

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY,  
FALL TERM, TWO THOUSAND AND FOUR**

**IN RE: REPORT OF THE GRAND JURY**

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**IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:**

The Grand Jurors of the State of Florida and County of Duval, duly empaneled, sworn, and charged to inquire and true presentment make in and for the body of the County of Duval, for the Fall term, 2004, in the Circuit Court of the Fourth Judicial Circuit of Florida, in and for Duval County, respectfully report as follows:

This report is a result of an investigation conducted by the Grand Jury into the Redevelopment Agreement between the City of Jacksonville, Jacksonville Economic Development Commission and TriLegacy, LLC for the Shipyards Project. This exhaustive investigation lasted six months, the term of the Grand Jury having been extended 90 days pursuant to Florida law.<sup>1</sup>

**I. OVERVIEW**

Concerns expressed by the community at large about the City's management of the Shipyards Project and possible misuse of City funds prompted this investigation. Florida's grand juries have the right to investigate the misuse of public monies and describe misconduct, mismanagement, and errors of public bodies and public officials improperly using public

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<sup>1</sup> See Section 905.095, Florida Statutes (2005)

monies.<sup>2</sup> Concerns about how taxpayers' dollars were managed and spent motivated our investigation of the Shipyards Project.

We had a duty to investigate how the City spent \$36.5 million of public monies. We listened to the testimony of nine City Officials, the City's bond counsel, the CEO of Stellar Corporation, two TriLegacy attorneys, and the CEO of TriLegacy. Moreover, both Richard Mullaney, General Counsel for the City of Jacksonville, and former Mayor John Delaney were allowed to make unprecedented, long presentations to the Grand Jury. After our extensive investigation, we did not find any criminal wrongdoing by any TriLegacy official or any City Official. However, we did find that the City failed to exercise due diligence in entering into and negotiating the Shipyards Redevelopment Agreement and that the City failed to properly monitor the progress of the Project.

## **II. BACKGROUND**

### **A. Parties Involved**

John Delaney was the Mayor of Jacksonville from July 1995 to June 2003. He was the Mayor when the City signed the Shipyards Agreement and when the City paid each installment to TriLegacy totaling \$36, 500,000.

The Jacksonville Economic Development Commission (JEDC) is a commission established in 1996 to facilitate and oversee Jacksonville's economic development.

Michael Weinstein was the Executive Director of JEDC from July 1997 to September 2001. He was Executive Director when the City negotiated and signed the Redevelopment Agreement.

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<sup>2</sup> See Miami Herald Publishing Co. v. Marko, 352 So.2d 518, 521 (Fla. 1977).

Kirk Wendland was a director for the JEDC when the Shipyards Project deal was negotiated and signed and he became the Executive Director of JEDC in October 2001. He was a part of the negotiating team for the City. Mr. Wendland was the Executive Director through February 2005.

John Alderson was an attorney with the General Counsel's Office when the City negotiated and signed the Shipyard agreement. He was assigned by the General Counsel to represent JEDC and he was a part of the negotiating team for the Redevelopment Agreement. In January 2002, John Alderson went to work directly for JEDC and not the General Counsel's Office.

Kara Church was an employee of the JEDC. She worked as a Special Project Manager for JEDC from January 2002 to July 2003. She took a leave of absence between July 2003 and February 2004, when she came back to the JEDC as a Policy Manager. While she was with the JEDC, she was in charge of monitoring the Shipyards Project.

Paul Krutko was the director of the Downtown Development Authority (DDA) from December 1997 to February 2002. He was a part of the negotiating team for the City. Mr. Krutko has moved to California and failed to return calls regarding possible testimony before the Grand Jury.

Richard A. Mullaney is presently the General Counsel for Jacksonville and was the General Counsel throughout the Shipyards Project.

Karen Chastain is presently an attorney at the General Counsel's Office for the City of Jacksonville. She was with the General Counsel's Office throughout the Shipyards Project.

Daniel Livermore is the City of Jacksonville's bond counsel. He advised the City and TriLegacy about the use of tax exempt bonds during the negotiations.

Richard Wallace is presently the Council Auditor for the City of Jacksonville. He has been with the Council Auditor's Office since 1974 and started as Council Auditor in July 2003.

Kirk Sherman is an Assistant Council Auditor for the City of Jacksonville. He has been with the Council Auditor's Office for twenty five (25) years. He reviewed the Redevelopment Agreement prior to presenting it to the City Council and drafted the questions and concerns about the project that the Council Auditor's Office presented to the City Council.

Pamela Markham is an Assistant Council Auditor for the City of Jacksonville. She has been with the Council Auditor's Office since 1983. She did not start working on the Shipyards Project until 2004 after all the payments had been made to TriLegacy. She assisted in an investigation of the Shipyards Project after the City stopped the project and she helped draft the Council Auditor's Review of the Shipyards Project.

Carlton H. Spence and Jeffrey Carlton Spence, his son, are Jacksonville businessmen who have owned and operated a cold storage business in Jacksonville for 30 years. They are the principals of TriLegacy, LLC, the corporation established to contract with the City to build the Shipyards Project.

W. Hamilton Traylor is an attorney who represented the Spence family and TriLegacy, LLC throughout the Shipyards Project. He assisted in the negotiation and management of the Project.

Gregory Dawson is an attorney who represented the Spence family and TriLegacy LLC throughout the Shipyards' negotiation and during the mortgage transaction.

Ronald H. Foster is the President and CEO of Stellar Group Corporation.

**B. Project History**

The Spence family bought the Shipyard property in 1999 with the intent to grow their storage business. After buying the property, the Spences set up a meeting with former Mayor John Delaney to introduce themselves. They wanted to explain that they intended to use the property for a new storage facility and that they hoped to bring more jobs into the Jacksonville area. At that meeting, Mayor Delaney expressed gratitude for the Spences' plan to bring more jobs to Jacksonville, but said, ideally, he would like to see a development that would include a public park on that land. After that meeting, the Spences thought about Mayor Delaney's vision and started investigating the possibility of building a public/private development on the property.

The Spences hired architectural design and development experts to help them formulate ideas about how the Shipyards property could be developed. The Spences then met with the JEDC to discuss their ideas. Throughout these discussions a vision of a large public/private development emerged including condominiums, office buildings, a public park, and a public riverwalk. Once JEDC and the Spences decided upon this public/private Project, they needed to determine what incentives the City could provide to the Spences to build the public portion. The Spences formed TriLegacy Group, LLC to contract with City for the new development. The name TriLegacy stood for Carlton H. Spence's three children and leaving a legacy for Jacksonville.

Both TriLegacy and JEDC organized negotiating teams. The negotiating team for the City included Kirk Wendland from the JEDC, Paul Krutko from the DDA, and John Alderson from the General Counsel's Office. The negotiating team for TriLegacy included Hamilton

Traylor, President of TriLegacy and attorney; Greg Dawson, attorney for TriLegacy; and James Gilmore and James Catlett from Agency Approval and Development, Inc.

