bond debt service. If the Developer did not make private improvements generating enough incremental property taxes to satisfy the City's annual bond debt service and if the Developer also failed to make the required debt shortfall payments to the City, then the City's security was the first mortgage on the Project site.

However, because of the Developer's noted misapplication of City funds, the Escrow and Settlement Agreement has been added to the City's security to cover any "deficiency" up to \$14 million (as further described above in the "Background Information"). The parties to the Escrow and Settlement Agreement include individuals and legal entities with sufficient financial resources to cover any reasonably possible deficiency, thereby accomplishing the primary objective of preventing any economic loss to the City.

***IV. The Audit Letter suggests that "major" changes in the project were made without securing contract amendments.***

The Audit Letter suggests that the following "major changes" were made to the scope of the project without the required approvals:

1. The sheds that were to have been Phase I-A residential units were determined to be unusable due to cost and structural issues;
2. The condo flats and townhouses on the two west piers (Phase I-B) could not be built;
3. The Developer decided not to fill the 5.14 acres of land that was included in the Project cost estimates at \$4 million in Exhibit C of the Shipyards Redevelopment Agreement due to excessive cost; and
4. The space for public improvements was reduced from 16.8 acres of public park to 6.18 acres plus 7.36 acres of City right-of-way.

It is important for the reader to note that the Audit Letter's comments on the private development "changes" appears to overlook the fact that the Shipyards Redevelopment Agreement provides a **sole** remedy for time delays (or even failure to construct) regarding the private development. As previously noted, this remedy is set forth in Section 7.2 of the Shipyards Redevelopment Agreement, which specifies a reduction in the applicable TIF percentages and resulting developer payments. With the TIF squeezed down (or inoperative if no private improvements are on the tax rolls), the Developer was obligated to make shortfall payments to cover the City's debt service on the bonds or else lose title to the property via foreclosure of the City's first mortgage as recognized and approved by City Council. Notwithstanding the forgoing, it is important for the reader to note the following information regarding these "changes" listed in the Audit Letter:

First, with regard to the sheds, at the City Council Finance Committee meeting of June 4, 2001, in which this project was unanimously approved, after the Chairman's suggestion that the sheds should be torn down, Mr. Krutko replied: "I think they are still studying that, they're looking at the foundations, there very well may be a possibility that they may have to reconfigure the plans on that." As predicted, foundation problems eventually resulted in a reconfiguration of the project design, which ultimately resulted in significantly more residential units.

Second, JEDC Staff agrees that any proposed change to the scope of the private development on the two west piers would be a "major" change requiring an amendment and City Council approval. However, the Developer did not inform JEDC staff regarding its inability to use the two west piers for the stated purpose at any time before the payment of \$17 million was made to the Developer on April 10, 2003. Any amendment which dealt with the two west piers would

have had to include a reasonable alternative (the two west piers were part of the mandatory Phase IB Residential Improvements.) JEDC staff fully understood that a mandatory component of the project description could not be eliminated without the approval of the JEDC board and the City Council. However, the use of City funds issue (which as previously noted, JEDC staff brought to the attention of the Office of the General Counsel) overtook this issue prior to it being communicated by the Developer to JEDC staff.

Third, any change to the scope of the Public Improvements would also be a “major” change requiring an amendment and City Council approval. However, the Developer did not inform JEDC or Public Works of its decision not to fill the 5.14 acres at any relevant point in time either before or after, the second (and last) payment of \$17 million was made to the Developer on April 10, 2003. The acreage in question was to be part of the public area and was set forth on Exhibit C as a cost item of \$4.05 million. JEDC staff fully understood that this component could not be eliminated without the approval of the JEDC board and the City Council. However, the use of City funds issue (which as previously noted, JEDC staff brought to the attention of the Office of the General Counsel) overtook this issue prior to it being communicated by the Developer to JEDC staff.

Finally, as to item #4, the Audit Letter suggests that approximately 6.14 acres were ultimately available for public improvements. The basis for this assumption was taken from the plans submitted to the Public Works department which were designed to show the location and specifications for the riverwalk. The Audit Letter assumption does not consider other anticipated park areas that would ultimately surround the private development’s buildings.. Moreover, Section 3.1 of the Shipyards Redevelopment Agreement recognized the Developer’s need for flexibility in Developer’s build-out of the private development. It should also be noted that 7.36 acres of the originally planned public improvements would have been used as City right of way for vehicular and pedestrian access as shown on said plans. At no time did JEDC staff approve a reduction of the total public improvement acreage requirement called for in the Shipyards Redevelopment Agreement.

#### Final Recommendations:

Before concluding, JEDC staff would like to specifically respond to each of the “Final Recommendations” contained in the Audit Letter. As explained in greater detail in Exhibit “A” attached, JEDC takes issue with many of the Conclusions and Observations in the Audit Letter. However, it is important to note that the JEDC agrees in concept with all of the 12 Final Recommendations for future projects proposed in the Audit Letter. These recommendations are numbered below, with the JEDC staff comments following each recommendation.

- 1) The Office of the General Counsel should draft and control all terms of the various Redevelopment Agreements. The legal expertise of the General Counsel’s Office should be used to improve, standardize and clarify contract terms. As the City’s legal representative, they can insure that the City can effectively defend its contractual rights.

