

RESOLUTION NO. 2849

**AUTHORIZE THE EXECUTION OF A STANDARD PROJECT AGREEMENT
BETWEEN THE CITY AND THE NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY FOR FIVE PROJECTS AND DESIGNATE THE CITY MANAGER TO
EXECUTE THE AGREEMENTS**

WHEREAS, in April, 2013 the General Assembly and Governor approved a new transportation funding bill (HB2313) with all taxes and fees imposed by the General Assembly; and

WHEREAS, 70% of HB2313 revenues will be provided in the Northern Virginia Transportation Authority (NVTa) for mass transit capital projects that increase capacity, and for regional highway projects included in TransAction 2040 that have been evaluated by the Virginia Department of Transportation (VDOT) for congestion relief, and

WHEREAS, the NVTa approved a list of 44 projects to be funded with FY 2018 -2023 Six year Program HB2313 funds; and

WHEREAS, the NVTa approved a standard project agreement for the local administration of a project and for implementing jurisdictions and agencies to enter into a formal agreement with the Authority to receive the HB2313 70% funds on a reimbursement basis; and

WHEREAS, the West End Transitway: Northern Segment (Phase 1) for \$2,200,000 (SPA# 2018-040-01), the Alexandria ITS Projects for \$1,195,491 (SPA# 2018-041-0), the Alexandria Bus Network ITS for \$150,000 (SPA# 2018-042-1), the DASH Transit Service Enhancements and Expansion for \$11,933,161 (SPA# 2018-043-0), and the Alexandria Duke St Transitway for \$12,000,000 (SPA# 2018-045-2) were approved as part of the FY 2018 to FY 2023 Six Year Program adopted project list; and

WHEREAS, the City will need to budget and appropriate funds for these five projects to do environmental work, design, construction, and acquire equipment; and

WHEREAS, the City will be reimbursed for these costs through the provisions outlined in the NVTa standard funding agreement;

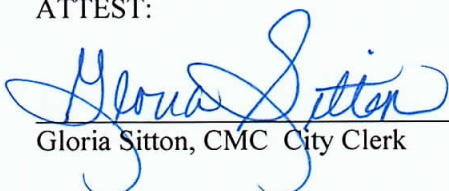
NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Alexandria does hereby authorize the execution of five Standard Project Agreements between the City of Alexandria and the Northern Virginia Transportation Authority for local administration of grants for, (1) West End Transitway (Phase 1), (2) Alexandria ITS Projects (TSP King Street/Duke Street), (3) Alexandria Bus Network ITS (DASH), (4) DASH Transit Service Enhancements and Expansion, and (5) Alexandria Duke St Transitway to be reimbursed with Fiscal Year 2018 to 2023 70% HB2313 revenues; and

FURTHER BE IT RESOLVED that the City Manager be designated to execute these agreements, and all future updates to these agreements.

Adopted: October 23, 2018


ALLISON SILBERBERG MAYOR

ATTEST:


Gloria Sitton, CMC City Clerk

Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
City of Alexandria
(Recipient Entity)

NVTA Project Number: _____

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this _____ day of _____, 20__, as between the Northern Virginia Transportation Authority ("NVTA") and _____ City of Alexandria ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 48.2 of Title 15.2 of the Code of Virginia, as amended;

WHEREAS, Section 15.2-4830(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 15.2-4838.01 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 15.2- 4838.1;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 15.2-4838.1 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ("the Project") satisfies the requirements of Virginia Code Section 15.2-4838.1;

WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTa Fund and/or from NVTa Bond Proceeds, is located within a locality embraced by NVTa's geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTa;

WHEREAS, City of Alexandria formally requested that NVTa provide funding to the Project by timely submitting an application for NVTa funding in response to NVTa's call for projects;

WHEREAS, NVTa has reviewed City of Alexandria's application for funding and has approved City of Alexandria's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by City of Alexandria, NVTa has determined that the Project complies with all requirements of the NVTa Act related to the use of moneys identified in Virginia Code Sections 15.2-4838.1.A,C.1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTa described in Appendix B have been duly authorized and directed by City of Alexandria to finance the Project;

WHEREAS, NVTa agrees that City of Alexandria will design and/or construct the Project or perform such other specific work for the Project and City of Alexandria agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the City of Alexandria's administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTa's governing body and City of Alexandria's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;.

