



CITY of NOVI CITY COUNCIL

Agenda Item 4
January 21, 2014

SUBJECT: Consideration of Policy and Rules Regarding City Employees Signing Contracts recognizing certain practices and adding Appendix A to the City's Purchasing Policy.

SUBMITTING DEPARTMENT: City Clerk *mc*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Section 12.2 of the City Charter states that the authority to contract on behalf of the City is "vested in the Council and shall be exercised in accordance with the provisions of statute and of the Charter." Section 12.1 of the Charter states that the Council "shall, by ordinance or resolution, establish detailed purchasing, sale and contract procedures, including procedures for written contracts and purchase orders, not inconsistent with this Charter." Section 4.5 of the Charter states in relevant part, "The Mayor shall be presiding officer and chief executive officer of the City and shall perform such other duties as are, or may be, imposed or authorized by the laws of the State or this Charter. He shall execute or authenticate by his signature such instruments as the Council, this Charter or any statute of the State of Michigan or law of the United States shall require." Pursuant to this Section, City Council passed a July 15, 1996 Resolution of City Council authorizing the Mayor and City Clerk to sign contracts.

Section 2-201 of the City Code provides some additional guidance on the making of contracts below a certain value. It gives the City Manager, or his duly authorized representative, the "exclusive power and responsibility to make sales and purchases of all supplies, apparatus, equipment, materials and other things requisite for public purposes and to make all necessary contracts for work or labor to be done, or material or other necessary things to be furnished for the benefit of the city where the amount of the expenditure for any purpose or contract does not exceed fifteen thousand dollars (\$15,000.00)." All other contracts must be approved by the Council.

Other than these provisions, and the 1996 resolution relating only to contracts approved by the Council, the Charter and state law are for the most part silent as to the procedure for approval and execution of standard contracts. Frequently, City contractors and vendors ask for signatures on documents in connection with the purchase of goods and/or services. Because the documents often contain terms and conditions controlling conditions of the purchase of goods or services, they constitute a "contract," and Department Heads have requested direction from the City Clerk's Office as to whether City staff has the authority to sign the documents provided by the vendor or contractor. Oftentimes, because of the high volume and low value of the contracts in question, it would be more efficient and expedient for City staff, rather than the Mayor or City Clerk, or the City Manager specifically, to sign the contract in connection with the purchase of goods or services.

The proposed Policy and Rules Regarding City Employees Signing Contracts provides authorization for City employees to execute basic contracts, including product information for goods and/or specifications for services, so long as the action is consistent with the price limitations set forth in the City's recently amended Purchasing Policy and also consistent with the authority under Section 2-201 of the City Code.

The Policy states that if the proposed contract includes terms in addition to basic price terms, quantity and specifications, including terms such as limitations of warranty or liability, insurance or indemnification requirements, alternative dispute resolution clauses, or any other type of clause unrelated to price, quantity or specifications, the contract *shall* require additional review by the City attorney and depending on the type of additional terms included, may require review and approval by City Council.

The Policy also authorizes Department Heads to require a contractor to provide bonds and/or insurance when deemed necessary by the Department Head, including contracts for services to be conducted on City property. An exhibit providing standard insurance coverage requirements has been attached to the Policy.

RECOMMENDED ACTION: Consideration of Policy and Rules Regarding City Employees Signing Contracts recognizing certain practices and adding Appendix A to the City's Purchasing Policy.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				



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January 6, 2014

Maryanne Cornelius, Clerk
City of Novi
45175 West Ten Mile Road
Novi, MI 48375

1/8/14
To: Mayor & City
Council Members
For upcoming
consideration


RE: Policy and Rules Regarding City Employees Signing Contracts

Dear Ms. Cornelius:

Enclosed please find the final draft of the Policy and Rules Regarding City Employees Signing Contracts. The Policy and Rules have been prepared in response to consistent requests by City contractors and vendors for signed contracts to be provided in connection with the City's purchase of goods and/or services. Oftentimes because of the high volume and low value of the contracts in question, it would be more efficient and expedient for City staff, rather than the Mayor or City Clerk to sign the contract in connection with the purchase of goods or services. The Policy recognizes the reality that the purchase of the goods or services is mandatory and the corresponding "contract" is administrative, and is similar to an invoice. //

The general policy provides authorization for City employees to execute basic contracts, including product information for goods and/or specifications for services consistent with the price limitations set forth in the City's Purchasing Policy, which was last amended on September 10, 2012. //

If the proposed contract includes terms in addition to basic price terms, quantity and specifications, including terms such as limitations of warranty or liability, insurance or indemnification requirements, alternative dispute resolution clauses, or any other type of clause unrelated to price, quantity or specifications, the contract shall require additional review by the City attorney and may require review and approval by City Council if the contractor will not accept revisions to the terms and in the opinion of the City attorney, the additional terms increase the City's potential liability or limit the City's remedies in the event of a defective product.

Maryanne Cornelius, City Clerk
January 2, 2014
Page 2

The enclosed policy and rules also authorize Department Heads to require a contractor to provide bonds and/or insurance when deemed necessary by the Department Head, including contracts for services to be conducted on City property. An exhibit providing standard insurance coverage requirements has been attached to the Policy.

