

City of Hendersonville
Contracts Policy
September 1, 2022

1. Policy Statement

The City of Hendersonville requires that all contracts be approved and executed in accordance with North Carolina State and Federal laws and this Contracts Policy. This Policy has been developed in an effort to better manage the numerous contracts and agreements that are executed by the City of Hendersonville. This Policy is designed to provide the levels of authority for the approval and the execution of contracts and agreements between the City of Hendersonville and outside parties.

2. General Provisions

a. As used in this Policy, the term “contract” shall be deemed to include all of the following:

- (1) Purchases of personal property, whether or not installation is a part of the contract;
- (2) Service contracts;
- (3) Construction and repair of real property, or fixtures thereto;
- (4) Professional service contracts, including but not limited to architectural, engineering, surveying, planning, grant administration, accounting and legal services;
- (5) Maintenance contracts;
- (6) Software contracts of any type;
- (7) Licensing contracts;
- (8) Leases by the City of personal property with no option to purchase by the City;
- (9) Leases of City-owned personal property to a third party for 1 year or less;¹ and
- (10) Leases of real property for 1 year or less.²

The use of the word “agreement” versus “contract” is intentional in this Policy.

b. Except as authorized by this Policy or another policy, ordinance, resolution or action of City Council, any type of agreement not listed in 2a(1)-(10) above will require approval by City Council. By way of illustration and not limitation the following are examples of agreements not included in the term “contract” for purposes of this Contract Policy, and therefore they require approval by City Council:

- (1) Capital leases, or financing agreements of any type;
- (2) Leases of any duration in excess of 1 year for real property;

¹ Leases of City-owned personal property to others for more than 1 year always requires City Council approval, with or without a non-appropriation clause.

² This applies whether City is Landlord or Tenant. Leases of real property by the City and leases of City-owned real property to third parties for more than 1 year always requires City Council approval, with or without a non-appropriation clause.

- (3) Any lease of personal property by the City having an option to purchase the personal property by the City;³
- (4) Any lease of City-owned personal property to a third party for more than 1 year;
- (5) Interlocal agreements;
- (6) Any type of lending or financing agreement⁴, or any other agreement pursuant to which the City grants or receives a security interest in real or personal property.
- (7) Real estate purchase and sale agreements;
- (8) Agreements pursuant to which the City grants any property interest in real property, including but not limited to options, easements (excluding utility infrastructure easements), and rights of first refusal;
- (9) Economic Development agreements;
- (10) Sale, exchange or conveyance of personal property, including a group of items of personal property, having a fair market value of greater than or equal to \$30,000; and
- (11) Sale, exchange or conveyance of real or personal property for less than fair market value.
- (12) Settlement of a lawsuit or other administrative action or complaint filed against the City.⁵

- b. For purposes of determining authority to approve and enter into a contract on behalf the City under this Policy, the amount of a contract (this includes purchases) shall be deemed to include all City funds authorized to be spent pursuant to the contract over the life of the contract, including the entire term of the contract, including all renewals and options to renew, and including all subparts and affiliated agreements (For example, the cost of the purchase and the cost of an associated maintenance agreement would be added together to determine the amount of the contract.)
- c. Contracts may not be divided in any manner to evade the provisions and requirements of this Policy.
- d. Except as prohibited by North Carolina State or federal laws, City Council may approve exceptions to this Policy for a particular contract or agreement pursuant to a duly adopted resolution.
- e. The City Manager is authorized to execute any contract or agreement which has been approved by resolution of City Council, unless prohibited by State or Federal laws.
- f. The City Manager may approve amendments and additions to the Purchasing Policy Manual, previously adopted by City Council, and may approve and implement other administrative policies regarding contracts and agreements for the City, including but not limited to processes and procedures for the procurement, approval, and management of any or all contracts and

³ A lease of personal property with an option to purchase is subject to public bidding laws.