JEDC Response:

JEDC staff agrees with this recommendation and JEDC staff has worked closely with the Office of General Counsel to standardize redevelopment agreements as much as possible during the last three years. A copy of the standard redevelopment agreement is attached hereto as Exhibit “C”. Moreover, over the last year JEDC staff has engaged the Office of the General Counsel and other experts as needed on a wide variety of issues in the negotiation and monitoring process of several projects. JEDC will continue these practices on all future projects as needed.

- 2) Any substantial change in the scope of the project should require an amendment to the redevelopment agreement and the approval of the City Council. “Substantial change” should be defined in the agreement.

JEDC Response

JEDC staff agrees that the initial scope of the project and any future substantive amendments should be carefully scrutinized and undergo City Council review. In the context of the TriLegacy Shipyards Redevelopment Agreement it is important to reiterate that JEDC and the City did not agree to any substantial changes to the Shipyards Redevelopment Agreement or the scope of the originally proposed project.

- 3) Clear audit provisions should be included in every contract to insure that the City oversight departments and the Council Auditor’s Office have the right to audit all records related to the project.

JEDC Response

JEDC staff agrees with this recommendation and have included standard audit and inspection provisions in the standard redevelopment agreement and in the LandMar redevelopment agreement. Again, it is important to note that in Section 4.3 of the original Shipyards Redevelopment Agreement contains the following audit provision: “...Developer shall maintain accounting records to enable the City to confirm that the proceeds of the Initial Project Grant have been spent for purposes consistent with the expenditures of proceeds of tax exempt bonds...”

- 4) The agreement should require that specific periodic progress reports be made to the JEDC, and available as needed to the Mayor, and the City Council. These reports should include the construction progress of the project as well as financial data regarding the expenditure of both City and, when an integral part of the Agreement, the private dollars as well.

JEDC Response

JEDC staff agrees with the recommendation. The attached standard redevelopment agreement form contains mandatory reporting requirements and associated penalties. In addition, JEDC will provide a copy of all such reports as requested to the Council Auditor’s Office, City Council and Mayor’s Office. The proposed LandMar redevelopment agreement also contains several mandatory financial and construction

related reporting requirements. The JEDC is currently in the process of standardizing its reporting and claw back policies and procedures to ensure uniform application of the same in all future agreements.

- 5) The Developer's responsibility in the event of default should be clearly delineated. The City should have no further obligation to the Developer while there is an uncured default. Where appropriate, the contract should include liquidated damages in the City's favor.

#### JEDC Response

JEDC staff agrees with this recommendation and is in the process of standardizing its default and clawback policies and procedures to ensure uniform application and enforcement in all future projects. JEDC Commissioners, staff and representatives from the Office of General Counsel have recommended standard reporting and clawback penalties based on the type of project proposed. Regarding the Shipyards Redevelopment Agreement, we also note that the Developer's responsibility was clearly delineated and that such clear responsibility resulted in the negotiation of a favorable Escrow and Settlement Agreement with the City.

- 6) When applicable, clear, concise monitoring milestones should be included in the Redevelopment Agreement.

#### JEDC Response

JEDC staff agrees with this recommendation. JEDC Staff is developing standard policies and procedures for redevelopment agreements and project compliance and monitoring standards which include the requirement of specific construction draw schedules and segregated accounts when necessary. These standard policies will ensure uniform application and monitoring in all future agreements.

- 7) If negotiating the Redevelopment Agreement or if the monitoring of an agreement requires specialized expertise that the City does not have, the City should obtain the necessary resource from the appropriate professionals outside of the City government.

#### JEDC Response

JEDC staff agrees with this recommendation and believes that potential funding sources to accomplish this should be evaluated. Moreover, in the last 12-18 months JEDC staff has regularly engaged the Office of the General Counsel and other experts as needed on a wide variety of issues early in the negotiation process.

- 8) For construction projects, City payments should be made on a reimbursement basis (construction draw schedule) based upon the receipt of actual sub-contractor/vendor invoices and measurable contractor construction progress.

#### JEDC Response

JEDC staff agrees with this recommendation and we note that substantially all JEDC redevelopment agreements require cost reimbursement based draw schedules. Even though the original Shipyards Redevelopment Agreement departed from this practice, the

agreement also contained a first mortgage provision which was designed to protect the City against the misapplication of funds advanced by the City in the event of a default by the Developer.

- 9) There should be a limit as to the amount of soft costs and allocation of costs that will be reimbursable by the City. Development fees, management fees and similar items should be prohibited. Both soft and hard costs incurred prior to the redevelopment agreement should be disallowed as reimbursable by the City or specifically addressed and defined as part of the Redevelopment Agreement.

#### JEDC Response

JEDC staff agrees that general limits on soft costs are appropriate. However, each project and associated costs must be evaluated on a case by case basis. An absolute disallowance of previously incurred soft costs may not be appropriate in all situations. Likewise, an absolute disallowance of “development fees, management fees and similar items” may not be appropriate in all situations.

- 10) The JEDC/City should perform due diligence to ensure that the developer has the necessary experience and financial wherewithal to complete the obligations under the agreement. This should include the review of the developer’s financial information, project development plans and project pro formas. If the developer considers this information proprietary or too sensitive for public knowledge, then the project may not require the public funds.

