

AUTHORITY TO CONTRACT FOR SERVICES

I. PURPOSE AND LIMITATION

The purpose of this policy is to set out the City's policy establishing authority for committing City funds for Service Contracts. This policy applies to all contracts for services, whether entered into through standard or emergency procedures, including but not limited to professional services, audit services, public works project services, public property maintenance and repair services, and maintenance, custodial and repair services for all City facilities.

II. GENERAL AUTHORITY TO ENTER INTO CONTRACTS FOR SERVICES

Provisions of the Charter govern the methods through which the City may be bound by contracts. Under the Charter, all contracting authority, with the exception of services rendered by a person in the employ of the City at a regular salary, rest with the City Council. The Charter states that the City shall not be bound by any contract or amendment thereto, unless the same shall be made in writing, approved by the City Council and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council (Charter § 421). The City Attorney shall approve the form of all contracts made by or amendment thereto and all bonds given to the City, endorsing his or her approval thereon in writing (Charter § 602(e)). The City Council may, however, by ordinance or resolution authorize the City Manager to bind the City, with or without a written contract, for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council, and may impose a monetary limit upon such authority.

III. DELEGATION OF AUTHORITY TO ENTER INTO AND AMEND CONTRACTS

The City Council hereby delegates its authority to contract for services to the City Manager and through him or her to Department Directors, and to the City Attorney as set out below. All formalities required under the provisions of the Charter shall be applied to these contracts. As such, the City Attorney shall review, approve and sign all such contract documents prior to contract award and execution and the City Clerk shall sign all such contracts attesting to their being entered into by the City. Additionally, the City Manager shall adopt and enforce administrative procedures that assure all contracts are: (1) entered into at a reasonable, fair and competitive price to the City; (2) all necessary formalities are followed and the requirements of federal, state, and local laws, including Council policies, are met; (3) best accounting practices are followed; and (4) the contracting process of the City is open and transparent, and provides accountability.

A. Authority to Enter Contracts

The authority to enter into original contracts is delegated as set out below.

1. The City Manager.

The City Manager is authorized to award and sign contracts for services without prior Council approval in an amount not in excess of \$120,000 provided that the services and funds were approved by the City Council as part of the annual Department budget or are available in an applicant deposit account. This authority shall not be delegated below the Assistant City Manager level.

2. Department Directors.

Department Directors are authorized to award and sign contracts for services without prior City Manager or Council approval in an amount not in excess of \$75,000 provided that the services and funds were approved by the City Council as part of the annual Department budget or are available in an applicant deposit account. This authority may not be delegated below the Department Director level.

3. City Attorney.

The City Attorney is authorized to award and sign contracts for all services for outside counsel and experts related directly to and necessary for prosecution and defense of pending litigation as defined in the Brown Act, and for services for outside counsel and experts necessary to address other pending or potential legal claims or legal issues so long as funds for outside counsel, experts and related legal services were approved by the City Council as part of the approved annual budget. The City Attorney shall keep Council informed regarding any such expense that exceeds \$120,000 on not less than a quarterly basis and shall seek budget updates, if needed, within a timely fashion.

B. Authority to Amend Contracts

If circumstances arise that were not reasonably foreseeable by the parties at the time of contracting which make extra work necessary for the proper completion of the service originally contracted for, a contract amendment and corresponding increase in total contract amount may be necessary. Under those circumstances, the City Manager and Department Directors are authorized to amend a contract as set out below. For purposes of this policy, "total contract amount" shall be defined as the total consideration paid over the term of the agreement, including any previous amendments to the contract. "Original contract amount" shall be defined as either the amount of compensation agreed upon when the contract was first entered into or the amount of compensation last approved by the City Council, whichever is greater.

1. City Manager.

The City Manager may sign and award a contract amendment on a contract approved by the Council if the total cost of services will not exceed 125% of the original contract amount, or increase the original contract by more than \$120,000, whichever amount is lesser. Otherwise the City Manager may sign and award a contract amendment so long as the total contract amount as amended does not exceed \$120,000.

2. Department Directors.

The Department Director overseeing the contract may sign the contract amendment if that amendment will not cause the total contract amount to exceed \$75,000.

3. Amendments in Cases of Possible Work Stoppage or Undesirable Delay.

In certain situations, the City Manager and the Department Director in charge of the contract may determine that an amendment is needed that will cause the total contract amount to exceed the City Manager's amendment signing authority, and that the timing is such that a work stoppage or other undesirable consequence will result if approval of the change is delayed until the next City Council meeting. In those situations, the City Manager may approve an amendment that increases the total contract amount up to 150% of the original contract. However, the City Manager will notify all City Council Members individually if this situation develops, and if any individual Council Member objects to the increase, a special meeting of the City Council will be called to address the issue.

4. Amendments Necessary to Address Emergency Situations

In the event of emergency work that requires an amendment to an existing contract, the emergency contracting policy outlined below may be followed.

IV. TYPES OF SERVICES CONTRACTS AND HOW TO AWARD THEM

It is recognized that by their nature, service contracts cannot always be awarded as a result of a competitive bid process. However, competitive proposals should be obtained whenever possible before resorting to negotiated awards.