The negotiating teams agreed the City would grant TriLegacy \$40 million in exchange for building \$44 million worth of public improvements and parkland as part of a larger private development worth approximately \$782 million. Once the parties decided the basic structure of the deal they needed to determine how the \$40 million grant should be disbursed. The negotiating team for the City suggested making the deal a draw contract, but ultimately the City and TriLegacy decided against a draw contract because both parties were concerned a draw schedule would slow the project down. The City distributed the money for Berkman Plaza on a draw schedule and the parties complained it took too long for the money to be disbursed. The City wanted the public improvements completed by January 2005 and TriLegacy did not think it could meet the schedule with a draw contract, so all the parties agreed on a compliance contract. The compliance contract agreed upon required TriLegacy to meet certain conditions prior to receiving the grant money, but did not tie the disbursement of funds to certain stages of construction.<sup>3</sup>

TriLegacy was an LLC formed solely for the purpose of this Project. A limited liability corporation shields its principals from any personal liability. Thus, the Spences and their other companies would not have been liable if anything went wrong with the Project. Despite dealing with an LLC on a \$40 million deal, the City did not demand and the Spences would not personally guarantee the project. TriLegacy only agreed to provide a guarantee for the first \$2.5

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<sup>3</sup> The details of the compliance contract are discussed on pp. 9-11.

million installment and to provide the City with a first mortgage lien on the property as security for the entire \$40 million grant.

During the negotiations, the City asked TriLegacy for financial statements of TriLegacy's principals to ensure that TriLegacy and its principals had the financial ability to carry out such a large project. TriLegacy refused to provide those financial statements because its principals did not want the statements to become public record. The City also asked TriLegacy for a copy of a marketability and feasibility study regarding the Project, but TriLegacy refused to provide any studies because they too would become public record.

Although TriLegacy refused to enter into a draw contract, refused to provide financial statements, refused to provide a feasibility statement, and refused to provide personal guarantees; the City continued with the deal. The parties drafted a Redevelopment Agreement under these conditions. On April 25, 2001, the DDA unanimously recommended the Agreement to the JEDC. On May 3, 2001, the JEDC unanimously approved the Agreement. The next step was the City Council.

**C. Council Auditor Review of the Redevelopment Agreement Prior to the City Council Approval.**

The City Council Auditor's Office reviews financial agreements made by the City and advises the City Council about the agreements. Prior to approving the Redevelopment Agreement in the City Council, the Council Auditor's Office reviewed the Agreement and gave a list of questions and concerns to JEDC.<sup>4</sup> On May 24, 2001, JEDC responded to some of the

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<sup>4</sup> May 5, 2001 Council Auditor Questions for JEDC

questions in writing.<sup>5</sup> There were numerous questions that JEDC did not respond to in writing, but the Council Auditor's Office said those questions were addressed verbally. We want to point out and focus on four major concerns the Council Auditor's Office raised and JEDC's responses in the May 24, 2001 memo.

First, the Council Auditor asked for "documentation of how the JEDC is sure that the developer is able and qualified to carry out the project." JEDC responded that the developer would not release its financial information. Second, the Council Auditor asked for a feasibility study on marketability of the project. JEDC responded saying that the developer does not want to release the feasibility study. Third, the Council Auditor expressed a concern about TriLegacy's ability to meet the financial obligations of the Redevelopment Agreement. JEDC responded by saying that the City was protected by the \$2.5 million guarantee for the 1<sup>st</sup> installment and the first-lien mortgage. Fourth, the Council Auditor questioned the developer's experience and JEDC responded saying the developer would respond.

On June 1, 2001, the Council Auditor's Office drafted a summary of its questions and JEDC's responses to give to the Finance Committee of the City Council.<sup>6</sup> Although the JEDC responses had not changed, the Council Auditor's Office failed to report the first, third, and fourth concern above, regarding TriLegacy's financial ability to complete the project and the developer's lack of experience. The Council Auditor's Office thought TriLegacy could address its experience or lack thereof in its presentation. However, why concerns about TriLegacy's

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<sup>5</sup> May 24, 2001 Council Auditor Questions for JEDC.

<sup>6</sup> June 1, 2001 Council Auditor's Questions and JEDC Responses



financial status were not included is not clear. The Council Auditor did inform the Finance Committee that the developer would not release the feasibility study.

**D. City Council Approval**

On June 12, 2001, the City Council enacted Ordinance 2001-450-E approving the Redevelopment Agreement between the City of Jacksonville, JEDC, and TriLegacy. On June 28, 2001, the relevant parties signed the Redevelopment Agreement.

**E. The Redevelopment Agreement**

The Redevelopment Agreement committed the City to granting TriLegacy \$40 million in exchange for building \$44 million worth of public improvements and parkland as part of a larger private development worth approximately \$782 million. The entire 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. The City funded the \$40 million grant by a tax exempt bond issue. The City anticipated paying off the bond debt with increased tax revenues generated from the project between 2002 and 2031. After the first three years of bond repayment, TriLegacy would be responsible for paying any shortfall between the annual debt service payment and the increase in ad valorem taxes collected.

The Redevelopment Agreement provided that the City would pay the \$40 million in four installments; \$2.5 million, \$17 million, \$17 million and \$3.5 million. As discussed above, the Redevelopment Agreement was not a traditional construction draw contract. The Agreement can best be characterized as a compliance contract, requiring TriLegacy to meet certain conditions prior to receiving the money.

To receive the first installment of \$2.5 million TriLegacy had to provide a guarantee of repayment of the \$2.5 million that would be released upon satisfaction of the conditions for the second installment and the City council had to approve the Agreement.

To receive the second installment of \$17 million, TriLegacy had to 1) deliver final plans and specifications for the project to be approved by JEDC and the Director of Public Works; 2) execute and deliver a first-lien mortgage of the Shipyard property to the City as security; 3) deliver a "qualified appraisal," stating the value of the property if the public improvements are completed; 4) obtain permits and approvals for construction of the eastern portion of the project; 5) deliver an executed construction contract between TriLegacy and a general contractor for construction of the eastern portion of the project which was reasonably acceptable to JEDC and the Director of Public Works; 6) deliver a performance bond for the eastern portion that was reasonably acceptable to JEDC and the Director of Public Works; and 7) deliver a letter stating that the conditions have been met.

To receive the third installment of \$17 million, TriLegacy had to 1) obtain permits and approvals for the western portion of the project; 2) deliver an executed construction contract between TriLegacy and a general contractor for construction of the western portion of the project that was reasonably acceptable to JEDC and the Director of Public Works; 3) deliver a performance bond for the construction of the western portion that was reasonably acceptable to JEDC and the Director of Public Works.

The final installment of \$3.5 million would be paid thirty (30) days after 1) substantial completion of the public improvements, and 2) the delivery of documentation of the total cost of

the public improvements and any additional information required to confirm that the grant was spent for purposes consistent with the tax exempt bond requirements.