#### JEDC Response

JEDC staff agrees with this recommendation and we also note that it is standard JEDC practice to perform due diligence on every project before approval to ensure that the developer and/or the developer’s project team has the necessary experience and financial wherewithal to complete the obligations under the agreement. It should be noted that pursuant to the original TriLegacy Shipyards Redevelopment Agreement, the anticipated redevelopment was not restricted to the financial resources of Developer, but could come from third party development as a result of sales of a portion of the project site. Participation by the Council Auditor’s Office in this analysis would be welcomed and encouraged. Alternatively the City Council has reserved the right to transfer the Shipyards Redevelopment Agreement to LandMar.

- 11) The JEDC/City should be required to review all feasibility studies and pro formas to ensure the viability of the project for which City funds are being requested.

#### JEDC Response

JEDC staff agrees. However, due to Florida’s sunshine laws, not every developer is willing to provide proprietary market information to a public agency. It is important to note that Paul Krutko, at the City Council’s Finance Committee meeting of June 4, 2001 stated that the DDA conducted a market study on the residential market for downtown, and the study showed that the Shipyard’s residential element could be absorbed. Mr. Krutko further stated that the Developer did its own study, which was proprietary, but

that they are excited about the Shipyards Project. Any risk associated with the financial viability of the project were deemed to be addressed by the first mortgage provision of the Shipyards Redevelopment Agreement

- 12) The Office of the General Counsel should also be required to receive and review all legal documents related to the project i.e. contracts, performance bonds, documents regarding collateral, etc. as to their legality and compliance with the agreement in order to insure that the City's interests are properly protected and that the City can collect on any collaterals or guarantees over the length of the agreement.

**JEDC Response**

JEDC staff agrees with this recommendation and has worked closely with the Office of the General Counsel to develop the Standard Redevelopment Agreement terms and standardized reporting and clawback policies and procedures. The Office of General Counsel will continue to be engaged as needed to negotiate and/or monitor project documentation on all projects as needed.

In closing, if any of the responses set forth in this cover letter and its exhibits and attachments result in a decision to revise part of the Audit Letter, JEDC staff would appreciate being advised of those changes so that the cover letter may be revised accordingly. It is our understanding that, if no changes are to be made in the Audit Letter, then this cover letter and its exhibits and attachments will be attached to the Audit Letter.

Respectfully Yours,



Jeanne M. Miller  
Interim Executive Director

# EXHIBIT “A” TO JEDC RESPONSE LETTER on “AUDIT LETTER”

## PAGES 3 & 4: OVERALL CONCLUSIONS:

### Audit Letter Statement:

“Submittal to the City of misleading ‘executed construction contracts’ ...and misleading and inadequate Performance Bonds ...”

### 1. JEDC Comment:

With the additional information gained as a result of the JEDC’s request that the Office of the General Counsel investigate how City funds were used, JEDC staff agrees that the executed construction contracts and Performance Bonds submitted by the Developer were structured to be misleading and facilitated the misapplication of City funds by the Developer.

Any future redevelopment agreement that requests the advancement of City funds will be pursuant to a specifically defined construction draw schedule with coordinated monitoring from the appropriate City departments (Public Works, Office of the General Counsel, etc.). In addition, any such contracts will be secured by appropriate forms of collateral. Future enhanced contract monitoring through cooperation with the Council Auditor, Public Works Department and the Office of the General Counsel will help ensure valid contracts and bonds so as to prevent any future misapplication of City funds.

Notwithstanding the above, it should be noted by the reader that the following construction and bond documents were submitted by TriLegacy to JEDC and circulated by JEDC to the appropriate City departments for prior review and approval (where required by the Shipyards Redevelopment Agreement) before disbursement:

1. Labor and Material Payment Bond: Trilegacy Surety: Arch Insurance Company and Lumbermans Mutual Casualty/\$20,000,000/Principal: The Stellar Group/Project Phase II Hogan’s Creek West
2. Owner and Construction Manager Agreement: TriLegacy/The Stellar Group; \$32,500,000;
3. Owner and Architect: TriLegacy/Sasaki Associates, Inc./\$98,000
4. Owner and Architect: TriLegacy BHR/\$1,466,000+Hourly rates;
5. Performance Bond: Principal The Stellar Group/Surety: Federal Insurance Company/\$12,500,000/Phase I Hogan’s Creek East
6. Performance Bond: Principal The Stellar Group/ Arch Insurance Company and Lumbermans Mutual Casualty/\$20,000,000 /Phase II Hogan’s Creek West

**Audit Letter Statement:**

“Use of City funds for non-public improvements that was a violation of the legal use of bond funds...”

**2. JEDC Comment:**

As a result of JEDC’s monitoring efforts, issues pertaining to the use of City funds were brought to the attention of the Office of the General Counsel and, at the request of JEDC staff, the Office of the General Counsel agreed to perform an investigation of the Project.

**Audit Letter Statement:**

“...contracts were never submitted to the General Counsel’s Office...”

“...loss may have been limited had more extensive and persistent monitoring...”

“...more diligent in reviewing the documents submitted by the Developer or had held the Developer accountable to the Performance Schedule...the City may have raised contractual issues...that may have delayed at least the second \$17 million payment.”