⁴ This applies whether the City is the lender or the borrower.

⁵ This is not intended to abrogate the authority of the City Manager to enter into agreements in the exercise of his authority to hire, discharge and discipline City employees.

agreements, provided the amendment, addition or new policy meets or exceeds the requirements of this Contract Policy, and other resolutions, ordinances and actions of City Council, and is compliant with North Carolina State and federal law (as federal law is applicable). Nothing herein shall be deemed to authorize the City Manager to take any action that is required by State or Federal law to be taken by City Council; however the City Manager may incorporate such actions taken by City Council into any administrative policy approved and implemented by the City Manager pursuant to this Policy.

g. Except as specifically stated otherwise in this Policy, nothing in this Policy is intended to abrogate, repeal, or limit in any manner any authority granted by another resolution, ordinance, policy or action of City council to approve or execute any contract or agreement.⁶

3. Contract Approval

a. The City Council must approve all contracts that meet any of the following criteria:

- (1) Contracts having a contract amount greater than or equal to \$500,000.00, with or without budgetary authority;
- (2) Contracts which require a budget ordinance amendment, a capital project ordinance amendment, or a grant project ordinance amendment, regardless of amount;
- (3) Contracts with terms greater than one year if the contract does not include either a non-appropriation clause or a clause permitting the termination for convenience by the City, regardless of amount;
- (4) Contracts that require City Council approval pursuant to North Carolina State or Federal law. This includes but is not limited to:
 - (a) Construction and repair contracts falling within the formal bid limits as set out in NCGS § 143-129.
 - (b) Purchase contracts for which an exception to the North Carolina bid laws is being used on the basis of NCGS § 143-129(6):
 - (i) Performance or price competition for a product are not available;
 - (ii) The products is only available from one source or supply; or
 - (iii) Where standardization or compatibility is the overriding consideration.
- (5) Any amendment to a contract, including but not limited to a project change order, where the contract being amended has a contract amount greater than or equal to \$500,000 (including all previous amendments); or
- (6) Any amendment to a contract where the amendment will cause the contract amount to be greater than or equal to \$500,000 (including all previous amendments);

⁶ An example of a resolution that is not repealed is the *Resolution Delegating the Authority for Declaring Personal Property Surplus*, Resolution #09-0311, which authorizes the City Manager to sell or exchange personal property, or a group of items of personal property having a total fair market value of less than \$30,000.

b. The City Manager may approve and execute any contract without additional City Council approval, if the contract meets all of the following criteria:

- (1) The contract amount is less than \$500,000; AND
- (2) The contract was included in the budget ordinance, a capital project ordinance or a grant project ordinance, as adopted or amended by City Council; AND
- (3) The contracts has a term of one year or less and has no renewal terms or options to renew OR

The contract has a term greater than one year, including all renewal terms and options to renew, and includes either a non-appropriation clause or a clause permitting the termination for convenience by the City (or both); AND

- (4) State and federal laws were followed in the procurement of the contract, if applicable; AND

- (5) The contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act, Chapter 159 of the North Carolina General Statutes.

The authority granted to the City Manager shall include the authority to approve and execute any amendment to a contract (including but not limited to change orders) which does not cause the contract to violate any of the criteria numbered 1-5 above.

Notwithstanding numbers 1-5 above, the City Manager may not approve any contract where approval by City Council is required by North Carolina State or Federal laws.

c. The City Manager may delegate the authority to Department Directors to approve and execute any contract that meets all of the following conditions:

- (1) The contract amount is less than \$150,000; AND
- (2) The contract was included in the budget ordinance, a capital project ordinance or a grant project ordinance, as adopted or amended by City Council; AND
- (3) The contracts has a term of one year or less and has no renewal terms or options to renew OR

The contract has a term greater than one year, including all renewal terms and options to renew, and includes a either a non-appropriation clause or a clause permitting the termination for convenience by the City (or both); AND

- (4) State and federal laws were followed in the procurement of the contract, if applicable; AND

- (5) The contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act, Chapter 159 of the North Carolina General Statutes.