Because the disbursement of funds is not tied to actual construction of the project, Section 4.3 "Use of the Initial Project Grant" provided the only contractual language which dictated how the City's money could be spent. Section 4.3 said the project grant should be used for the payment of hard and soft costs of the public improvements and infrastructure improvements as estimated in Exhibit C. Section 4.3 further required TriLegacy to maintain accounting records so that the City could ensure that the grant money was spent for purposes consistent with the expenditures of proceeds of tax exempt bonds, and if any expenditure was found to have been spent for purposes inconsistent with expenditures from proceeds from tax exempt bonds, then TriLegacy would reallocate such use to a proper purpose. The City maintains that this language made it very clear that TriLegacy could only put each City dollar directly into the public portion. TriLegacy interpreted Section 4.3 to mean that it could spend the City's money on both the public and private portions of the project as long as, at the end of the project, it provided \$40 million worth of public improvements.

**F. Payment of the Funds and Project Monitoring.**

The City paid TriLegacy \$2,500,000 on July 10, 2001; \$17,000,000 on April 17, 2002; and \$17,000,000 on April 10, 2003. The City never paid the last \$3,500,000. Kara Church, a JEDC employee, who started in January 2002, was placed in charge of monitoring the Shipyards Project and the disbursement of funds. Monitoring the Shipyards Project was one of Ms. Church's first assignments at JEDC. Ms. Church produced a checklist and would mark off when

TriLegacy completed each condition precedent to the disbursements.<sup>7</sup> Ms. Church was not an expert on permitting, mortgages, or construction contracts so she relied on Public Works and the General Counsel's Office to tell her when the items were complete and she would check them off the list.

We found that TriLegacy did not meet all the requirements of Section 4.2 before the City disbursed the funds. Section 4.2 required TriLegacy to produce final plans and specifications for the public improvements before the City disbursed the second installment of \$17 million. The Council Auditor's Office reported the plans and specifications were not finalized until after the City had already disbursed the second installment.

In addition to not ensuring that every item on the checklist was actually completed properly, JEDC did not monitor the construction progress adequately. Although Ms. Church was assigned to monitor the Project, she did not go on site of the Project to check on the construction because the disbursement of funds was not tied to the construction goals. According to the performance schedule in the Redevelopment Agreement, by April 2002, TriLegacy was to commence construction of the Riverfront Public Improvements and the Phase 1-A Residential Improvements. By December 2003, eight months after the 3<sup>rd</sup> installment of \$17 million, Phase 1-A of the Residential Improvements should have been substantially completed.<sup>8</sup> By December 2004, the Riverfront Public Improvements should have been substantially completed.

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<sup>7</sup> See TriLegacy Initial Project Grant Disbursement Checklist.

<sup>8</sup> Substantial completion is not defined in the redevelopment agreement, however, it is generally accepted to mean that most of the construction is complete and final inspection or certificate of occupancy is near.

By April 2003, when the City paid the third installment of \$17 million, the Phase 1-A Residential Improvements should have been approximately 60% complete and the Riverfront Public Improvements should have been approximately 40% complete. Today the Shipyard Project is devoid of substantial improvements; there are no buildings, residential or otherwise. Therefore, it was clear in April 2003 that the project was grossly off schedule. There was nothing coming out of the land, certainly not 60% or 40% worth of improvements.

TriLegacy says that the project was delayed by September 11, 2001 and by problems building the bulkhead. The bulkhead needed to be much deeper than originally anticipated. Additionally, there were problems with Jacksonville Electric Authority (JEA). TriLegacy's workers were dangerously close to JEA lines while working on the bulkhead. The City was aware of all of these delays. Despite that awareness, the City never requested or required a written modification of the performance schedule. The City never suggested or required a delay in the disbursement of the City's money based on the breach of the performance schedule.

The City continued to disburse funds throughout the three year period that this project continued. The City only once asked for an accounting of how the City's money was being spent. In March 2003, John Alderson gave Kara Church a copy of a Receipt and Disbursement letter<sup>9</sup>, which implied that TriLegacy used the City's money to pay off the existing mortgage on the property. He asked Ms. Church to ask TriLegacy how the money was being spent. On March 20, 2003, Ms. Church sent an email to Hamilton Traylor requesting an updated accounting.<sup>10</sup> TriLegacy responded by saying that an accounting was not a condition precedent

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<sup>9</sup> See Receipt and Disbursement Letter, April 16, 2002, see discussion *infra* pp. 17-19

<sup>10</sup> See March 20, 2003, Email from Kara Church to Hamilton Traylor

to the third installment of \$17 million and did not provide an accounting. The City still disbursed the third installment of \$17 million, on April 9, 2003.

#### **G. The Project's Demise**

In February 2004, the City abruptly halted the Shipyards project. TriLegacy claims that it was a few condo sales away from securing financing to build one of the large condominiums and that it was working to bring in a well-known financial company to build an office highrise. That February the City asked TriLegacy how much the Spences had spent on the project. TriLegacy reported that it had spent approximately \$50 million, the \$36.5 million from the City and approximately \$15 million of its own money. At that point, the City realized that TriLegacy must have spent some of the City's money outside of the public portion because all the City's money was spent and the public improvements were not completed.

When the City realized that TriLegacy spent its money outside of the public portion, the City stopped the project. The City and TriLegacy had different opinions about how the City's money could be spent. The City argues that the Redevelopment Agreement, particularly section 4.3 and Exhibit C, require every City dollar to go directly into the public improvements. TriLegacy argues that the \$40 million from the City was a loan for the project, and the Redevelopment Agreement allowed TriLegacy to spend the City's money for any private or public part of the project as long as, at the end of the project, there were \$40 million worth of public improvements.

The City points to the part of Section 4.3, which required TriLegacy to maintain accounting records so the City could ensure that the grant money was spent for purposes consistent with the expenditures of proceeds of tax exempt bonds, to support its argument that

every dollar must go directly into the public portion. The City's bond counsel, Daniel Livermore, advised the City and TriLegacy during the negotiations about how to maintain the tax exempt status of the bonds. Mr. Livermore drafted a memo, dated May 4, 2001, about his understanding of how the \$40 million project grant could be spent in accordance with the tax exempt bond status.<sup>11</sup> In that memo he states that the Redevelopment Agreement could be analyzed as a "turn key" approach and "so long as the fair market value of what the City receives pursuant to the two dedications [the Bay Street Public Improvements and the Riverfront Public Improvements, totaling \$40,000,000] upon completion exceeds 90% of the bond proceeds spent for such improvements, no impermissible private use would result." This language supports TriLegacy's interpretation that it could use the City's money for the project, both public and private parts as long as, at the end of the project, there were \$40,000,000 worth of public improvements. The City, however, says that Mr. Livermore was very clear during the negotiations that the money had to go directly into the public portion.

