



## Administrative Policies and Procedures

<b>Policy Title:</b> Contracts and Legal Requirements	<b>Policy Number:</b> 109
<b>Effective:</b> 9/18	
<b>Supersedes:</b>	
<b>Approval:</b> <i>HOWARD S. LAZARUS</i>	<b>Page</b> 1 <b>of</b> 10

**1. Purpose:** Establish policies and procedures for drafting, negotiating, entering, and administering City contracts. This APP applies to all City contracts except collective bargaining agreements.

**1.1. Relationship with Other APPs.** This APP is limited to drafting, negotiating, entering into, and administering City contracts. Other APPs related to procurement and contracting still apply including: [#107](#) (Submissions for Council Agenda); [#203](#) (Sale of Surplus Property); [#204](#) (Purchase of Goods and Services); [#206](#) (Non-Discrimination by City Contractors); [#207](#) (Procurement Standards for Federally Funded Contracts); and [#508](#) (Grant Accounting and Administration)

## 2. Policy

**2.1. General.** It is the policy of the City that all City contracts must be approved by the City Attorney as to form and legal sufficiency, and by the Service Area Administrator and the City Administrator as to substance. The Office of the City Attorney is referred to herein as the "City Attorney."

**2.1.1. What is a “Contract”?** For purposes of this APP, “contract” means any agreement or promise, regardless of title or label, which obligates the City to any responsibility, including any action, payment, performance of services, or liability. Contracts can take many forms, including memoranda of understanding or agreement, purchase or sale agreements (including goods and services), rental agreements, employment or personal services agreements, licensing agreements, inter-governmental agreements, real estate transactions, grants, purchase orders (including any document with terms and conditions), non-disclosure agreements, or change orders. The term “contract” also includes any amendment, renewal, or modification to an existing contract.

**2.1.2. Authority to Contract.** City contracts must be authorized and signed in accordance with the City’s Charter and Code.

**2.1.3. Contracts in Name of the City.** All contracts must be in the name of the *City of Ann Arbor*.

**2.1.4. Use of Templates.**

**2.1.4.1. General Policy.** It is the policy of the City that when the City Attorney has approved a template contract for a transaction, such template shall be used. Exceptions to this policy may be made at the discretion of the City Attorney. Contract Administrators shall ensure that they are using the most current version of the applicable template contract, which the City Attorney shall ensure is posted on the City’s internal website. If none of the available templates are appropriate for a transaction, Contract Administrators shall work with the City Attorney to draft the appropriate contract.

**2.1.4.2. Professional Services Agreement.** The Professional Services Agreement is generally appropriate when the service is to be rendered by a member of a recognized profession that involves extended analysis, exercise of discretion and independent judgment, and an advanced, specialized type of knowledge, expertise or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of "professional services" include appraisal, architectural, auditing, consulting, engineering, software development, design, legal and medical services.

**2.1.4.3. Construction Agreement.** The Construction Agreement is used when a contractor is constructing, altering, or replacing a public improvement. Certain maintenance and repair projects may require the Construction Agreement. Consult with the City Attorney to resolve any questions.

**2.1.4.4. General Services Agreement.** The General Services Agreement is generally appropriate when the service to be rendered does not require either the Professional Services Agreement or the Construction Agreement. Consult with the City Attorney to resolve any question.

**2.1.4.5. Purchase Order.** A Purchase Order (“PO”) contains City Attorney-approved General Terms and Conditions of sale on the back. These General Terms and Conditions can serve as the contract where no other agreement is in place. This is generally only appropriate if the purchase is for non-specialized or routine goods. For purchase of specialized or non-routine goods (e.g., guns, Tasers, chemicals, purchases over \$25,000, etc.), consult with the City Attorney. Anyone purchasing goods or services on behalf of the City, in an amount exceeding \$3,000, without an agreement that has otherwise been approved by the City Attorney, must issue a PO prior to receipt/acceptance of the goods/service. Service Units shall review quotes and invoices to ensure that the contractor does not attach any terms and conditions (or refuse to accept the City’s General Terms and Conditions) and if it does, to ask that the contractor remove such terms and conditions. If a contractor refuses, seek the advice of the City Attorney. Any changes to the approved General Terms and Conditions must be approved by the City Attorney in accordance with Section 2.1.4.6. of this APP. Please consult [APP 204](#) concerning Purchase Order procedures.

**2.1.4.6. Changes to Templates.** Changes to terms in a template are subject to City Attorney approval. This includes situations where a contractor attempts to modify the terms of the City’s template by attaching its own terms and conditions. Contract Administrators are advised to involve the City Attorney at the earliest opportunity where changes to the template are proposed.

**2.1.5. Submission Requirements.** A contract submitted to the City Attorney for review must be accompanied by all related documents. For contract renewals and amendments, a copy of the original, fully-executed agreement

(and any previous amendments, extensions, and renewals) must be included. For contracts that incorporate exhibits, attachments, and addenda, such documents must be provided.

