

AUTHORITY TO CONTRACT

I. PURPOSE AND LIMITATION

The purpose of this policy is to set out the City's policy establishing authority for City contracts. This policy applies to all contracts, whether entered into through standard, emergency, or other procedures, including, but not limited to, professional services, purchase requisitions, acquisition of goods, supplies, equipment, and materials, settlements, right of entry agreements, cost sharing agreements, joint defense agreements, cooperative agreements, reimbursement agreements, grant agreements, audit services, legal and investigative services, independent instructional and recreation services, former employee services, on-call and emergency services, temporary labor services, training services, public works projects, and public property maintenance, installation, custodial, and repair services.

II. GENERAL AUTHORITY TO ENTER INTO CONTRACTS

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 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 into 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 all contracts, without prior Council approval, in an amount not in excess of \$120,000 provided funding for the contract was approved by the City Council as part of the annual Department budget, authorized budget amendment, City Council action or is available in an applicant deposit account. With the exception of grants and donations, which are covered in City Council Policies F-3, F-25 and B-17, the City Manager is authorized to sign all contracts without prior Council approval where the City is receiving or expending an amount not in excess of \$120,000. This authority shall not be delegated below the Assistant City Manager level.

2. Department Directors.

Contracts for Services

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, authorized budget amendment, City Council action, or are available in an applicant deposit account. This authority may not be delegated below the Department Director level.

Contracts or Purchase Requisitions for the Acquisition of Goods and Materials

Department Directors, including the City Clerk and the City Attorney, are authorized to award and sign contracts or purchase requisitions for the acquisition of goods and materials, with prior City Manager or Council approval, in an amount not in excess of \$75,000 provided that the funds were approved by the City Council as part of the annual Department budget, authorized budget amendment, City Council action or are available in a deposit account.

3. City Attorney.

The City Attorney is authorized to award and sign contracts for all services for outside counsel, investigators, 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, investigators, and experts necessary to address other pending or potential legal claims or legal issues so long as funds for outside counsel, investigators, 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 are not reasonably foreseeable by the parties at the time of contracting which make extra work or material 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 to 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 will not exceed 125% of the original contract amount, or increase the original contract by more than \$120,000, whichever amount is less. Otherwise the City Manager may sign and award a contract amendment, including but not limited to, amendments to extend the term of a contract, 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 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
- Training and Temporary Labor Services

B. General Services Contracts

General Services Contracts are not strictly professional in nature, but arise where operations, repair, installation, and maintenance services, or other services of a non-professional nature, are provided to the City. Contracts 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.

Some General Service Contracts may be considered “public works” under the Charter and, if so, the work covered by the General Service Contract shall be awarded in accordance with the laws governing the award of “public works” contracts. If not considered a “public work” under the Charter, the City shall select general services contractors through a Request for Proposal or a Request for Bid process, whichever serves the City’s greater benefit, based on each contract or procurement. Contracts through a Request for Bid process shall be awarded based solely on pricing and minimum qualifications to determine the most responsive and responsible bidder.

Contracts through a Request for Proposal process shall be awarded based on qualifications and pricing in order to determine the best value to the City.

C. Capital Improvement Program

Contracts for public works shall be awarded consistent with the provisions of Charter Section 1110 and Chapter 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 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 or 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 the initial term cannot exceed three (3) years. The City Manager is authorized to extend the term of an on-call agreement for up to six (6) months if work has been authorized or encumbered during

the initial term but not yet completed. 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.

2. Emergency Contracts for Services.

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.

F. Contracts with Former City Employees

When not more than five (5) years has passed since a person who is a former City employee has left service with the City:

1. All professional services contracts with former City employees or temporary employment contracts with retiring or former City employees shall require approval of the City Council; and
2. City Council approval shall also be required for professional services contracts with a corporation or other business entity owned or operated by a former City employee or that employs a former City employee

V. GENERAL PROCEDURES

A. Contract Retention

The City Clerk shall retain all original executed 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 Contract Templates (or as otherwise approved by the City's Risk Management Division).

C. Reporting

At least once annually, 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.

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

Amended - May 12, 2015

Amended - February 23, 2016 (F-5 & F-20 were consolidated with F-14)