

## AUTHORITY TO CONTRACT

### *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.

### *General Authority to Enter Into Contracts*

Provisions of the Charter govern the methods through which the City may be bound by contracts. 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 Manager has final authority to approve any contract within the City Manager's approval limit and may make exceptions to the City's standard contract terms, including but not limited to, insurance and indemnification requirements, based on operational considerations and weighing the particular risks involved. When deciding whether to modify standard contract terms, the City Manager shall consult with the City Attorney, Risk Manager, and Department Directors, as necessary. This authority shall not be delegated below the Assistant City Manager level.

Contracts may not be written to circumvent any of the authority limits described herein.

### *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 the Assistant City Manager, 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 and agreements for services or purchase requisitions for the acquisition of goods, materials or equipment, 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 approved budget. 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.

Department Directors, including the City Attorney and City Clerk, are authorized to award and sign contracts and agreements for services or purchase requisitions for the acquisition of goods, materials or equipment, 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 or City Manager as part of the annual approved budget. This authority may not be delegated below the Assistant or Deputy Director level. The City Manager has authority to approve requests for budget increases without City Council approval at the level set forth in Policy F-3, Section E-1 ("Budget Adoption and Administration").

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.

4. Human Resources Director.

The Human Resources Director shall have authority to enter into contracts to resolve claims, litigation and other legal disputes where the City is receiving or expending an amount not in excess of \$75,000. This authority may not be delegated below the Department Deputy Director or Risk Manager level.

**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, Department Directors, City Clerk and City Attorney are authorized to amend contracts 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 most recently approved by the City Council by amendment, whichever is greater.

1. City Manager.

*Contracts within the City Manager's Contracting Authority*

The City Manager may sign and award any 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.

*Contracts approved by City Council*

The City Manager may sign and award any contract amendment, including but not limited to, amendments to extend the term of a contract, so long as the total contract amount does not exceed 125% of the original contract amount or the original contract amount plus an additional \$120,000, whichever amount is less.

2. Department Directors.

*Contracts within the Contracting Authority of the Department Director*

The Department Director, including the, City Clerk, or City Attorney, who entered into the contract, or whose department is designated as the contract administrator in the contract, may sign and award any 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 \$75,000.

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

In certain situations, a contract amendment may be needed that will cause the total contract amount to exceed the City Manager's amendment signature authority, and 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 these situations, the City Manager may approve an amendment that increases the total contract amount up to 150% of the original contract amount. Within twenty-four (24) hours, the City Manager shall notify the City Council Members of any such amendment.

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.

***Types of Contracts and Method of Award***

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 Contracts**

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 based on 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 section shall include, but not be limited to, procurements for 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 the section titled Authority to Enter into Contracts, A (3), of this policy; and Training and Temporary Labor Services.

**B. Services Contracts (Non-Professional)**

Non-Professional Services Contracts that are not public works under Charter Section 1110, are used where services are not strictly professional in nature but where such services are needed by the City. Examples include, but are not limited to janitorial services, printing services, closed circuit television services, steam cleaning, window washing and refuse collection.

The City shall select services contractors through a Request for Proposal or a Request for Bid process, whichever serves the City's best interest. 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 both qualifications and pricing to determine the best value to the City.

**C. Maintenance and Repair Contracts**

Maintenance and Repair Contracts are used where services are not strictly professional in nature but where such maintenance and repair services extend the life of City assets, facilities and/or infrastructure. Examples include, but are not limited to: pavement patching, plumbing and facilities maintenance services.

If a contract for these types of services is under \$120,000 the City shall select services contractors through a Request for Proposal or a Request for Bid process, whichever serves the City's best interest based on the service to be provided. 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 both qualifications and pricing to determine the best value to the City.

Service contracts for maintenance or repair over \$120,000 are considered a Public Work and thus need to be requisitioned as a Public Works Contract.

**D. Public Works Contracts**

Contracts for Public Works where the total expenditures for the project exceed \$120,000, shall be awarded consistent with the provisions of Charter Section 1110 and Chapter 15.75 of the Newport Beach Municipal Code and relevant provisions of the California Public Contract Code. Public Works contracts are used for the construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies or materials for any such project, as well as all projects for the maintenance or repair of such facilities intended to extend their useful life.