In April 2004, the City requested financial records from TriLegacy and determined TriLegacy only spent approximately \$14,016,508 on the public improvements allocated for in Exhibit C of the Redevelopment Agreement out of the \$36.5 million. The City was outraged and claimed that TriLegacy misapplied and stole the City's money. The City has gone so far as to say that TriLegacy engaged in a scheme to defraud the City. The City points to the Council Auditor's findings that \$22.5 million were misapplied, including \$6.2 million spent to pay off the preexisting mortgage on the property, \$7.2 million to Carlton Spence personally, \$1.9 million to Mr. Spence's other companies, and the rest to project expenses outside of the public portion.

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<sup>11</sup> See May 4, 2001 Memo from Daniel Livermore to Shari Shuman, John Alderson, and Karen Chastain.

TriLegacy states that they spent a total of \$50 million on the project and that any payments to Carlton Spence personally and his companies were reimbursements for money spent on the project prior to receiving the project grant. TriLegacy produced receipts to the City totalling \$49,895,109.

#### **H. The Draft Complaint**

After stopping the project, the City drafted a civil lawsuit against TriLegacy and its principals, Carlton H. Spence, Jeffrey Spence, and Hamilton Traylor. The lawsuit alleged TriLegacy defrauded the City of \$22 million, TriLegacy submitted a sham construction contract and a sham performance bond, and it illegally paid the preexisting mortgage off on the property with City money. The City never filed the draft complaint, but apparently prepared it during the settlement negotiations.

##### **1. Accusation that TriLegacy Transferred Money Outside of the Project.**

The lawsuit specifically claimed that 1) TriLegacy transferred \$7,225,000 of City funds to Carlton Spence in April 2002; 2) TriLegacy transferred \$2,125,000 of City funds to Bitter End Plantation, Inc. in April 2003; 3) TriLegacy transferred \$2,705,000 of City funds to Beach Trading Company in April 2003; 4) TriLegacy wired \$1,885,965.88 to Union Planters Bank in Alabama for ICS Logistics, Inc.; and 5) that TriLegacy principals traveled to Bermuda and Boston on the City's money.

TriLegacy principals report all of the money was paid to reimburse Mr. Spence and those other companies for money loaned to the Shipyard Project. TriLegacy explains Hamilton Traylor took the trip to Bermuda with a representative from the Stellar Corporation to examine a marine system similar to that of the Jacksonville Riverfront. Further, the trip to Boston was to



meet with representatives from a development and architectural firm that was assisting with the concept plans for the Shipyards.

**2. Accusation that the Construction Contract with Stellar Corporation was a Sham Contract.**

The draft complaint also alleges the construction contract between Stellar Corporation and TriLegacy to construct the public improvements on the eastern and western portion of the project was a sham contract, signed merely to trick the City into disbursing the grant money. TriLegacy and Stellar Group deny that accusation. TriLegacy and Stellar signed a construction contract for both the eastern and western parts of the project on January 8, 2002. TriLegacy provided a copy of the construction contract to JEDC at least two months prior to the disbursement of the 2<sup>nd</sup> installment, the first \$17 million, on April 17, 2002.

The Redevelopment Agreement required JEDC and the Director of Public Works to approve the construction contract. Kirk Wendland, the executive director of JEDC at that time, does not recall reviewing the construction contract. John Alderson, an attorney formerly with the General Counsel's Office but at the time working for JEDC, reviewed the contract and found no problem with it. Kara Church, who was monitoring the project for JEDC, thought Public Works had signed off on the construction contract and, therefore, she checked that requirement off the list. Ms. Church had no knowledge of whether the construction contract was adequate. Stellar maintains the construction contract was valid and that Stellar actually performed work on the property and received payments. Stellar reports the contract used was a standard contract that it uses in many of its transactions. The only difference is Stellar and TriLegacy were not able to reach a guaranteed maximum price, but that did not stop work from being performed and

paid for. The Council Auditor's Office reported TriLegacy paid Stellar millions of dollars for work on the property.

### 3. Paying the Mortgage on the Property With City Funds.

The draft complaint alleges that TriLegacy improperly paid off the existing first mortgage on the Shipyards property with the City's money. The Redevelopment Agreement required TriLegacy to pay off the existing mortgage on the Shipyards and provide the City with a first lien mortgage prior to the disbursement of the second installment of \$17 million. The City contends TriLegacy had to pay the existing mortgage off with its own money, not the City's money. TriLegacy believed the mortgage pay-off could be accomplished as it is done in a traditional closing. When TriLegacy received the grant from the City, it would pay off the existing mortgage. The City, then, would be in a first lien position.

Karen Chastain, from the General Counsel's Office, was responsible for making sure the City obtained the first lien mortgage prior to the disbursement of the second installment. She worked on the transaction with Greg Dawson, who represented TriLegacy. Greg Dawson and Karen Chastain communicated several times via email on April 15, 2002. It is clear in those emails, the last of which was at 6:13 p.m. on April 15, 2002 from Greg Dawson to Karen Chastain, that TriLegacy had not yet paid the existing mortgage<sup>12</sup> On April 16, 2002, TriLegacy hand delivered a "Receipt of Funds and Statement of Disbursements" to Karen Chastain.<sup>13</sup> That document acknowledges receipt of \$17 million and lists disbursements to be made outside of closing, including \$6,219,375.26 to pay off the first existing mortgage on the property.

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<sup>12</sup> See April 15, 2002, 6:13 p.m., email from Greg Dawson to Karen Chastain.

<sup>13</sup> See Receipt of Funds and Statement of Disbursements, April 16, 2002.

At 2:42 p.m. on April 16, 2002, Karen Chastain sent Shari Shuman, the City Treasurer, a letter stating, "this will confirm that the mortgage (in a form acceptable to me) is executed and the title agent/title company has the original mortgage ready to be recorded. I have a marked-down title commitment insuring our first lien mortgage position (in a form acceptable to me) and the title agent is required to deliver a mortgage title policy insuring the City's first lien position (up to \$40,000,000, subject to actual disbursements) to me in this manner."<sup>14</sup>

The General Counsel's Office relied on the marked up title commitment from the title insurance company to believe that the mortgage was completely paid off prior to approving the disbursement. The City did not receive a Satisfaction of Mortgage before paying the second installment, but did have an insured first mortgage position. TriLegacy maintains the City should have known that it was using the \$17 million to pay off the existing mortgage and give the first lien because the Receipt and Disbursement Statement indicated that it would be paying off the mortgage with the payment of the \$17 million. Furthermore, TriLegacy maintains that it never tried to hide or conceal that it was using the City's money to pay off the mortgage. In support of that premise, on April 11, 2002, Greg Dawson sent a fax to Karen Chastain, the cover of which read, "To confirm that TriLegacy Group, LLC and Jacksonville Riverfront Development, Ltd. will be in a position to deliver a first lien mortgage with the funding of the \$17,000,000..."<sup>15</sup> The General Counsel's Office does not recall receiving the fax.