**2.1.6. Timeline for Review.** The City Attorney will review contracts in a timely manner. Service Units should submit contracts to the City Attorney as early as possible as review and negotiations may take significant time.

**2.2. Contract Administration.** Each Service Unit shall designate at least one Contract Administrator who will administer the Unit's contracts including preparing the initial contract and any Council resolution on the appropriate template, supporting the City Attorney in contract negotiations, managing contract execution and routing, and other general contract administration. Service Units shall keep the City Administrator and City Attorney apprised of their current list of Contract Administrators. All Contract Administrators shall complete trainings as required by the City Administrator and City Attorney. The Contract Administrator shall ensure that the Service Unit can comply with a contract's obligations.

**2.2.1. Negotiations.** Contract Administrators shall work with contractors to edit contracts in accordance with the City Attorney's requested changes and to obtain all documentation that the City Attorney requests. If the City Attorney requests changes to an agreement, the Contract Administrator shall communicate those changes in accordance with the City Attorney's instructions. Contract Administrators shall also ensure that City Attorney documents that are shared with outside parties have been approved for sharing by the City Attorney. If the City Attorney requests to speak to a contractor's attorney, the Contract Administrator shall be responsible for requesting such attorney's contact information.

**2.2.2. Notices.** Contract Administrators shall designate the appropriate person within their Service Unit to receive notice related to a contract by both name and title. Service Units shall notify the City Attorney immediately of any notice related to: (1) amending the contract's terms, (2) terminating the contract, (3) any claimed breach of the contract, or (4) exercising or enforcing any contractual right or obligation.

**2.2.3. Scope of Services.** Contract Administrators are responsible for the content of a contract's scope of services. The scope of services shall be written clearly and concisely, addressing questions of "Who? What? When?"

Where? How?” If the scope of services refers to or incorporates a contractor’s terms and conditions, notify the City Attorney.

- 2.2.4. Compensation.** Contract Administrators shall ensure a contract’s compensation provisions accurately address the compensation amount (including payment of expenses and fees), timing of payment, and amounts returnable upon contract termination.
- 2.2.5. Non-Disclosure Agreements.** The Contract Administrator shall assess whether a non-disclosure agreement (NDA) is necessary for a contemplated agreement based on the information that the City will be providing in connection therewith. If the Contract Administrator believes that an NDA may be necessary, he/she shall consult with the City Attorney.
- 2.2.6. Signing Sequence.** Contract Administrators shall manage the routing of contracts for execution in accordance with this APP. Contractors must sign contracts first unless the City Attorney has authorized a different sequence.
- 2.2.7. Fully-Executed Contracts.** Contract Administrators shall keep a copy of all fully-executed contracts on file in accordance with the applicable records retention requirement. After execution is complete, Contract Administrators shall ensure that copies of the fully-executed contract have been provided to the contractor, the City Clerk, and the City Attorney.
- 2.2.8. Insurance.** Contract Administrators shall oversee the insurance review process to ensure that the contractor provides timely proof of insurance prior to contract execution, and that such proof is processed by the City’s insurance review contractor. Contract Administrators shall ensure that the required insurance does not lapse during the life of the contract. If the required insurance lapses during the life of the contract, the Contract Administrator shall immediately notify the City Attorney who may coordinate with Accounting Services to stop payment to the vendor if appropriate.
- 2.2.9. Tracking Contracts.** Contract Administrators shall track the date of expiration, renewal, auto-renewal, and termination of contracts, and coordinate with their Service Units regarding applicable notice requirements. Contract Administrators shall file all contracts with the City Clerk. Included with such filing shall be notice of every contract’s expiration and termination, if known, to enable the Clerk to comply with [Section 5.3 of the Charter](#).

**2.2.10. Contract Breach and Default.** If a Contract Administrator believes that breach or default (by either party) under a contract has occurred or is likely to occur, the Contract Administrator shall consult with the City Attorney as soon as possible.

### **2.3. Miscellaneous.**

**2.3.1. Attorney Communications.** No one other than the City Attorney may communicate with a contractor's attorney. Any attorney who wishes to communicate with the City should be referred to the City Attorney immediately. Communications from the City Attorney shall never be shared outside of the City without the City Attorney's express consent.

**2.3.2. Liability.** A contract that includes provisions relating to indemnification, waivers, hold harmless obligations, make whole obligations, or that affect the City's liability, must be reviewed and approved by the City Attorney.

**2.3.3. Insurance.** If a contract involves special equipment or services (e.g., pesticides or chemicals, the collection or use of personal information, vertical construction, or other hazards or risk of an unusual magnitude or nature), consult with the City Attorney at the earliest opportunity (e.g., prior to issuance of the Formal Solicitation such as [RFPs or ITBs](#)), as special insurance may be required. Failure to involve the City Attorney prior to release of the Formal Solicitation could result in serious delay.

