

CITY OF ALEXANDRIA
COST SHARE DEVELOPMENT



COMPLIANCE AUDIT

ISSUED OCTOBER 18, 2006

**LEGISLATIVE AUDITOR
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October 18, 2006

THE HONORABLE EDWARD G. RANDOLPH, JR.,
MAYOR, AND THE CITY COUNCIL
CITY OF ALEXANDRIA
Alexandria, Louisiana

We have reviewed certain transactions of the City of Alexandria (City) in accordance with Title 24 of the Louisiana Revised Statutes. Our review was performed to determine if the City's use of development agreements was consistent with state and City law.

Our review consisted primarily of examination of selected financial records, other documentation, and a review of the City's policies, procedures, and practices. The scope of our review was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the City's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. Copies of this report have been delivered to the Honorable James C. Downs, District Attorney for the Ninth Judicial District, and others as required by state law.

Respectfully submitted,

Steve J. Theriot, CPA
Legislative Auditor

KK:JM:DGP:dl

ALEX06

Findings:

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The City of Alexandria (City) uses development agreements which allow for cost sharing with real estate developers to reduce the economic cost of development. During the planning process, the City may request that the developer build additional infrastructure capacity such as wider roads or increased utilities capacity to meet the City's future needs. Louisiana law¹ permits development agreements to reduce the cost of development provided there is a public hearing with at least three notices, a council ordinance adopting the agreement, and the agreement must be filed with the mortgage office of the parish. We examined 14 cost share ordinances and the related development agreements for the period June 2000 through April 2005 and found the following:

1. The City paid \$186,913 to construct two water crossings in violation of City charter requirements or state bid law.
2. The City paid \$51,527 for a portion of a residential street and a water line relocation in violation of Article VII, Section 14 of the Louisiana Constitution.
3. The City provided materials or reimbursed developers for construction expenses valued at \$555,892 but could not provide proper documentation to support its legal obligation to incur these costs.
4. The City did not record the development agreements with Rapides Parish Clerk of Court within 10 days of entering the agreement as required by state law.
5. None of the 14 adopted cost share ordinances met the public notice requirement.

Water Crossings Constructed in Violation of State Law and City Charter Purchasing Requirements

Alexandria City Code Chapter 28, Part 1 Section 28-4.4 provides that when a waterway lies at the boundary of a subdivision, all streets will be stubbed out toward the waterway and all construction ceased at the boundary of the public easement. The City will then be responsible for traversing the waterway. Since the City is solely responsible for the crossing, the work should be let for bid in accordance with the City Charter and/or the Public Bid Law.

¹ **Louisiana Revised Statute 33§4780.21** provides, in part, that development agreements "will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Louisiana Revised Statute 33§4780.24 provides, in part, that a development agreement shall specify "the duration of the agreement, the permitted use of the property, the density or intensity of use, the maximum height and size of the proposed buildings, and provisions for reservation or dedication of the land for public purposes. The agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions provided they do not prevent the development of the land for its intended purposes."

Louisiana Revised Statute 33§4780.28 provides, in part, that "notice of intention to consider adoption of a development agreement shall be published at least three times in the official journal of the municipality or parish and at least ten days shall elapse between the first publication and the date of the hearing."

Louisiana Revised Statute 33§4780.29 provides, in part, that "a development agreement shall be approved by ordinance of the governing authority of the parish or municipality."

Louisiana Revised Statute 33§4780.31 states, in part, that "no later than ten days after a municipality or parish enters into a development agreement, the clerk of the municipal or parish governing authority shall record in the mortgage office of the parish a copy of the agreement."

Louisiana Public Bid Law requires public works exceeding \$100,000 to be advertised and let by contract to the lowest responsible bidder. The City Charter² requires public works exceeding \$7,500 to be advertised and let by contract to the lowest bidder. However, on two occasions, the City used the development agreement process to perform public works effectively circumventing the use of the bids.

One of the projects was the construction of a bayou crossing over Bayou Robert to align Coty Drive with Bruyninckx Drive. Instead of letting the project for public bid, the City entered into a development agreement for \$198,861 with V&V Properties. On October 20, 2004, six days before the City entered into the development agreement, V&V Properties invoiced the City \$126,285 for the completed bayou crossing. After reviewing the invoice, the City's engineering office determined that only \$53,633 of the invoice could be supported. Mr. Darrell Williamson, former director of planning, stated he told V&V to stop working after he learned they started the work before the ordinance was passed or the development agreement was signed, which led to the difficulty in verifying some of the items V&V invoiced. Mr. Williamson eventually approved a \$96,115 payment for the bayou crossing. The use of a development agreement in this instance effectively circumvented both the Public Bid Law and the City Charter.

The second project was the construction of a drainage crossing in the Victoria Place Subdivision. Again, instead of letting the project for public bid, the City entered into a development agreement this time with Ragan Nelson. On December 24, 2003, the City paid Ragan Nelson \$90,798 for the construction of the drainage crossing.

In both instances, the developer was required to provide copies of contracts and invoices from subcontractors approved by the developer's engineer and the city engineer. For both of these projects, the City could not produce these documents for review.

Water Line and Street Construction in Possible Violation of Article VII, Section 14 of the Louisiana Constitution

The City donated \$36,202 to relocate a water line and \$15,325 to construct a street in possible violation of Article VII, Section 14 of the Louisiana Constitution.³ Article VII, Section 14 of the Louisiana Constitution prohibits the loaning, pledging, or donating of public funds to or for any person, partnership, or corporation. For payments such as these to not be characterized as a donation, the City must show that (1) the payments were based on a legal obligation; (2) the payments were for a public purpose; and (3) the payments were commensurate with the public benefit received.⁴ Both of these situations occurred in the West Point on the Bayou Subdivision.