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<sup>14</sup> See April 16, 2002, 2:42 p.m., email from Karen Chastain to Shari Shuman.

<sup>15</sup> See April 11, 2002, Fax from Greg Dawson to Karen Chastain.

**I. Payment From TriLegacy to Michael Weinstein For Consulting Related To The Super Bowl A Year And A Half After Mr. Weinstein Left JEDC.**

During our investigation, it came to our attention that TriLegacy hired Michael Weinstein, former Executive Director of JEDC, to advise TriLegacy of the best use of the Shipyards property during the Super Bowl. Mr. Weinstein was instrumental in bringing the Super Bowl to Jacksonville and certainly knew a tremendous amount about that weekend's festivities. TriLegacy approached him about what to do with the Shipyard's property during the Super Bowl. Mr. Weinstein agreed to help TriLegacy plan and market the use of the property and he charged a \$25,000 retainer. TriLegacy paid the \$25,000 in May 2003. Despite the high fee, both parties agree that little of any consulting work was ever done. TriLegacy started working with the Super Bowl host committee directly and then in early 2004 the Shipyards Project began to unravel stunting plans for the Super Bowl.

Mr. Weinstein left the JEDC in September 2001, so he was no longer involved with the Shipyard's Project at the time of the consulting agreement. However, Mr. Weinstein had been the Executive Director of JEDC when the City negotiated the Redevelopment Agreement. Jacksonville's Municipal Code prohibits former city officials from acting as a representative for a party on any matter in which the City has a direct or substantial interest or in which that city official participated in personally and substantially.<sup>16</sup>

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<sup>16</sup> "It shall be unlawful an a class-C offense for any person , who was an officer or employee of the city or an independent agency, after his or her employment has ceased, knowingly to act as agent or attorney for anyone other than the city or independent agency in connection with any administrative or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter involving a specific party or parties in which the city or an independent agency is a party or has a direct and substantial interest and in which he or she participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise while employed by the city or an independent agency." See Section 602.402 of the City of Jacksonville Municipal Code

At the time of the consulting agreement between Mr. Weinstein and TriLegacy, the Shipyard's Project should have been going strong. The City had a substantial interest in the land and the company about which Mr. Weinstein agreed to consult. Further, Mr. Weinstein had personally and substantially participated in oversight of the Shipyard's Project negotiation as the Executive Director of JEDC. Although we do not believe that Mr. Weinstein committed any intentional wrongdoing, in light of the above municipal ordinance, we do not feel that he should have accepted employment from TriLegacy while the Shipyard's Project was ongoing.

#### **J. The Settlement Agreement**

In light of the City's accusations, and the obvious lack of progress on the property throughout the summer of 2004, the City and TriLegacy began settlement negotiations in an attempt to resolve the dispute over how the money could be spent. On August 17, 2004, The City of Jacksonville and TriLegacy entered into a settlement agreement on the Shipyards Property. The Settlement Agreement terminated TriLegacy's Redevelopment Agreement at the Shipyards property.

The Settlement Agreement provided two options 1) for a new developer, LandMar, to take over the project at the Shipyards property and TriLegacy would not owe the City any money, or 2) the City would receive the deed to the property and TriLegacy would have to pay any deficiency up to \$14 million. The deficiency would be calculated by taking the outstanding bond debt of \$43.2 million less the fair market value of the property. Carlton Spence and Jeffrey Spence, TriLegacy and Jacksonville Riverfront Development would be jointly and severally responsible to pay any deficiency amount.

According to the Settlement Agreement, if the deficiency amount is less than \$7 million, the deficiency amount shall be paid in equal principal payments of \$500,000 beginning September 30, 2005 and on each September 30 until the deficiency amount is paid in full. If the deficiency amount is \$7 million or more, the deficiency will be paid in annual payments equal to the greater of \$500,000 or 1/20 of the deficiency amount, beginning September 30, 2005 and on each September 30 thereafter until the principal amount of the deficiency amount is paid in full. Interest on the deficiency amount shall accrue from August 17, 2004 (date of this agreement) at a rate of 4% per annum. However, in the event all scheduled principal payments are paid when due, or in the event the outstanding principal balance is paid off in full before the scheduled maturity date, the obligation to pay the accrued interest shall be come null and void.

Walter M. Lampe of Lampe, Roy & Associates, Inc. provided an appraisal of the Shipyards Property. As of March 1, 2005, the total market value was \$36 million. Using the appraisal from Lampe, Roy & Associates, Inc., the deficiency would be \$7,200,000 (\$43.2 million less \$36 million). Presently, the City of Jacksonville and LandMar are negotiating a new Redevelopment Agreement for the Shipyards Property. Approval must come from City Council before LandMar and the City of Jacksonville can enter into a new Redevelopment Agreement.

The City argues that the settlement agreement makes the City whole. We disagree with the City. If LandMar does not take over the deal, TriLegacy will be required to pay the deficiency over time. If TriLegacy makes timely payments, there will be no interest charged. Thus, TriLegacy will have an interest free loan for a term to be determined based on the deficiency amount. In addition, based on the terms of the settlement agreement, the present value of the deficiency cannot be calculated because the accrued interest could be forfeited as

long as TriLegacy pays on time. Whatever the present value, a payment obligation made on time, without any charge for accruing interest, is significantly less than the reported sum of the future payments.

The other problem is that the Redevelopment Agreement counted on increased ad valorem taxes to repay the bond debt, but without the development on the site those taxes will not increase and the City will have to repay the bond debt out of the general fund. Therefore, the City may not be made completely whole by the Settlement Agreement.

The City also argues that TriLegacy's acquiescence to enter into the Settlement Agreement and pay up to \$14 million to the City is an admission of wrongdoing. TriLegacy maintains that it did nothing wrong and that it entered into the Settlement Agreement because the City threatened to jeopardize the Spences' relationship with the Jacksonville Port Authority. The Spences' livelihood has come from the Port Authority and it could not afford to lose that deal.

### **III. FINDINGS OF FACT**

#### **A. No Criminal Wrongdoing.**

We find no criminal wrongdoing on behalf of any TriLegacy representative or any City official. We do understand that the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS) and the U.S. Attorneys office are investigating TriLegacy and the City's accusation of fraud and tax code violations. However, we found Hamilton Traylor, Jeffrey Carlton Spence, and Greg Dawson to be credible witnesses. It is important to note they all voluntarily testified before us without a subpoena and without any immunity knowing that the FBI, the U.S. Attorney's office, and the IRS are currently investigating them. If the federal investigations

reveal that representatives of TriLegacy lied to us, then they would be subject to perjury charges. Also the testimony before the Grand Jury could be used against them in the federal case. We did not find any fraud or intent to defraud the City of Jacksonville.