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

City of Alexandria shall:

1. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.
2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 15.2-4838.1(A) and C(1).
3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.
4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.
5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to City of Alexandria to advance the Project to the next phase until the current phase is completed. In any circumstance where City of Alexandria seeks to advance a Project to the next phase using NVTA funds, City of Alexandria shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit City of Alexandria from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTa for having advance funded a future phase of the Project. However, City of Alexandria further recognizes that NVTa's reimbursement to City of Alexandria for having advance funded a Project phase will be dependent upon NVTa's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTa's Executive Director will periodically update NVTa's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. City of Alexandria shall provide all information required by NVTa so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.
7. Provide to NVTa requests for payment consistent with Appendix B and the most recently approved NVTa cash flow estimates that include NVTa's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTa and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTa, City of Alexandria can expect to receive payment within twenty (20) days upon receipt by NVTa. Approved payments may be made by means of electronic transfer of funds from NVTa to or for the account of City of Alexandria.
8. Promptly notify NVTa's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTa detailed estimates of additional costs associated with those circumstances. City of Alexandria understands that it will be within NVTa's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTa will do so only in accordance with NVTa's approved Project Selection Process and upon formal action and approval by NVTa. City of Alexandria shall timely provide to NVTa a

complete and accurate update to Appendix B, if NVTa approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTa no later than 90 days after final payment has been made to the contractors.
10. Review and acknowledge the requirements of NVTa Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to _____ City of Alexandria _____'s Project: a) Prior to any NVTa funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTa member localities; b) any such funds released by NVTa for such project will be in addition to the funds that the NVTa member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTa until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTa.
11. Should _____ City of Alexandria _____ be required to provide matching funds in order to proceed or complete the funding necessary for the Project, _____ City of Alexandria _____ shall certify to NVTa that all such matching funds have been either authorized and/or appropriated by _____ City of Alexandria _____s governing body or have been obtained through another, independent funding source;
12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern _____ City of Alexandria _____ and provide copies of any such financial records to NVTa, free of charge, upon request.

13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern City of Alexandria; and provide to NVTa copies of all such drawings and plans free of charge, upon request.
14. Reimburse NVTa for all NVTa funds (with interest earned at the rate earned by NVTa) that City of Alexandria misapplied or used in contravention of Sections 15.2-4829 *et. seq.* of the Virginia Code ("the NVTa Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.
15. Name NVTa and its Bond Trustee or require that all City of Alexandria's contractors name NVTa or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of City of Alexandria for the Project and present NVTa with satisfactory evidence thereof before any work on the Project commences or continues.
16. Give notice to NVTa that City of Alexandria may use NVTa funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTa's in-house legal counsel) in connection with the work performed under this Agreement City of Alexandria so as to ensure that no conflict of interest may arise from any such representation.
17. Provide certification to NVTa, that upon final payment to all contractors for the Project, City of Alexandria will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTa be considered responsible or obligated to operate and/or maintain the Project after its completion.
18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern City of Alexandria.

19. Acknowledge that if the Project is being funded in whole or in part by NVTB Bond Proceeds, comply with the tax covenants attached as Appendix D.
20. Acknowledge that if City of Alexandria expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that City of Alexandria agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."
21. Recognize that City of Alexandria is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.
22. Recognize that if City of Alexandria is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTB funds and/or NVTB Bond Proceeds that City of Alexandria will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTB will not be a party or signatory to that Agreement; nor will NVTB have any obligation to comply with the requirements of that Agreement.
23. Provide a certification to NVTB no later than 90 days after final payment to the contractors that City of Alexandria adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTB's Obligations

NVTB shall:

- I. Provide to City of Alexandria the funding authorized by NVTB for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTa.