² **City Charter of Alexandria, Article V Sec 5-10** states, in part, that "all public works aggregating seven thousand five hundred dollars (\$7,500.00) or more shall be advertised and let by contract to the lowest responsible bidder in accordance with the applicable council policy and administrative requirements."

³ **Article VII, Section 14** states, in part, "Except as otherwise provided by this constitution, the funds credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private," the exceptions being "the use of public funds for programs of social welfare for the aid and support of the needy" and "for a public purpose, the state and its political subdivision or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual."

⁴ **Louisiana Attorney General Opinion 02-0125** provides that expenditures of public funds must pass a reasonableness test examining the legal obligation of the purchase combined with the public purpose and public benefit of the purchase.

In each situation, the City failed to document its legal obligation to pay and how these construction projects benefit the public.

The water line relocation and street construction were not included in the City ordinance and subsequent development agreement which was strictly for traversing a bayou. However, the City used the budget for the Coty Drive bayou crossing to pay for these expenses.

Lack of Documentation

The City provided materials or reimbursed developers for construction expenses valued at \$555,892 but could not provide proper documentation to support its legal obligation to incur these costs.

For example, the City provided materials for the gas system and paid for the installation of street lights and a sewer main upgrade in the Lake District Subdivision; paid for a street upgrade in the Bocage Subdivision; and paid for an upgraded water main in the Tennyson Oaks Subdivision without development agreements. The City also paid for a water main installation, drainage upgrade, and additional drainage and sewer improvements in the Alsace Lorraine Subdivision without a development agreement or did not maintain a complete copy of a development agreement. Since the City could not provide complete copies of development agreements for these projects, the City has not documented that it met the three-point test previously noted.

Recording the Agreement

Louisiana law⁵ further requires that the adopted development agreements be filed with the parish clerk of court. We examined 14 situations where the City used development agreements. The City expended funds under 11 of these agreements but could only provide three of the signed agreements. None of the development agreements were filed with the Rapides Parish Clerk of Court.

Public Notice

Louisiana law⁶ requires a development agreement to be published at least three times in the public entity's official journal prior to adoption. The law also stipulates that 10 days must elapse between the first date of publication and the hearing to adopt the agreement. For each of the 14 development agreements reviewed, the City only published notice of intent to consider adopting the agreements once prior to adopting the agreements.

⁵ Louisiana Revised Statute 33§4780.31 states, in part, that "no later than ten days after a municipality or parish enters into a development agreement, the clerk of the municipal or parish governing authority shall record in the mortgage office of the parish a copy of the agreement."

⁶ Louisiana Revised Statute 33§4780.28 states, in part, that "notice of intention to consider adoption of a development agreement shall be published at least three times in the official journal of the municipality or parish and at least ten days shall elapse between the first publication and the date of the hearing."

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The City should review and/or implement new policies and procedures with regard to development agreements to ensure each agreement is for eligible work that can be done under a development agreement and is properly documented. The City should also:

- (1) comply with the state Public Bid Law when procuring public works projects;
- (2) comply with the City Charter's bid requirements when procuring public works projects;
- (3) ensure each development agreement to be considered by the City Council is properly noticed;
- (4) file each development agreement with the Rapides Parish Clerk of Court;
- (5) develop written procedures and requirements for the consideration of development agreements, to include the projects the City will consider cost sharing with the developer.
- (6) only pay for work that is consistent with the scope of the ordinance and the development agreement; and
- (7) document the incremental cost of projects to ensure the city is paying the fair value of the improvements.

Finally, the City should continue to seek an Attorney General's opinion as to when the state Public Bid Law applies with regard to development agreements.

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The City of Alexandria is located in Rapides Parish and has a population of 46,342. The City is governed under the provisions of the Home Rule Charter adopted November 1, 1980, and operates under a Mayor-City Council form of government. To reduce the economic cost of development, the City uses development agreements to upgrade infrastructure when deemed beneficial to the public.

The examination was performed to determine if the City's use of development agreements was consistent with the laws of the state and the City. The procedures performed during the examination included:

- (1) interviewing current and former employees of the City;
- (2) interviewing other related persons;
- (3) examining selected documents of the City; and
- (4) reviewing applicable state laws and regulations and City ordinances.

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Management's Response



October 2, 2006
VIA FACSIMILIE

Mr. Steve J. Theriot, CPA
Legislative Auditor
1600 North Third Street
Baton Rouge, Louisiana 94397

RE: City of Alexandria - Development Agreements

Dear Mr. Theriot:

The City of Alexandria ("City") acknowledges receipt of the results of the compliance audit performed by your office at my request.

The City accepts the conclusions reached in the audit without exception.

Please be advised that the City has not entered into any additional Development Agreements since the potential problems were discovered. The persons who had oversight of the divisions involved are no longer employed by the City.

The City believes Development Agreements can be a valuable economic development tool in fostering residential and commercial development. The City intends to follow the recommendations set forth in the compliance audit in implementing a set of policies and procedures that will allow it to use Development Agreements in the future.

Thank you for your prompt attention to this request.

Sincerely,

CITY OF ALEXANDRIA

Edward G. "Ned" Randolph
Mayor

Edward G. Randolph, Jr. Mayor
City of Alexandria

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