The authority delegated to a Department Director by the City Manager may include the authority to approve and execute any amendment to a contract (including but not limited to change orders) which does not cause the contract to violate any of the criteria numbered 1-5 above.

Notwithstanding numbers 1-5 above, the City Manager may not delegate authority to Department Directors to approve any contract where approval by City Council is required by North Carolina State or Federal laws.

d. The City Manager may delegate authority to Department Directors to name a subordinate having authority to approve and execute any contract that meets all of the following conditions:

- (1) The contract amount is less than \$5,000; AND
- (2) The contract was included in the budget ordinance, a capital project ordinance or a grant project ordinance, as adopted or amended by City Council; AND
- (3) The contract has a term of one year or less and has no renewal terms or options to renew; AND
- (4) State and federal laws were followed in the procurement of the contract, if applicable; AND
- (5) The contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act, Chapter 159 of the North Carolina General Statutes; AND
- (6) The designation of the subordinate is made in writing by the Department Director and filed with the City Finance Director.

3. Other Agreements.

a. The City Manager shall have the authority to approve and execute the following types of agreements, unless prohibited by North Carolina State or Federal law. To the extent that the City Manager has approved and signed these types of agreements in the past, all such agreements are ratified and approved with the adoption of this Policy by City Council:

- (1) Performance guaranty agreements contemplated by the Code of Ordinances for the City, including but not limited to Zoning, Subdivision, and Stormwater improvement guarantees (Note: the City Manager may delegate this authority to the Department Directors.);
- (2) Utility extension agreements, setting out the terms under which the City will permit and accept an extension of the City's water or sewer system, provided the agreement does not obligate the City to expend City funds beyond the City Manager's budgetary authority;
- (3) Deeds of dedication and easement deeds pursuant to which the City obtains title to and/or an easement for water, sewer, greenway, stormwater, roads or other infrastructure, provided the agreement does not obligate the City to expend City funds beyond the City Manager's budgetary authority;
- (4) Agreements regarding the administration and enforcement of the City Code of Ordinances in the normal course of business (Note: the City Manager may delegate this authority to Department Directors.);

- (5) Grant of easements across City-owned property for the placement of utility infrastructure, including but not limited to water, sewer, electric, stormwater, and telecommunications;
- (6) Encroachment agreements for City streets and streets controlled by the North Carolina Department of Transportation not requiring the expenditure of funds beyond the City Manager's budgetary authority (Note: the City Manager may delegate this authority to Department Directors.);
- (7) Agreements regarding the hiring, discharging and disciplining of City employees (Note: the Human Resources Director shall have the authority to extend offer letters for acceptance by new employees setting out the usual terms and conditions of employment with the City.); and
- (8) Utility agreements with the North Carolina Department of Transportation not requiring the expenditure of funds beyond the City Manager's budgetary authority (Note: the City Manager may delegate this authority to Department Directors.).

3. Finance Officer Review

Regardless of form, no contract or agreement may be executed unless the City of Hendersonville Finance Officer, the Assistant Finance Officer, or a duly authorized Deputy Finance Officer has pre-audited the contract if required by the Local Government Budget and Fiscal Control Act.

4. City Manager or Department Director Discretion

Notwithstanding any authority granted or delegated by this Policy, the City Manager or a Department Director has the discretion to present any contract or agreement to City Council for approval, regardless of amount.

5. Compliance with Required Procedures

Nothing in this Policy shall be deemed to exempt any contract or agreement from complying with any procedures required by North Carolina State or Federal laws, or any other local ordinance, resolution, or policy.

6. Repeal of Policy

With the adoption of this Policy, the Contract Management Policy adopted by City Council on January 10, 2014 is hereby repealed.

Adopted by City Council on the 1st day of September, 2022.

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