**3. JEDC Comment:**

While the Shipyards Redevelopment Agreement did not require the submission of contract documents to the Office of the General Counsel, JEDC did in fact submit these documents to the Office of the General Counsel for information purposes.

The Audit Letter also states that exposure to potential loss under the Shipyards Redevelopment Agreement may have been limited had **more extensive and persistent** monitoring of the Project been performed. The Audit Letter defines “more extensive and persistent” as being more diligent review of contract documents submitted by the Developer or more stringent enforcement of the contract’s Performance Schedule, and states that enhanced efforts in these areas may have raised contractual issues that may have delayed at least the second \$17 million payment.

In response, it is important to note the distinction between “exposure to loss” and “actual loss.” As discussed in detail in JEDC’s response letter, existing facts indicate that because of the City first mortgage position on the property, the City is not likely to suffer any actual loss. Likewise, it should also be noted that it was JEDC’s “monitoring” of the Project that led to an investigation by the Office of General Counsel, which in turn led to a finding that the Developer had defaulted under the Shipyards Redevelopment Agreement.

However, JEDC acknowledges that additional monitoring may have brought this matter to the attention of the Office of the General Counsel earlier. JEDC did not immediately perceive the misleading elements of the construction contracts and performance bonds (see JEDC Comment #1 above). As to the Developer’s obligation to “timely” construct the private development (Phase IA & Phase IB), the **sole** remedy for time delays was clearly set forth in Section 7.2 of the TriLegacy Shipyards Redevelopment Agreement (i.e., a reduction in the applicable TIF percentages). Regarding the Public Improvements, as of April 10, 2003 when the second \$17 million payment was released, the Developer

had undertaken millions of dollars of construction-related work and had indicated that the work would be completed *on or before the Performance Schedule's completion date of January 21, 2005*. In summary, on April 10, 2003, the JEDC had no reasonable grounds to determine that the Developer would be in default or that the January 21, 2005 completion deadline was unobtainable.

#### **PAGES 4 & 5: LEGISLATIVE PROCESS:**

##### **Audit Letter Statement:**

“...presented numerous questions to the JEDC staff... some ... were satisfactorily answered whereas in other instances, the questions raised remained as concerns regarding the proposed legislation.”

##### **4. JEDC Comment:**

In 2001, the Council Auditor's Office presented 8 and 9 pages of questions to JEDC staff regarding the project. JEDC staff provided written responses to these Council Auditor's Office questions, including a final 5 page list of Council Auditor's Questions, Needs and Concerns (see Attachments I, II, and III attached to our response to the Audit Letter). At no time did the Council Auditor's Office communicate to the JEDC that any questions raised were not satisfactorily addressed or answered. It has been the practice of the Council Auditor to make it very clear when the office is not satisfied with JEDC's responses by deferring the legislation, further pursuing any outstanding issues or by keeping the item on its list of Council Auditor's Questions, Needs and Concerns and handing this list out to all Council Members for independent inquiry (see Attachment III).

#### **PAGES 5 & 6 LEGISLATIVE PROCESS OBSERVATIONS:**

##### **Audit Letter Statement:**

“Lack of development experience of the Developer...”

##### **5. JEDC Comment:**

This project did not involve any developer selection/RFP process. The Developer was the owner of the land that is the subject of the Shipyards Redevelopment Agreement. Due to the strategic location of the project site, the blighted nature of the project site and dilapidated nature of the structures on this property, the City and the JEDC were interested in the Developer's plan to rehabilitate *its own* property. In this context, the Developer proposed utilizing the \$15 million property for private development and public improvements valued at approximately \$40 million. The City's risk of loss was protected by a first mortgage on the property and this security was deemed reasonable, notwithstanding the development experience of the developer. It should also be noted that the Council Auditor's Office did not raise any concern about the “development experience” of the Developer during the Council Finance Committee meeting or the City Council meeting at which the Shipyards Redevelopment Agreement was approved.

**Audit Letter Statement:**

“Lack of financial information regarding the experience of the developer...financial capability to perform...”

**6. JEDC Comment:**

We disagree with the Audit Letter’s observation that there was lack of financial information regarding the experience of the developer and lack of financial capability to perform under the Shipyards Redevelopment Agreement. Developer owned valuable property. Letters evidencing the financial strength of the Developer team were provided by three banks. In addition, we agree with the statement made by the Council Auditor’s Office at the Finance Committee meeting of June 4, 2001, that “...the first mortgage secures us greatly.” It was also well documented and explained that there would be various forms of security that are phased in under the Shipyards Redevelopment Agreement, such as the guaranty requirement prior to the first draw of \$2.5 million and the various letters of credit, but the first mortgage was clearly set forth and understood by everyone to be the primary security for the City.

**Audit Letter Statement:**

“Lack of a feasibility study...”

**7. JEDC Comment:**

At the City Council’s Finance Committee meeting of June 4, 2001, Paul Krutko stated that the DDA had done a market study on downtown residential housing needs. Mr. Krutko explained that the study concluded that the market was ready for the Shipyard’s residential element. Mr. Krutko advised the committee that the Developer had also undertaken its own internal study, which was proprietary. Mr. Krutko further advised the City Council Committee that the Developer, whose property was subject to a first mortgage if the project failed, was very excited about the Shipyards Project. Furthermore, the Council Auditor’s Office did not consider this issue a deficiency during the “Legislative Process”, as no objection was raised by the Council Auditor’s Office at any of the Council Committee meetings or the Council meeting at which the Shipyards Redevelopment Agreement was approved.

