

City of New Berlin General Financial Policy	TITLE: Contract Policy
AUTHORIZATION DATE: 11/15/2016	LAST UPDATE:
POLICY SOURCE: Finance Committee	SCOPE: City -wide
Reviewed by City Attorney	Board/Commission Approval: Finance Committee: 11/10/2016 Common Council: 11/15/2016

General

The purpose of this policy is to establish and make clear the authority for committing the City to contracts and to further clarify the required reviews and approvals for City contracts. To conduct the City's mission it is sometimes necessary to enter into legally binding agreements ("contracts") with other entities. This policy is to ensure that:

1. All necessary formalities are followed and the requirements of federal, state, and local laws, including Council policies, are met;
2. Best accounting practices are followed;
3. The contracting process of the City is open and transparent, and provides accountability;
4. The appropriate legal review, Council approval and signature requirements are obtained.

Definitions

Contract: Any agreement between two or more persons that creates a legally binding obligation to do or not to do a particular thing. A contract may or may not involve the payment of money but there must always be consideration of some sort to bind the promises being made. This policy applies to any document that obligates the City, irrespective of the terminology used to describe that document. Types of documents that constitute contracts include, but are not limited to: affiliation agreements; assignments; business agreements; memoranda of understanding; memoranda of agreement; non-disclosure agreements; promises to pay; promissory notes; purchase orders; riders or addenda to existing contracts; separation agreements; settlement agreements; and waivers.

Business Contract: Includes the following types of contracts: deeds; construction agreements; agreements with software consultants, for computer hardware, or for

telecommunication services; contracts with vendors for purchase of materials, equipment or services; procurement agreements; financing agreements; independent contractor/consultant agreements; and agreements with temporary employment agencies.

Contract Initiator: The individual who proposes to enter into contract negotiations on behalf of the City of New Berlin.

Total Contract Cost: The total consideration paid over the term of the agreement, including any previous amendments to the contract.

Surety Bond: A contract among at least three parties: the **obligee** - the party who is the recipient of an obligation; the **principal** - the primary party who will perform the contractual obligation; the **surety** - who assures the obligee that the principal can perform the task.

Policy

This Policy describes the City's contract review and approval requirements and the protocols for the delegation of signature authority. This policy applies to all contracts or amendments thereto, which the City seeks to enter into for the acquisition of equipment, materials, supplies, labor, services or other items.

The City will only be bound by written contracts to which the City is formally party, that have been reviewed and approved in accordance with this policy, and that have been executed by City officials who have specific contract authority. Contracts signed by officers or employees without documented signature authority may be deemed void. Individuals in such circumstances may be personally liable for the obligations assumed under such contracts per the City's employee indemnification policy and are subject to disciplinary action up to and including termination of employment.

Except where a specific, written exception applies, the following requirements apply to all contracts. If, after reviewing this policy, there are questions about the review and approval process or requirements for a particular type of contract, contact the City Attorney or Finance Director.

When a contract also involves a purchase of goods or services, the Contract Initiator must follow the City's Procurement Policy and/or the Procurement Card Policy.

Preliminary Review by Contract Initiator

Contract Initiators are responsible for conducting a preliminary review of proposed contracts. Prior to submitting a contract for the required review, approval and execution, the Contract Initiator must read the entire contract to confirm that the contract:

- a) Is clear and consistent;
- b) Is complete and accurately reflects the intentions of the parties;

- c) Is consistent with the City's mission and is in the best interests of the City;
- d) Does not include a provision for assumption of sales tax by the City;
- e) Does not include a provision for automatic renewal of the contract (except in limited circumstances such as subscription services ;)
- f) Does not contain requirements with which the City cannot comply; and
- g) Is reviewed for compliance with the City's Contractual Risk Transfer Policy.

Approval & Execution of Contracts

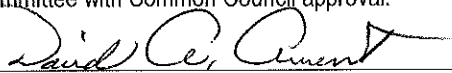
1. Except as otherwise provided for hereunder, contracted items must be provided for in the budget and be authorized by action of the Common Council. The fact that the item was included in the budget does not exempt the Contract Initiator from this policy, the city's procurement policy or any other applicable policy.
2. *All* contracts with indemnification language or a risk transfer provision, regardless of dollar amount or budgetary impact, must be approved as to form by the City Attorney. If a contract has significant material risk it must be approved by the mayor.
3. A department head or their designee may enter into a contract for under \$10,000. Approval of a contract is **not** automatically authorized even though the monetary impact may have been Council approved through the budgetary process.
4. All change orders to contracts must be approved by the Common Council if the total cost of the contract will exceed the original budget amount. If change orders are greater than the contingency amount but less than the budget, the Mayor will have the delegated authority to execute. If the change order is less than the contingency amount, the department head or their designee may approve it up to \$10,000, amounts over this limit need mayor approval.
5. Per WI State Statute 62.09(10)(f) the comptroller (Finance Director) for the City shall counter-sign all construction contracts verifying that the necessary funds have been provided to pay the liability that may be incurred under the contract. No contract is valid until so countersigned.
6. Public construction contracts under Wisconsin Statute Sec 62.15 (12) must be signed by the Mayor and the City Clerk. The Statute also provides that the contract must be approved as to form by the City Attorney and the comptroller (Finance Director) must counter-sign that there are sufficient funds available to cover the expense.
7. Contract Initiator shall complete the attached "City of New Berlin Contract Routing Form" for all contracts and will submit the form along with the original executed contract, along with the appropriate signed Terms and Conditions Form, to the City Clerk for recordkeeping purposes. A terms & conditions form is required for contracts over \$5,000 or those determined to have significant material risk by a department head.