**B. The City Failed To Exercise Due Diligence Prior To Entering Into The Redevelopment Agreement.**

Our investigation revealed the following facts:

1. The Spence family, the principals of TriLegacy, had absolutely no experience building a public/private development, particularly a project worth \$782 million.
2. Because TriLegacy lacked experience, it hired development and architectural consultants to help design the project, but none of those companies or people were made a party to the deal, nor were they obligated to continue consulting as the project progressed and was actually built.
3. The deal was with TriLegacy, LLC. A limited liability corporation shields the principals from any personal liability if something goes wrong with the project. Despite dealing with an LLC on a \$40 million deal, the City did not demand and the Spences would not personally guarantee the Project.<sup>17</sup>
4. The Spences refused to provide any financial statements for TriLegacy, the Spence family, or any of the other Spence owned businesses, that would have provided evidence of their financial ability to complete the Project.

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<sup>17</sup> The first \$2.5 million was guaranteed by two of the Spence's corporations, but the other \$37.5 million of the project was not guaranteed.



5. The Spences did not provide evidence of a probability of obtaining major commitments from financial institutions that would sustain the \$40 million worth of public improvements let alone a \$782 million Project.
6. TriLegacy refused to provide a marketability or feasibility study, which would have provided evidence that the Project would be successful.
7. TriLegacy refused to do a draw contract.

The City should not have entered into a deal with a LLC with no development experience, that would not provide any financial statements, would not provide a feasibility study, would not make a personal guaranty or any guarantees except for the first \$2.5 million, and would not agree to a traditional draw contract. Valid reasons may have existed for TriLegacy's refusals. Often there is a give and take between parties during the preagreement negotiations. We understand former Mayor John Delaney's strong desire to have a project of this nature and magnitude. However, at some point the City must say "no." We believe it was the ultimate responsibility of the Mayor and the City Council to say the City cannot enter into a deal and give \$40 million under these conditions. If the City agreed to consummate the agreement regardless of its lack of due diligence, though we do not agree, the agreement should have included 1) a traditional draw schedule, and 2) increased contractual provisions to monitor the project progress.

**C. The Redevelopment Agreement Failed to Adequately Protect the City.**

1. **The first lien mortgage was not adequate security for the City's \$40 million investment.**

The only security for the City in the Redevelopment Agreement was the first lien mortgage. When the Spences acquired the property in 1999, it was worth approximately \$15

million. The City did not obtain an appraisal or inquire into the actual value of the property on June 28, 2001, the date the Redevelopment Agreement was signed. Therefore, the City had no knowledge of the actual value of the property when it signed the Redevelopment Agreement, making \$15 million the only security for a \$40 million grant.

The City argues that as the project progressed the land would increase in value, covering their investment. But without tying any of the disbursements to actual construction, the City had absolutely no guarantee that the work would be done and that its collateral would rise in value. Former Mayor John Delaney and the General Counsel argue that further protection would not have been needed if TriLegacy had built the Project as scheduled. Of course that is correct, but it completely ignores the purpose of having contracts and security. The purpose of having sufficient security for a contractual agreement is in case there is a breach, unintended or not. The security should have been for the possibility of breach. In this case, if TriLegacy did not improve the property, the mortgage would not provide adequate security for the \$40 million investment because the property would only be worth approximately \$15 million. That is not adequate security. The City has argued that land values, generally, have increased and that the property will continue to become more valuable. Land values fluctuate. But, more importantly, the City is not in the business of land speculation.

The City should have required adequate security. While dealing with a LLC, at the very least, the City should have demanded a personal guarantee from the Spences or one of their profitable companies and insisted upon a draw contract in addition to the security of the first lien mortgage.

2. **The Redevelopment Agreement should have required the General Counsel's Office, as opposed to or in addition to the Director of Public Works and JEDC, to review the contracts and other legal documents submitted as conditions precedent to disbursing the City's money.**

The Redevelopment Agreement required the construction contract and performance bond to be reasonably acceptable to the JEDC and the Director of Public Works, but made no mention of the General Counsel's Office. The General Counsel's Office, with over fifty (50) highly qualified attorneys, was in a much better position to analyze the construction contract and performance bond and ensure that those legal documents met the conditions in the Redevelopment Agreement. The Redevelopment Agreement should have required the General Counsel's Office, as opposed to or in addition to the Director of Public Works and JEDC, to review any and all contracts and other legal documents submitted during this deal. Though not required by the Agreement, our consolidated government, with centralized legal services, and common sense would have lawyers and not non-lawyers review contracts. Therefore, the General Counsel's Office should have reviewed all the legal documents.

3. **The Redevelopment Agreement did not require TriLegacy to make any progress reports on construction.**

The Redevelopment Agreement did not require TriLegacy to make monthly or even annual progress reports on construction. The agreement gave the JEDC and Director of Public Works the authority to monitor the project, but TriLegacy was not required to submit any periodic reports. The Redevelopment Agreement should have required TriLegacy to submit periodic progress reports to JEDC.

**4. The Redevelopment Agreement did not require TriLegacy to keep the City's money in a separate bank account, submit periodic reports of expenditures, or explicitly allow the City to audit records.**

The Redevelopment Agreement required TriLegacy to maintain accounting records, but it did not require TriLegacy to keep the City's money in a separate bank account, periodically report expenditures of public funds, or explicitly allow the City to audit records. JEDC did ask for an accounting in March 2003, but TriLegacy did not believe it had to provide such documents at that time and JEDC did not question that response. If the City is going to give out public funds, it must ensure that it is able to track how the funds are spent, particularly when the City disburses the funds before the work is done. The City should have contractually required TriLegacy to maintain the City's money in a separate bank account, submit periodic accountings, and/or give the City a right to audit records at any time during the project.

**D. The Redevelopment Agreement And The City Were Not Clear On How The City's Money Should Be Spent.**

TriLegacy and the City had very different interpretations of how the City's money could be spent. TriLegacy believed that the \$40 million was a loan and that the money could be spent on the private and public parts of the Project as long as at the end of the Project, TriLegacy provided \$40 million worth of public improvements. The City believed that the contract unambiguously stated that every dollar had to go into the public portion. The City also believed that it clearly explained that every dollar of City money had to go directly into the public portion to TriLegacy.

We found all the witnesses credible in their own opinions and interpretations. After reviewing Section 4.3, hearing from the City Officials, the City's bond counsel, and the TriLegacy representatives, we were not able to determine the correct contract interpretation. Therefore, we

understand how there could have been confusion. We believe that both parties thought their interpretations were correct. We do not believe that TriLegacy concocted their interpretation after they spent the City's money. We believe that TriLegacy intended to complete the project and intended to provide the City with the \$40 million worth of public improvements.

The City argued that Section 4.3, which required the money to be spent consistent with expenditures of proceeds of tax exempt bonds, clearly stated that TriLegacy could not use the money outside of the public portion. Unfortunately, it appears that the opinions of the City's bond counsel have not been clear. One opinion supported the City while another supported TriLegacy. His most recent analysis would have allowed TriLegacy to use the grant money for the Project generally as long as, at the end of the Project, TriLegacy had built \$40 million worth of public improvements with less than 5% of private use. Under that analysis, if the City had not pulled the plug and TriLegacy had been allowed to finish the project, the tax exempt bond issue would not be in jeopardy.