**Audit Letter Statement:**

“Pre-Development Conditions...”

**8. JEDC Comment:**

The City Council was asked to approve the Shipyards Redevelopment Agreement prior to the completion or waiver of nine pre-development conditions and unanimously did so. It should be noted that the waiver of a pre-development condition as to the O & M Plan **would not** eliminate the need for City Council approval of the O & M Plan. Even though JEDC staff and the Developer negotiated several drafts of an O&M agreement, in as much as the public improvements were several years from start of construction to completion and certain of the public park area was to be identified as the project’s private

development occurred, detailed costing of maintenance was difficult. Furthermore, the Shipyards Redevelopment Agreement provided that the public park areas would be maintained by the City (as are all City parks) if an acceptable O&M agreement could not be reached with the Developer and approved by the City Council. This was a timing issue which was dealt with in a manner compliant with the Shipyards Redevelopment Agreement.

**Audit Letter Statement:**

“Additional unknown costs to the City...O&M Plan...Traffic Improvement Plan...lengthening Bay Street Bridge...potential building of parking garages.”

**9. JEDC Comment:**

JEDC staff agrees that additional information and development conditions on these issues would have been helpful. However, all questions that related to “Additional Unknown Costs to the City” were previously addressed by JEDC staff in its responses to the Council Auditor’s Office’s questions and the Council Auditor’s Office did not raise concerns on these issues at the Council Finance Committee meeting or the City Council meeting at which the Shipyards Redevelopment Agreement was approved. As also discussed in JEDC Comment #8 above, the cost of maintaining the city park (once built and conveyed to the City) and the other items mentioned were all clearly identified and discussed prior to City Council approval of the project.

**Audit Letter Statement:**

“Numerous other questions...were asked...not all of the Council Auditor’s concerns were elevated to the City Council at various committee meetings.”

**10. JEDC Comment:**

As discussed above, the CAO submitted two separate preliminary lists of detailed questions regarding the project and JEDC staff provided written responses to all questions. See Attachments I and II hereto Council Auditor Questions, Needs and Concerns. If any of the JEDC responses were not sufficient, then these issues would have typically been included in the final 5 page version of Council Auditor Questions, Needs and Concerns that was passed on to all Council Members (see Attachment III). Based on the foregoing, JEDC staff questions any suggestion that the Council Auditor concerns were suppressed or went unaddressed.

**PAGES 6 & 7: REDEVELOPMENT AGREEMENT OBSERVATIONS:**

**Audit Letter Statement:**

“Lack of a standard form...”

**11. JEDC Comment:**

Although in substantial part the Shipyards Redevelopment Agreement tracks the format of the Berkman Plaza Agreement, there are substantive modifications which were clearly mentioned based on the unique nature of the proposed Shipyards project (e.g. the draw schedule being an advancement of City funds instead of on a reimbursement basis). JEDC staff fully agrees that a standard form redevelopment agreement is desirable for all projects. The standardized agreement should contain certain standard template language and provisions while also providing flexibility to accommodate the unique aspects of each project. The originally proposed Shipyards project was an extraordinarily large project with very unusual time restraints (Super Bowl). It should also be noted that JEDC staff and the Office of General Counsel have worked closely to develop a “standard form redevelopment agreement” during the last three years and the JEDC now utilizes the standard form for projects. Finally, the Council Auditor’s Office at no time raised any objections to the form of the Shipyards Redevelopment Agreement during its in depth review of the original project.

**Audit Letter Statement:**

“...difficulty to apply some of the clauses...”

**12. JEDC Comment:**

It is the position of JEDC staff and the Office of General Counsel that all of the material clauses designed to protect the City are very clear and straightforward as demonstrated by the favorable Escrow and Settlement Agreement entered into by the Developer (and certain individuals, a corporation, and an LLP) and the Developer’s attorneys with the City.

**Audit Letter Statement:**

“Project Guarantees...limited liability company (LLC) with no other guarantees or personal guarantees...”

**13. JEDC Comment:**

While it is true that the Shipyards Redevelopment Agreement was with a Limited Liability Company (LLC), the Shipyards Redevelopment Agreement contained various forms of security that were to be phased in over the life of the project such as the guaranty requirement prior to the first draw of \$2.5 million and the requirements for various forms of letters of credit. Moreover, the City’s first mortgage on the property provided the primary security for the City and the City’s first lien position protected the City against losses. The risks associated with entering into an agreement with an LLC were considered manageable considering the various forms of security provided for under the terms of the Shipyards Redevelopment Agreement. Furthermore, this concern was not raised by the Council Auditor’s Office at any time during its in depth review of the project in 2001.

**Audit Letter Statement:**

“No clear audit provisions...”