**E. Procurements and Contracts Involving Federal or Pass-Through Funding**

Procurements expending funds from federal grants or awards received directly by the City or from a pass-through agency such as the State of California, must comply with the provisions of Title 2 of the Code of Federal Regulations ("CFR") §200.318 through §200.326. To ensure the City's adherence to the Federal guidelines related to these procurements and contracts, the City Manager has adopted procurement procedures for such projects in the Administrative Procedures Manual.

**F. Independent Instructional and Recreation Contractors**

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 five (5) years in duration but must include a termination clause granting the City the right, at its sole discretion and with or without cause, to terminate the contract at

any time by giving seven (7) calendar days' prior written notice to the Contractor.

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 and independent contractor. The City Manager shall give written notice to the City Council should fees paid exceed \$120,000.

**G. On-Call Contracts for Services**

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, repair and maintenance services and emergencies, 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 five (5) 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 completed. On-Call agreements must include a termination clause granting the City the right, at its sole discretion and with or without cause, to terminate the contract at any time by giving seven (7) calendar days' prior written notice to the Contractor. Procedures for entering into on-call agreements shall be prescribed by the City Manager in the Administrative Procedure Manual.

**H. Emergency Contracts**

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 the contract amount exceeds the signing authority of the City Manager or Department Director as authorized in this policy, then that contract shall be brought to the City Council at its next regularly scheduled meeting for review or authorization, if the contract constitutes a Public Works, in accordance with Charter Section 1110.

Whenever possible, the City shall enter Emergency Contracts with contractors or consultants who can be relied upon to assist the City in advance of any actual emergency.

Emergency Contracts, that are entered into prior to an emergency, shall be submitted to Council for approval after being reviewed and approved by the Office of the City Attorney. After the Emergency Contract is approved, services provided on an emergency basis under an Emergency Contract 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.

**I. Contracts with Former Council Members and City Employees**

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

1. All professional services contracts with former Council Member or 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 Council Member or City employee or that employs a former Council Member or City employee.

**J. Purchase Orders for Goods, Materials or Equipment**

Departments shall submit requests for the purchase of goods, materials or equipment through a Purchase Requisition that is approved by the proper approval authority described in this policy, based on the purchase amount.

The Finance Department shall conduct the necessary and proper bidding or proposal process for each purchase request and issue Purchase Orders to procure goods, materials or equipment.

**K. Purchase Orders for Services**

While typically used for the procurement of goods, materials or equipment, Purchase Orders may be used for services, subject to the following conditions:

1. Purchase Orders for services may be issued to a vendor not in excess of \$7,500 per Purchase Order and \$15,000 per vendor, per fiscal year.
2. The \$7,500 per Purchase Order and \$15,000 per vendor, per fiscal year limit shall apply to each Department separately.

**L. Commodities and Unique Services**

Certain commodities and service types are not subject to traditional procurement and bidding procedures. The City Manager shall prescribe in the Administrative

Procedures Manual procedures to ensure that pricing involved in these transactions is competitive.

### *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 database 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 Manager or Risk Manager).

#### **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.

### *History*

Adopted F-14 - 09-22-1969 (Purchase Authority for Goods & Materials)

Reaffirmed F-14 - 03-09-1970

Reaffirmed F-14 - 02-14-1972

Amended F-14 - 11-11-1974

Amended F-14 - 11-24-1975

Amended F-14 - 12-08-1975

Amended F-14 - 11-24-1986

Amended F-14 - 05-26-1987

Adopted F-14 - 01-24-1994 (new F-14) (Authority for Contracts)

Amended F-14 - 01-24-1994 (old F-14) (changed to F-5)

Amended F-5 - 02-26-1996  
Amended J-1 - 11-10-1997 (Contracts with Former Employees)  
Amended J-1 - 03-09-1998  
Amended J-1 - 03-22-1999 (changed to F-20)  
Amended F-5 - 03-14-2000  
Amended F-20 - 04-08-2003  
Amended F-14 - 04-13-2004  
Amended F-5 - 11-22-2005  
Amended F-14 - 05-09-2006  
Amended F-14 & F-5 - 01-25-2011  
Amended F-14 - 05-12-2015  
Amended F-14 - 02-23-2016 (incorporating F-5 & F-20 and renaming " Authority to Contract")  
Amended F-14 - 06-26-2018  
Amended F-14 - 02-12-2019