If the City wanted every dollar to go directly into the public portion and if failure to do so would jeopardize the bond issue, then the City should have stated that more clearly. The City should have put the following provision in the contract: "every dollar provided by the City must go directly into the public portion of the project. Failure to put every dollar directly into the public portion will jeopardize the tax exempt bond status of the bonds issued."

**E. The City Failed To Adequately Monitor The Project.**

The Redevelopment Agreement said that "during all periods of design and construction, the Executive Director of the Agency and the City's Director of Public Works shall have authority

to monitor compliance by the Developer with the provisions of this Agreement, the Project Documents and the Concept Plans.”

1. **JEDC should have asked the General Counsel’s Office to review all legal documents and contracts submitted before disbursing the City’s money.**

Although the Redevelopment Agreement did not require JEDC to submit any contracts and other legal documents to the General Counsel’s Office for review, the JEDC should have given all such documents to the General Counsel’s Office for review. Any successful business has its attorneys review contracts and other important documents before accepting them. The JEDC was negligent in not having its attorneys at the General Counsel’s Office review all of the documents.

2. **JEDC should have monitored the progress of construction more closely and modified the Redevelopment Agreement for any delays in performance and/or held up paying the third installment of \$17,000,000 due to a breach in the performance schedule.**

JEDC did not appear to have any plan for monitoring the Project’s progress. The City never asked for construction progress reports. JEDC did not have representatives going to the site and checking on the progress. The Stellar Group produced monthly progress reports on the construction for TriLegacy, but the City never asked to review any of those reports.

Anyone driving by the Shipyards property today can see that there is not a public park and there are not buildings coming out of the ground. In April 2003, when the City paid the second \$17,000,000, Phase 1-A of residential improvements should have been 60% completed. Clearly, there was not 60% worth of improvements on the property at that time. If TriLegacy was so off schedule on Phase-1A of the project, then it would have been safe for the City to

assume that the public improvements, scheduled to be substantially completed by December 2003, were not on schedule either. Obviously, there was a problem, but the City still disbursed the last \$17 million. The City should have held TriLegacy accountable to the Performance Schedule in the Redevelopment Agreement. Once the performance schedule was breached, the City should have modified or terminated the Agreement.

**3. JEDC should have demanded to review TriLegacy's accounting records prior to disbursement of the third installment of \$17,000,000.**

The Redevelopment Agreement required TriLegacy to keep accounting records, but the City only asked on one occasion to review an accounting of expenditures and when TriLegacy said "no," the City did not pursue it. In March 2003, prior to disbursing the third installment, Kara Church sent an email to Hamilton Traylor requesting an updated accounting. TriLegacy did not believe that they had to provide an accounting at that time. The City accepted TriLegacy's refusal. Even though the project was clearly behind schedule and the City had a strong interest in knowing where the public money was going, the City failed to insist upon an accounting. The City paid the last \$17,000,000. The City should have demanded that accounting and held up the disbursement until the City received it.

**F. The Construction Contract Was A Valid Contract.**

We believe that the construction contract between Stellar Group and TriLegacy was a valid construction contract. We do not believe that Stellar colluded with TriLegacy to create a shame contract in order to get the City's money. Stellar performed work on the project, TriLegacy paid Stellar, and the City failed to provide any proof that the contract was not valid.

Moreover, the City had the construction contract for months before the 2<sup>nd</sup> installment and over a year before the 3<sup>rd</sup> installment and no one found any problem with the contract. We find it disingenuous for the City to argue two years later that it is a sham contract. If the City's allegation were true, then the City was grossly negligent to have had the construction contract months before the second installment without identifying it as a sham. The Stellar Group and its principals have a long and distinguished record as a credible construction company and corporate citizen. We found the allegations against them to be totally unfounded.

**G. The City Was On Notice That TriLegacy Planned To Use The City's Money To Pay Off The Mortgage And, Thus, The City Should Not Have Disbursed The Second Installment Prior To Receiving A Satisfaction of Mortgage.**

We find that the City was on notice that TriLegacy planned to use the City's money to pay off the mortgage. If the City wanted to ensure that TriLegacy paid off the existing mortgage prior to the disbursement of the second installment, then the City should have waited until it received the actual Satisfaction of Mortgage as opposed to an insured first mortgage position before disbursing the funds. TriLegacy viewed the mortgage pay-off as a traditional closing, so that when it received the loan from the City, it would use those funds to pay off the existing mortgage and the City would be in a first lien position.

We do not believe that TriLegacy tried to conceal the use of the City's money to pay off the mortgage. TriLegacy sent the General Counsel's Office a fax on 4-11-02 saying that it would provide a first lien mortgage with the funding of the \$17 million. The City knew that the mortgage was not paid off less than twenty-four (24) hours before it approved the disbursement. Moreover, TriLegacy gave the General Counsel's Office the Receipt and Disbursement Statement which could be interpreted as meaning that when TriLegacy receives the \$17 million, it will pay



the \$6,219,375.26 to satisfy the existing mortgage. Each one of these facts, standing alone, should have caused the City to question whether TriLegacy was waiting for the \$17 million to pay off the mortgage.<sup>18</sup> The City should have been more careful. To fully protect the public funds, the City should have waited until it received the actual Satisfaction of Mortgage before disbursing the second installment.

In fact, Section 4.2(b) of the Redevelopment Agreement gave the City 60 days to pay TriLegacy after it satisfied the conditions for disbursement. Thus, the City had every right and plenty of time to wait for the Satisfaction of Mortgage.

**IV. WE COMMEND THE CITY'S EFFORTS TO REFORM ITS PRACTICES AND PROCEDURES TO ENSURE FUTURE REDEVELOPMENT AGREEMENTS WITH PRIVATE BUSINESSES SUFFICIENTLY PROTECT THE CITY AND ARE MONITORED PROPERLY.**

We commend Mayor John Peyton for calling for changes within JEDC that will help prevent future problems like those that arose in this project. Mayor Peyton asked Daniel Kleman, the Chief Administrative Officer of the City of Jacksonville, to meet with the JEDC, the General Counsel's Office, and others to review the practices and procedures regarding financial accountability, monitoring, and compliance with Redevelopment Agreements. On November 9, 2004, Mr. Kleman drafted a letter to Mayor Peyton with seventeen (17) suggestions for future Redevelopment Agreements.<sup>19</sup> JEDC has responded to some of the suggestions but has not produced a comprehensive response nor has it adopted these recommendations. Although not every recommendation would be appropriate for every redevelopment agreement that JEDC

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<sup>18</sup> Thus, even if the City did not receive the April 11, 2001 fax from Greg Dawson, the other facts should have triggered concern.