2. Assign a Program Coordinator for the Project. NVTa's Program Coordinator will be responsible for monitoring the Project on behalf of NVTa so as to ensure compliance with this Agreement and all NVTa's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTa's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by _____ City of Alexandria _____ for the Project. NVTa's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.
3. Route to NVTa's assigned Program Coordinator all _____ City of Alexandria _____'s payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTa for the Project. After submission to NVTa, NVTa's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTa's Program Coordinator will then make a recommendation to the NVTa's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from _____ City of Alexandria _____. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTa's Program Coordinator will notify _____ City of Alexandria _____ in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTa have been corrected. Under no circumstances will NVTa authorize payment for any work performed by or on behalf of _____ City of Alexandria _____ that is not in conformity with the requirements of the NVTa Act, Chapter 766, or this Agreement.

4. Route all City of Alexandria's supplemental requests for funding from NVTa under Paragraphs A.5 and A.8 of this Agreement to NVTa's Executive Director. NVTa's Executive Director will initially review those requests and all supporting documentation with NVTa's CFO. After such initial review, NVTa's Executive Director will make a recommendation to NVTa's Finance Committee for its independent consideration and review. NVTa's Finance Committee will thereafter make a recommendation on any such request to NVTa for final determination by NVTa.
5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTa Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of City of Alexandria's financial records for the Project and on -site inspections.
6. Acknowledge that if, as a result of NVTa's review of any payment requisition or of any NVTa compliance review, NVTa staff determines that City of Alexandria has misused or misapplied any NVTa funds in derogation of this Agreement or in contravention of the NVTa Act, Chapter 766 or applicable law, NVTa staff will promptly advise NVTa's Executive Director and will advise City of Alexandria's designated representative in writing. City of Alexandria will thereafter have thirty (30) days to respond in writing to NVTa's initial findings. NVTa's staff will review City of Alexandria's response and make a recommendation to NVTa's Finance Committee. NVTa's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTa. Pending final resolution of the matter, NVTa will withhold further funding on the Project. If NVTa makes a final determination that City of Alexandria has misused or misapplied funds in contravention of this Agreement, the NVTa Act, Chapter 766, or other applicable law, NVTa will cease further funding for the Project and will seek reimbursement from City of Alexandria of all funds previously remitted by NVTa (with interest earned at the rate earned by NVTa) which were misapplied or misused by City of Alexandria. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to City of Alexandria to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.
8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.
2. City of Alexandria may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by City of Alexandria to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, City of Alexandria shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.
3. NVTA may terminate this Agreement, for cause, resulting from City of Alexandria's material breach of this Agreement. If so terminated, City of Alexandria shall refund to NVTA all funds NVTA provided to City of Alexandria for the Project (including interest earned at the rate earned by NVTA). NVTA will provide City of Alexandria with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, City of Alexandria may

request that NVTA excuse _____ City of Alexandria _____ from refunding all funds NVTA provided to _____ City of Alexandria _____ for the Project based upon _____ City of Alexandria _____'s substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse _____ City of Alexandria _____ from refunding all or a portion of the funds NVTA provided to _____ City of Alexandria _____ for the Project. No such request to be excused from refunding will be allowed where _____ City of Alexandria _____ has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, _____ City of Alexandria _____ will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and _____ City of Alexandria _____'s Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to _____ City of Alexandria _____'s governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

_____ City of Alexandria _____ agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

Agreement. In the event that City of Alexandria fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, City of Alexandria shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If City of Alexandria refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from City of Alexandria by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to City of Alexandria.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.
2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: NVTA, to the attention of its Executive Director;
3060 Williams Drive, Suite 510
Fairfax, VA 22031
- 2) to City of Alexandria, to the attention of _____

_____ (address)

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

City of Alexandria represents that it is not acting as a partner or agent of NVTa; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By: _____

Date: _____

City of Alexandria (Name of Recipient Entity)

By: _____

Date: _____