A. Professional Services Consultant Selection

Professional consultant services differ from other services in that they are of a professional nature, and due to the ethical codes of some of the professions involved, as well as the nature of the services provided, do not readily fall within the competitive bidding process. Professional consultants should be individually selected through a qualifications-based selection process for a specific project or service on the basis of demonstrated competence and qualifications for the types of services to be performed and with the objective of selecting the most qualified consultant at a fair, reasonable and

verifiably appropriate cost. The procedures for achieving this goal shall be adopted and applied by the City Manager in the Administrative Procedures Manual.

This policy shall include, but not be limited to, services in the following fields:

- Engineering (civil, mechanical, electrical, structural, traffic, geotechnical, etc.)
- Building plan review and grading plan review and/or inspection services
- Architecture
- Landscape Architecture
- Construction Project Management Firms
- Environmental
- Planning
- Economic Analysis
- Property Appraisals
- Land Surveying
- Financial Services
- Data Processing Services
- Legal Services not otherwise authorized in Section A(3) of this Policy

B. General Services Agreements

General Services Agreements are not strictly professional in nature, but arise where operations, repair and maintenance services, or other services of a non-professional nature, are provided to the City. Agreements that typically fall into this category are for repair and maintenance of roadways, landscape maintenance, repair and maintenance of City facilities, and other such non-professional services.

The City shall select general services contractors through a request for proposal process that is implemented in order to determine the most qualified proposer and obtain the most competitive price. Both qualifications and pricing shall be considered when awarding such contracts.

C. Capital Improvement Program

Contracts for public works shall be awarded consistent with the provisions of Charter Section 1110 and Article 15.75 of the Newport Beach Municipal Code as updated and amended from time to time. Under the terms of City Charter Section 1110, contracts for public works that exceed \$120,000 in total expenditures must be awarded by the City Council through the conducting of a formal bidding process. At its option, the City Council may direct that such contracts be signed by the Mayor, the City Manager or the Public Works Director.

D. Independent Instructional and Recreation Contractors

Where contractors are paid for services from fees collected for the services provided, Department Directors are authorized to award and sign contracts with independent contractors for instructional, educational, cultural, or recreational purposes where the fees paid by the City are based upon either a percentage of fees collected by the City for a program or on a flat rate basis for tasks performed by the contractor. Contracts with such independent contractors may be up to two (2) years in duration.

Should fees paid to any contractor exceed \$75,000 during the term of the contract, the Department Director shall provide written notice to the City Manager identifying the program, independent contractor and anticipated total fees to be paid. The City Manager shall give written notice to the City Council should fees paid exceed \$120,000.

E. On-Call and Emergency Contracts for Services

Under limited circumstances the use of formal contracting procedures to procure services is not an effective or an efficient use of City resources. The following contracting procedures are authorized for entering into on-call agreements for services as needed and for procuring services in times of emergency.

1. On-Call Agreements.

The City Manager and Department Directors are authorized to enter into on-call agreements for obtaining services on an as needed basis, including, but not limited to, professional services and repair and maintenance services, that are needed from time to time where the size of the job does not warrant the expense of entering into individual agreements for each service. On-call agreements must be within the authority of the individual entering into the agreement on behalf of the City and they cannot extend longer than two (2) years. Funds shall be encumbered on a per project basis as opposed to a contract basis. Selection of consultants and contractors for award of on-call agreements shall be consistent with the award procedures for the type of contract being awarded as set out above. Procedures for entering into on-call agreements shall be prescribed by the City Manager in the Administrative Procedure Manual.

If a contract for services is necessary under the provisions of Newport Beach Municipal Code Section 2.20.020, the City Emergency Procedures shall be followed.

If a contract for services is entered into in times of urgent necessity under the authority of Newport Beach City Charter Section 1110, and the contract amount exceeds the

signing authority of the relevant Department Director or City Manager as authorized in this Policy, then that contract shall be brought to the City Council at its next regularly scheduled meeting for review.

Whenever possible, the City shall enter Emergency On-Call Agreements with contractors or consultants who can be relied upon to assist the City in advance of any actual emergency. Emergency On-Call Agreements shall be submitted to Council for approval after being reviewed and approved by the Office of the City Attorney. After the Emergency On-Call Agreement is approved, services provided on an emergency basis under an Emergency On-Call Agreement may be retained by oral commitment of the City Manager (or, in the case of an emergency described by Municipal Code Section 2.20.020, the Director or Assistant Director of Emergency Services), to be memorialized in a Letter Agreement between the parties as soon as possible thereafter.

When a written contract has been entered into in order to address an emergency, a copy of the written contract shall be provided to the City Clerk as soon as possible.

V. GENERAL PROCEDURES

A. Contract Retention

The City Clerk shall retain all original executed service contracts in accordance with the City's current adopted Records Retention Schedule. Contracts shall be posted into the City's electronic document data base in order to maintain transparency in contracting.

B. Insurance

All contracts shall be accompanied by proof of the appropriate level of insurance at the time of execution. The insurance level required shall be in accordance with the City's published Schedule of Insurance (or as otherwise approved by the City's Risk Manager).

C. Reporting

At least once in 2011 and 2012, the City Manager shall report to the Council the summary of all contracts entered into by the City Manager and Department Directors. The summary shall include the vendor, the department responsible that will oversee the contract, the purpose of the contract, and the contract amount.

F-14

FUTURE AMENDMENTS TO POLICY

Any future changes in the provisions of this Policy shall be made by resolution of the City Council.

Adopted - January 24, 1994

Amended - April 13, 2004

Amended by Resolution No. 2006-35 - May 9, 2006

Amended by Resolution No. 2011-15 - January 25, 2011