**14. JEDC Comment:**

Section 4.3 of the TriLegacy Shipyards Redevelopment Agreement required the Developer to maintain accounting records to enable the **City** to confirm that the proceeds ... have been spent for purposes consistent with the expenditures of proceeds of tax exempt bonds. Failing to allow the City to confirm proper expenditures, the Developer was required to repay any City funds. The language in Section 4.3 clearly afforded the City, JEDC and the Council Auditor’s Office with the right to audit the necessary books and records. The previously mentioned standard form redevelopment agreement contains several explicit audit and inspection provisions. Moreover, the proposed LandMar redevelopment agreement provides for several audit and inspection rights and requirements.

**Audit Letter Statement:**

“Payment Schedule not contingent on construction progress...”

**15. JEDC Comment:**

The Shipyards Redevelopment Agreement did not contain a reimbursement based payment schedule which is included in other JEDC contracts. However, lack of a reimbursement based payment schedule was a negotiated business point of the Shipyards Redevelopment Agreement which was evaluated and unanimously approved by DDA, JEDC and the City Council. This unique structure of the Shipyards Redevelopment Agreement was the result of three factors: (i) The first factor was a concern that a reimbursement based payment schedule would result in delaying the Project and prevent the Developer from completing Phase I of the Project prior to the Super Bowl; (ii) The second factor was a concern by the Developer that other JEDC projects had been delayed, resulting in cost overruns, because of JEDC’s “due diligence reviews” of associated construction draws; (iii) The third factor was that the Developer argued that its financial liabilities regarding interest from date of issuance and financial commitments for millions of dollars in private capital investment under contract for the steel on the bulkhead work (so as to avoid pending significant cost increases) prior to its being able to secure the first \$17 million payment made it impossible for the deal to go forward without the Developer having immediate access to funds. The Developer argued that it could not withstand any funding delays and still meet the aggressive performance schedule. All of the approving bodies (DDA, JEDC, and the City Council) were made aware that the payment schedule was not contingent on construction progress. All associated risks were considered manageable given the protection afforded to the City by the first mortgage on the property. It is interesting to note that the Council Auditor’s Office did not consider the lack of a reimbursement based payment schedule as a concern during the review process (see Attachments I, II and III).

**Audit Letter Statement:**

“No specific limit as to the time period that cost could be incurred and charged to the City...”

**16. JEDC Comment:**

This is not a correct statement by the Audit Letter. All reimbursements of project costs are subject to federal rules which include limitations as to reimbursable project expenses prior to issuance of the bonds. Pursuant to section 4.3 of the TriLegacy Shipyards Redevelopment Agreement, any expenditure prior to such time period would not be considered “Public Improvements” and would therefore be disallowed. The use of tax exempt bond funds is clearly set forth in the TriLegacy Shipyards Redevelopment Agreement and costs inconsistent with the standards of such funding would be disallowed. Bond funding has clear guidelines on costs incurred prior to issuance. There is also the protection afforded by Exhibit C’s schedule of costs.

**PAGE 8: REDEVELOPMENT AGREEMENT PROJECT SCOPE  
OBSERVATIONS:**

**Audit Letter Statement:**

“Changes were made to the scope of the Project without any direct City approval... Due to cost and structural issues related to the sheds...Developer changed the scope...condo flats...cannot be built on the two west piers because... filling in the approximate 5.14 acres would cost more than the \$4 million that had been allocated...”

**17. JEDC Comment:**

The Audit Letter’s comments on the private development appears to overlook the fact that the Shipyards Redevelopment Agreement provides a **sole** remedy for time delays (or even failure to construct) the private development portion of the project. This remedy is set forth in Section 7.2 of the TriLegacy Shipyards Redevelopment Agreement, which specifies a reduction in the applicable TIF percentages. With the TIF squeezed down (or inoperative if no private improvements are on the tax rolls), the Developer would have been required to make shortfall payments to cover the City’s debt service on the bonds or else lose title to the property via foreclosure of the City’s first mortgage.

As to the magnitude of the changes related to the sheds, the following exchange from the Finance Committee meeting of June 4, 2001 is worth noting:

**Chairman Overton:** Why keep the sheds, why not just tear them down and start over without them?

**Krutko:** Well, I think that is a choice that the developers made in terms of how to precede with the project. Their evaluation of them initially was that they could be some exciting residential space. I think they are still studying that, they’re looking at the foundations, there very well may be a possibility that they may have to reconfigure the plans on that.

**Chairman Overton:** There is no prohibition against taking them down if that came to be?

**Krutko:** No, they are not considered historic properties; are not locally designated.

**Chairman Overton:** There is nothing on the site that would be considered to be that way?  
**Krutko:** To my knowledge, No.

It is also important to mention that once the foundations of the sheds were determined to be unacceptable for residential units, the Developer's proposal for the shed area was to construct 100 for sale condos, an increase from the 72 unit concept utilizing the sheds.

With reference to the developer's desire to forgo both filling in approximately 5.14 acres and development on the two west piers, JEDC staff did not "approve" these changes. Upon the developer's initial request to modify the scope of the public improvements regarding the west pier and related fill issues, and upon the JEDC's independent monitoring of the financial matters pertaining to the project, JEDC staff requested that the Office of General Counsel conduct an investigation into the use of funds issue.

**Audit Letter Statement:**

"...there are only 6.18 acres of 'Public Open Space/Parks/Easement/Riverwalk' and 7.36 acres of City right of way instead of the 16.8 acres..."