**2.3.4. Contracts with Other Governmental Entities.** Contracts with other governmental entities (e.g., the state, county, DDA, LDFA, AAATA, Housing Commission, etc.) present special issues. Staff should involve the City Attorney as early as possible to avoid potentially serious delay.

**2.3.5. Metadata.** Most electronic documents include hidden data or personal information that is not readily apparent. Other than pre-approved templates, electronic contract documents shall not be shared outside of the City unless the City Attorney gives its express approval.

**2.3.6. Grants and Sub-Grants.** Service Units shall ensure they can comply with all requirements of a grant or sub-grant. Service Units shall review [APPs 207](#) and [508](#), and consult with Accounting Services prior to pursuing a grant. When a contract accepts a grant or uses grant funds, Service Units shall

provide a copy of the applicable grant documents to the City Attorney with the legal request for review.

**2.3.7. Contract Amendments and Change Orders.** Contract amendments and change orders are subject to the same approval process as regular contracts.

**2.3.8. Designation of Signature Authority.** Authorized signatories may authorize another individual (a “designee”) to sign on their behalf. The designee shall not sign unless and until the authorized signatory has communicated such authorization (and its duration) in writing to the designee, which the designee shall keep on file.

**2.3.9. Service Area Administrator Signatures.** Service Area Administrators are required to sign all contracts for their respective Service Areas to confirm the Service Area can comply with the substantive obligations and that the contract benefits their Service Area and the City.

## **2.4. Purchasing Agent.**

**2.4.1. Use of Templates in Formal Solicitations.** The Purchasing Agent shall ensure that the appropriate and most current template contract is attached to any Formal Solicitation that the City issues (e.g., [RFPs or ITBs](#)). The Purchasing Agent shall seek the advice of the City Attorney if there is any question as to the appropriate template.

**2.4.2.** The Purchasing Agent shall be responsible to ensure that, prior to the City’s issuance of a Purchase Order, the City has received all required declaration forms related to compliance with conflict of interest disclosures, living wage requirements, prevailing wage requirements, and non-discrimination requirements, and that the contractor is not in default to the City.

**2.4.3.** The Purchasing Agent shall be responsible to assist Service Units in identifying contracts that are subject to Section 2.3.3., which require special insurance.

## **3. Procedure**

**3.1. Signature Requirements.** The matrix below outlines whose signatures are required on what contracts, and the order of execution.

Order	Signatory	Contract (\$25,000 or less)	Contract (more than \$25,000)
1	Contractor	Yes	Yes
2	Service Area Admin.	Yes	Yes
3	City Attorney	Yes	Yes
4	City Administrator	Yes	Yes
5	Mayor	No	Yes
6	City Clerk	No	Yes

**3.2. Contract Routing.** Before routing a contract for signature, the Contract Administrator shall ensure that all applicable exhibits, attachments, and addenda are attached to the contract. Contract Administrators shall route contracts for signature as follows (unless the City Attorney has authorized a different procedure):

**3.2.1. Contracts Requiring City Council Approval.** For contracts that require City Council approval, the Contract Administrator shall: (1) have the contractor sign the approved contract; (2) provide the City Council resolution authorizing the contract; (3) ensure that the Contractor's insurance is deemed compliant; (4) include any required bonds; (5) route the contract to ensure all required signatures are obtained; (6) provide a fully-executed copy to the City Clerk, the contractor, and the City Attorney; and (7) save a fully-executed copy in the Service Unit's files in accordance with the applicable records retention schedule.

**3.2.2. Contracts Not Requiring City Council Approval.** For contracts that do not require City Council approval, the Contract Administrator shall: (1) have the contractor sign the approved contract; (2) prepare a memorandum to the City Administrator in accordance with his/her requirements; (3) ensure that the Contractor's insurance is deemed compliant; (4) include any required bonds; (5) route the contract to ensure all required signatures are obtained; (6) provide a fully-executed copy to the City Clerk, the contractor, and the City Attorney; and (7) save a fully-executed copy in the Service Unit's files in accordance with the applicable records retention schedule.

**3.3. Emergency Contracts.** For emergency purchases of services, Contract Administrators should review City Code section [1:317](#) and involve the City Attorney as soon as possible to review the contract as to form and content. For emergency purchases of goods, materials, and equipment, Contract Administrators should review City Code section [1:317](#) and ensure that: (1) the



City's approved Terms and Conditions (on the back of the City's Purchase Order) are included; and (2) the contractor agrees to those Terms and Conditions.

**3.4. Contract Negotiations.** Contract Administrators shall work with the City Attorney to ensure that the Contract Administrator communicates the City Attorney's requested changes accurately without sharing confidential and/or privileged information.

**Additional Resources**

[City Charter](#) – Chapter 14 (pp. 55-57)

City Code – [Purchasing, Contracting and Selling Procedure](#)

[Contract Templates](#)

[Contract Routing Form](#)

[APPs](#)

[Records Retention Schedules](#)