Please feel free to contact me with any questions or concerns in regard to the enclosed Policy.

Very truly yours,

JOHNSON ROSATI SCHULTZ & JOPPICH, PC

Elizabeth K. Saarela

EKS
Enclosure
Thomas R. Schultz, Esquire

Appendix A to Purchasing Policy

**CITY OF NOVI
POLICY AND RULES
REGARDING CITY EMPLOYEES SIGNING CONTRACTS**

Purpose

Section 12.2 of the City Charter states that the authority to contract on behalf of the City is vested in the Council and shall be exercised in accordance with the provisions of statute and of the Charter. Although state statute and City Charter identify certain types of contracts that require Council approval, not all types of contracts are either identified by statute or Charter, or require City Council approval. Certain contracts that are not specifically required by state statute or City Charter to be approved by City Council may, in some instances, be more efficiently and expeditiously approved and executed by City employees, including the City Manager, Department Heads, and their designees. The purpose of this policy is to provide a more comprehensive outline of the types of contracts that may be reviewed, approved, and executed by City employees, subject to receipt of any required appropriation being made.

General Policy

- A. Contracts solely for the purchase of goods or services, or a combination of goods and services, in amounts consistent with the limitations of the City of Novi Purchasing Policy, may be reviewed, approved, and executed by City employees, subject to certain conditions and exceptions set forth in this policy, in accordance with the following limitations:
 - 1. City staff may review, approve and sign contracts for the purchase of goods or services in connection with purchases made pursuant to the City of Novi Purchasing Card Policy, for purchases up to \$1,500.
 - 2. Department heads may review, approve and sign contracts for the purchase of goods or services for purchases up to \$4,999.
 - 3. The City Manager may review, approve, and sign contracts for the purchase of goods or services for purchases up to \$14,999.

- B. Any Contracts for the purchase of goods or services that contains any of the following terms or conditions shall be reviewed by the City attorney's office, and upon recommendation of the City attorney's office, may require City Council approval and execution by the Mayor and City Clerk:
1. Indemnity, limitation of liability and/or hold harmless clauses;
 2. Insurance requirements;
 3. Waiver or limitation of warranty;
 4. Limitation of damages;
 5. Alternative dispute resolution, mediation, or arbitration clauses;
 6. Any other clauses or limitations not related to the cost, quantity or specifications of the goods or services being provided.
- C. All other types of contracts, and those that require payment by the City of an aggregate amount exceeding \$14,999 over the life of the contract, shall require City Council approval and shall be executed by the Mayor and City Clerk.

Additional Conditions

Contracts for the installation of goods, or for the provision of services subject to this Policy, including but not limited to the following instances, may also require the contractor to provide the City with standard insurance coverage and/or bonds guaranteeing the quality of the materials and workmanship of the goods installed:

1. As determined to be necessary by the appropriate Department Head, any contract for the installation of goods or the provision of services on City property, including installation within City ROW or easement areas, may require the contractor to provide the City with a Certificate of Insurance meeting the minimum requirements set forth in Exhibit A.
2. As determined to be necessary by the appropriate Department Head in connection with his or her recommendation to the City Manager, any contract for the purchase and installation of goods in excess of \$5,000, may require the contractor to provide the City with a standard Maintenance and Guarantee Bond for the total amount of the contract price.

Adopted:

Amended: _____, 2013

EXHIBIT A
INSURANCE

The Contractor shall procure and maintain at its own expense during the term of the contract and supply proof of the following insurance coverage:

- Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage.
- Professional Liability Insurance in the amount of not less than \$1,000,000 (One Million Dollars) per claim occurrence and/or aggregate, and Environmental Impairment coverage. The retroactive date indicated on the policy shall either be unlimited, or, shall be the date that the Contractor established its initial coverage.¹
- Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned, all non-owned, and all hired vehicles.
- Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

The Contractor shall not commence work under the contract until it has obtained and provided the City with proof of the insurance required hereunder in a manner acceptable to the City. All coverage shall be with insurance carriers licensed and admitted to do business in Michigan. All coverage shall be with carriers acceptable to the City.

On Commercial General Liability and Motor Vehicle Liability Insurance coverage, the following language must be stated: The City of Novi, Michigan, its City Council, elected officials, officers, employees, agents, Boards, commissions, authorities, voluntary associations, and any other units operating under the jurisdiction are named as additional insureds and said coverage shall be considered to be the primary coverage rather than any policies and insurance or self-insurance retention owned or maintained by the City of Novi. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage is primary, contributing or excess.

Workers' Compensation, Professional Liability, Commercial General Liability, Owners Contractors Protective Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating thirty (30) days advance written notice of cancellation or non-renewal shall be sent to the City.

Contractor shall be liable for any injury or damage occurring on account of its performance under this Contract. To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify and hold harmless the City of Novi, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Novi, against

any and all claims, demands, suits or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Novi, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Novi by reason of personal injury, including without limitation bodily injury or death, and/or property damage, which arises out of or is in any way connected or associated with this Contract, the Contractor's performance under this Contract, or other actions or inactions of the Contractor, or its employees or agents in connection with the performance of this Contract.

Prior to execution of a contract with the City, the Contractor shall provide the City with certificates of insurance and/or policies for the required coverage in a form acceptable to the City.

¹ If applicable