**18. JEDC Comment:**

The focal point of the original site plan for public improvements was the Riverwalk's location and specifications that comprise the vast majority of the 6.18 acres, as mentioned in the Audit Letter. However, as also stated an addition 7.36 acres of "public improvement" were included and shown for the roadways/sidewalks in the Project. Furthermore, what was **not** shown on the site plans were the public park areas that would be around the private buildings that would have utilized the private development acreage. It is important to note that Section 3.1 of the TriLegacy Shipyards Redevelopment Agreement recognized needs for flexibility in Developer's build-out of the private development. Again, the ultimate configuration of certain public areas was dependent upon the construction of the associated private structures which were anticipated to ultimately utilize just over 50% of the developable land of the project site. At no time did JEDC waive the 16.8 acre requirement nor did the Developer ever inform or request an amendment or waiver to accommodate the change.

**PAGES 9 & 10: PROJECT MONITORING AND REPORTING  
OBSERVATIONS:**

**Audit Letter Statement:**

"...clear monitoring milestones were not included in the Redevelopment Agreement...appears that monitoring plans were not developed by the JEDC or Public Works..."

**19. JEDC Comment:**

The Audit Letter's comments on monitoring plans appears to overlook the fact that the Shipyards Redevelopment Agreement provides a **sole** remedy for time delays (or even failure to construct) regarding the private development. This remedy is set forth in

Section 7.2 of the Shipyards Redevelopment Agreement, which specifies a reduction in the applicable TIF percentages. With the TIF squeezed down (or inoperative if no private improvements are on the tax rolls), the Developer must make shortfall payments to cover the City's debt service on the bonds or else lose title to the property via foreclosure of the City's first mortgage.

Furthermore, JEDC staff disagrees that clear monitoring milestones were not included in the TriLegacy Shipyards Redevelopment Agreement. The TriLegacy Shipyards Redevelopment Agreement had a Performance Schedule, including commencement and completion dates, a draw schedule, and a detailed list of specified checklist items. In fact, as the Audit Letter states, the Performance Schedule was "a good monitoring tool". JEDC prepared a checklist for all deliverable documents and all such documents were circulated to all applicable City departments for review. There were numerous meetings between the Developer, its contractors (including meetings at the site) and JEDC staff and Public Works' representatives. Multiple reviews were undertaken of riverwalk design plans by the Public Works Department and the Public Works Department's riverwalk consultant. From June 28, 2001, when the Shipyards Redevelopment Agreement was executed, there were literally dozens of actions undertaken with regard to the monitoring of the Shipyards Redevelopment Agreement (see response letter for a summary of JEDC monitoring activities), including additional legislation filed and passed by City Council on Shop Road.

**Audit Letter Statement:**

"...TriLegacy was not required to submit any type of reports on the construction progress of the private or public project..."

**20. JEDC Comment:**

While it is true that Tri-Legacy was not required to give construction progress reports of the private or public projects, the Shipyards Redevelopment Agreement did contain a provision which required a full accounting of how all public funds were used upon completion of Public Improvements and Infrastructure Improvements. In fact, it was the lack of accounting for project expenditures that brought about the decision by JEDC staff to request the Office of the General to investigate the project.

**Audit Letter Statement:**

"The JEDC did not make the required reports..."

**21. JEDC Comment:**

At the Finance Committee meeting of June 6, 2001, Council Member Lockett-Felder raised concerns regarding keeping track of the Shipyard project's Minority Business Enterprise (MBE) reporting and expressed concern that efforts in this area be reported to the City Council Finance Committee every 6 months. While certain reporting data was submitted in other formats (e.g. the JEDC did include a progress report on the Shipyards Project in its Annual Survey report to the City Council for the years 2002, 2003, and

2004) and there was no MBE activity to report for the first 18 months. JEDC staff acknowledges that the required reports to the Finance Committee were not made. It should also be noted that this City Council mandated reporting requirement was never requested by the Council Auditor's Office, and it may be desirable for the Council Auditor's Office to monitor such City Council imposed requirements in the future.

**Audit Letter Statement:**

"The Developer was not held accountable to the Performance Schedule..."

**22. JEDC Comment:**

As previously stated, regarding the Developer's obligation to "timely" construct the private development (Phase IA & Phase IB), the **sole** remedy for time delays is set forth in Section 7.2 of the Shipyards Redevelopment Agreement (i.e. a reduction in the applicable TIF percentages). Regarding the Public Improvements, as of April 10, 2003 when the second \$17 million payment was released, the Developer had undertaken millions of dollars of work and had indicated that the Public Improvements would be completed on or before the Performance Schedule's completion date of January 21, 2005. The JEDC had no reasonable grounds to conclude that the scheduled January 21, 2005 completion date was unobtainable on April 10, 2003.

Furthermore, JEDC staff disagrees with the comment made in the Audit Letter that the Developer was not held accountable to the Performance Schedule and that the Performance Schedule was not monitored by JEDC. In fact, JEDC staff was very concerned about adherence to the Performance Schedule by the Developer and required the Developer to attend several meetings with JEDC staff to discuss the Performance Schedule and Developer's progress. The end result of these meetings was that JEDC staff "blew the whistle" on the Project and asked the Office of General Counsel to conduct a full investigation of the Project. It was this investigation called for by JEDC staff that led to the uncovering of many of the "Observations" which are the subject of the Audit Letter.