<sup>19</sup> See November 9, 2004, Letter to Mayor Peyton from Daniel A. Kleman

negotiates, each of the recommendations should be considered during every negotiation to ensure that all the necessary protections are in place for every deal. Had those policies been in place prior to the Shipyards Project, all of the problems that arose could have been avoided.

We also commend the General Counsel's Office involvement in assisting with Mr. Klemmen's recommendations and taking an active role in the deal with the LandMar negotiations to ensure that any deal with LandMar protects the City's investments. If the contractual provisions the General Counsel is requiring for the LandMar deal had been included in the TriLegacy agreement, all of the problems that arose could have been avoided.

Lastly, we commend the Council Auditor's Office for raising questions and concerns about the Shipyards Project before the City Council approved the Redevelopment Agreement. However, we believe that the Council Auditor should have expressed all of its concerns regarding JEDC's responses and lack thereof to the City Council. We also commend the Council Auditor's Office review of the Shipyards Project since 2004. We disagree with some of the analysis of TriLegacy's actions and motives in the Council Auditor's review dated April 15, 2005. However, we support the Council Auditor's recommendations.

## **V. RECOMMENDATIONS**

All of the following recommendations should be implemented in future development agreements and waived only when clear justification for waiver exists.

1. The City should require future Redevelopment Agreements to include a draw schedule, that ties funding to actual construction.
2. The City should require future developers to submit periodic construction progress reports to assist the City in monitoring the project.

3. The City should require that all public funds be kept in a separate bank account to which the City could have access for monitoring purposes.
4. The City should require any Redevelopment Agreement to include a contractual provision allowing the City to access and review all expenditures of public monies to ensure that the City's money is being properly spent.
5. The City should ensure that a developer and its affiliated companies have sufficient experience to embark upon and carry out the designed project.
6. The City should require the developer and its affiliates to provide financial records to the City to show that the developer has the financial ability to carry out the project.
7. A representative from the General Counsel's Office should be a party to any Redevelopment Agreement negotiations.
8. The General Counsel's Office should review all legal documents and contracts provided by a developer as a condition precedent to funding. Requiring such a review of legal documents should not have to be a requirement of any redevelopment agreement, but should be the common practice of City Officials in a consolidated government.

## VI. CONCLUSION

**Some City Officials have suggested, and may suggest again, in what we regard as a disingenuous attempt to deflect attention from the accuracy of our findings, that our motivations were improper; that we were biased against the City and were going after the wrong people. These accusations are unfounded. This Grand Jury did not want to go after anyone and we were not motivated by any political considerations. We listened to the extensive testimony of all the pertinent City officials and representatives of TriLegacy.**

Former Mayor John Delaney and General Counsel Richard Mullaney have stated publicly<sup>20</sup> that the Shipyards Project was 1) a great vision, 2) that the City exercised appropriate due diligence, 3) that the redevelopment agreement was good, and 4) that the settlement agreement is great. We commend former Mayor John Delaney for his vision but strongly disagree with #2, #3, and #4.

We found no criminal wrongdoing and feel that TriLegacy and Stellar Group, Inc. have been wrongly maligned by some City Officials in the media. We believe that TriLegacy from the outset of the Project honestly believed that it could spend the City's money on both the public and private portions of the Project as long as, at the end of the Project, there was \$40 million worth of public improvements. It is clear, from the period before the first \$17 million disbursement, that TriLegacy operated and acted under this interpretation as evidenced by paying the property mortgage with the City's money. TriLegacy did not try to hide the fact that it used the City's money to pay off the mortgage. TriLegacy sent a fax to the City that said it would pay off the mortgage with the funding of the \$17 million. In addition, TriLegacy provided a Receipt and Disbursement Statement that implied that the existing mortgage would be paid after TriLegacy received the \$17 million. It is ludicrous, unfair, and reckless to allege that the Spences abandoned their original plan, which would have greatly expanded their already successful business, and embarked on a scheme to defraud the City.

To the contrary, if the City officials actually believed that a scheme to defraud existed, the City was grossly negligent in not discovering such a scheme prior to disbursing

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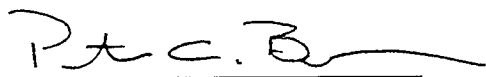
<sup>20</sup> We cannot refer to their Grand Jury statements, but have noted several statements made to the media.

\$36.5 million over almost a three year period. We found that the City did not exercise due diligence in negotiating the Shipyard Redevelopment Agreement and failed to adequately monitor the project. The City should not have entered into an agreement with an LLC with no development experience, that refused to provide financial statements, refused to provide a feasibility study, refused to make a personal guarantee, and refused to use a traditional draw contract. The refusals had to stop somewhere. The City had a responsibility to pull out of the deal or, at the very least, insist upon a draw schedule.

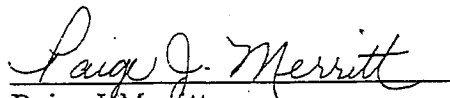
After entering into such a contract without draws, the City had an increased responsibility to monitor the Project progress. Disbursing the third installment of \$17,000,000 in April 2003 was completely unacceptable when it was clear that the project was not on schedule. We urge the City to adopt the recommendations above in order to protect the taxpayers and well-being of our community. If any of the basic recommendations delineated above had been followed and included in the Redevelopment Agreement, all the problems could have been avoided and possibly we would have a public park at the Shipyards today.

The Grand Jury directs that a copy of this presentment be furnished to Mayor John Peyton, the City Council for the City of Jacksonville, and all individual witnesses who presented testimony, and that the original be filed with the Clerk of Court as a public record.

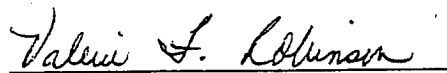
DATED this 28 day of April, 2005



Peter C. Brenna  
Foreperson of the Duval County Grand Jury

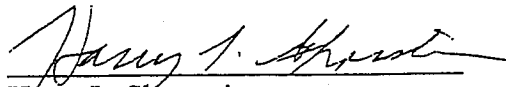


Paige J. Merritt  
Vice Foreperson of Duval County Grand Jury



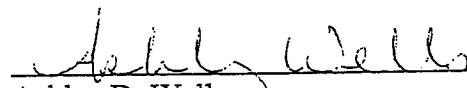
Valerie F. Robinson  
Secretary of Duval County Grand Jury

I, HARRY L. SHORSTEIN, State Attorney for the Fourth Judicial Circuit of Florida, in and for Duval County, hereby certify that I, as such Prosecuting Officer and as authorized and required by law, have advised the Grand Jury which returned this Report this 28 day of April, 2005.



Harry L. Shorstein  
State Attorney  
Bar Number 093316

I, Ashley Wells, Assistant State Attorney for the Fourth Judicial Circuit of Florida, in and for Duval County, hereby certify that I, as such Prosecuting Officer and as authorized and required by law, have advised the Grand Jury which returned this Report this 28 day of April, 2005.



Ashley D. Wells  
Assistant State Attorney