**Audit Letter Statement:**

"...it should have been obvious that Trilegacy was not going to meet the [public and private] project schedule ...prior to the City's payment of the second \$17 million which was paid on April 10, 2003...withholding the disbursement of the second \$17 million until the private construction of Phase IA and IB appeared to be on schedule."

**23. JEDC Comment:**

We disagree with this comment in the Audit Letter. In April of 2003, the construction of the Riverfront Public Improvements was well underway with bulkhead construction. Based on the facts and information available to it at the time, any breach of contract claim by JEDC or the City in April of 2003 would have been inappropriate and

unfounded. Furthermore, the Shipyards Redevelopment Agreement's Default provision (Section 7.2) specifically covers Developer's failure to substantially complete the private Phase IA & IB residential improvements and sets forth the economic penalties related thereto, as previously discussed.

**Audit Letter Statement:**

"Project monitoring should have resulted in contract amendments...major changes we identified were as follows...1.the sheds...changed...from 72 lofts to a 100-unit residential condominium complex...2.the condo flats on the two west piers (Phase I-B) could not be built...3. the Developer decided not to fill the 5.14 acres...included in the Project cost estimate at \$4 million in Exhibit C...due to excessive cost.... the space for public improvements was reduced from 16.8 acres of public park to 6.18 acres plus 7.36 acres of public right of way..."

**24. JEDC Comment:**

These issues have been previously addressed. Please see JEDC Comments #17 & #18 above.

**PAGE 11: CITY PAYMENTS OBSERVATIONS:**

**Audit Letter Statement:**

"We question whether the developer met all of the conditions... for release of the second and third payments...documents ...given...approval of the final plans was given by ...Public Works...on November 18, 2003..."

**25. JEDC Comment:**

The relevant provision of the Shipyards Redevelopment Agreement reads as follows:  
Section 4.2.(b)(i): the delivery of the final plans and specifications for the Riverfront Public Improvements and the approval thereof by the Authority and the City's Director of Public Works **as provided in Section 5.3;**

Section 5.3: Design Review. The Improvements shall be constructed in accordance with the Downtown Master Plan guidelines, with such modifications as may be approved by the Design Review Committee. All plans and drawings relating to the exterior design, landscaping, streetscaping, and the Public Improvements (the "Exterior Design Plans") of the Project shall be submitted to a committee (the "Design Review Committee") appointed by the chairman of the Jacksonville Downtown Development Authority (the "Authority"). The Design Review Committee will work together with the Project architect(s) and the Developer in making recommendations to the Authority's governing board for any changes to the Exterior Design Plans. The Authority's governing board will have the right of final approval over the Exterior Design Plans. In addition to the foregoing review and approval by the Design Review Committee and the Authority, all plans and drawings relating to the Public Improvements shall be subject to review and approval by the City's Director of Public Works.

The developer presented plans and specifications for the public areas to the DDA Design Review Committee on November 28, 2001, which conceptually approved the “Jacksonville Shipyards-Public Space Park”. The Developer then issued letters on March 28, 2002 and April 12, 2002 stating that such plans were final and that no substantive change would be made without City approval. Public Works then issued a memorandum on April 12, 2002 stating its review and approval of “...the plans and drawings relating to the ‘Riverfront Public Improvements’ for the Jacksonville Shipyards project in accordance with Section 5.3 of the Agreement.” There is a distinction between “final plans” as used above and final plans as permitted by the Public Works Department. Public Works issued permits for the public improvements in November of 2003, but this did not preclude work on the bulkheads and other site work which did not require a permit. In summary, Public Works reviewed the details of the riverwalk with its consultant and had all plans that showed final layout of the riverwalk, including width, location and type of landscaping, benches, etc. The Developer issued a letter stating that such plans were final and that no substantive change would be made without City approval.

**Audit Letter Statement:**

“...executed contracts...were only shells of contracts ...and the Performance Bonds...did not act as project protection for the City.”

**26. JEDC Comment:**

These issues have been previously addressed. Please see JEDC Comment #1 above.

**PAGE 14: DEBT SERVICE OBSERVATIONS:**

**Audit Letter Statement:**

“...the City failed to establish a separate reserve account...”

**27. JEDC Comment:**

The Audit Letter notes that the City did not establish a separate reserve account for the incremental ad valorem taxes. At that time, City and JEDC Staff determined that the projected incremental increase in ad valorem taxes were not sufficiently large enough to create a separate reserve account in the City’s accounting system. A key factor in this determination was the fact that the proposed funding source was the Northside East Tax Increment District which funds eventually default to the City’s General Fund at the end of each fiscal year. The Audit Letter also states that the City did not properly calculate and budget the payment due from Tri-Legacy in FY 2004/2005. It should be noted that JEDC staff did not budget any revenue from Tri-Legacy in FY2004/05 due to JEDC

Staffs concern that Tri-Legacy was in default of the Shipyards Redevelopment Agreement and could not be relied on to make any such payments.

**PAGES 16 AND 17: RECOMMENDATIONS:**

**28. JEDC Comments on the Audit Letter's 12 Recommendations:**

Please see the JEDC response letter for our comments on the Audit Letter's Recommendations.