8. The City Clerk shall retain all original executed contracts and surety instruments for the period required by applicable law. The City Clerk, in order to maintain transparency in contracting, shall post contracts into an electronic database detailing contract date, name of contractor, date contract was approved by Council, the department responsible that will oversee the contract, and any contract expiration dates or other pertinent deadlines for future follow-up.

Emergency Contracts

1. The provisions of this policy are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works or utility committee, in which the public health or welfare of the city is endangered. Whenever the city council determines by majority vote at a regular or special meeting that an emergency no longer exists, this subsection no longer applies.
2. The provisions of this policy are not mandatory for the purchase of services, materials or equipment for immediate delivery to meet emergencies arising from unforeseen causes. The following situations constitute an emergency under this provision.
 - A) Any situation in which there exists immediate & substantial danger to the health, life or property of any person or any situation in which there exists potential for increased damage to City property if the situation is not immediately remedied.
 - B) Any situation where the normal operation of any City department or Agency is seriously impaired or is in jeopardy of being seriously impaired; or
 - C) When the Mayor or in his absence the Council President declares an emergency.
3. In such emergency situations the Mayor shall have the delegated authority to enter into a contract without Council approval, however the Mayor will notify City Council of his/her actions as soon as reasonably possible.

This policy was reviewed and approved by the Finance Committee and Common Council and signed by Mayor David Ament on the 18 day of NOVEMBER, 2016 as evidenced by his signature hereon. Three signed originals of this policy have been generated. One original is maintained in the City Clerk's office, the second original is maintained in the Finance Department, and the third original is maintained in the Mayor's Office. This policy may only be modified by the Finance Committee with Common Council approval.



David A. Ament, Mayor

City of New Berlin Contract Routing Form

Name of Contractor: _____

Contract Date: _____

Expiration Date: _____

Contract Amount: _____

Other Dates of Significance: _____

Contract Initiator/Dept: _____

Public Construction Contract? Yes No

City Attorney has reviewed & approved this contract with the following comments if any:

City Attorney

Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney	<input type="checkbox"/>	Finance Director	<input type="checkbox"/>
City Clerk	<input type="checkbox"/>	Mayor	<input type="checkbox"/>
Other	<input type="checkbox"/>		

Contract Information entered into database by Clerk's Office:

**Completed copy of this form should be returned to contract initiator
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**

**CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS
FOR THE PURCHASE OF GOODS & EQUIPMENT**

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the vendor identified below (hereinafter referred to as "Vendor"). These Terms and Conditions, along with the invoice specifications for the goods or equipment being purchased, and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred as to the "Goods" between the City and the Vendor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned invoices and specifications. These Terms and Conditions are solely for the benefit of the City and the Vendor, and are not intended for the benefit of any other party.

2. Goods and/or Equipment. The goods and materials being furnished under this contract shall be as identified in the specifications or invoice. The City shall not be deemed to have accepted the Goods until they have been provided the opportunity to inspect them and to acknowledge, in writing, that they are in accordance with the specifications/invoice and without damage or defect.

3. Advertising. The Vendor shall not identify the City as a client or customer of the Vendor or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

4. Modification. In the event that the parties determine that a modification to the Terms and Conditions of the providing of these goods are necessary, such change shall not be effective unless executed by authorized representatives of both parties.

5. Delivery. The goods provided hereunder shall be delivered to the City within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the contract. In the event that the goods are not delivered within a reasonable period of time, the City shall have the right to cancel this contract without fee or penalty.

6. Insurance. Vendor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Vendor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Vendor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Vendor shall further obtain an endorsement from

the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

8. Limitation on Liability. The City's liability to the Vendor shall not exceed the sums paid by the City to the Vendor under this contract. In addition, to the extent that the Vendor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Vendor for its own negligence or intentional conduct.

9. Warranty. Vendor warrants and guarantees to City that all goods and/or equipment to be supplied hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the specifications/invoice attached hereto, whichever is greater.

10. Conflicts. If there is any inconsistency between these Terms and Conditions and the specifications/invoice or any attachments thereto, these Terms and Conditions shall apply.

11. Hold Harmless. The Vendor shall defend and hold harmless the City as and against any claims, actions, demands or causes of action brought against the City for damages or losses arising out of Vendor's supply of the goods hereunder and the attached specifications/invoice. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

12. Indemnity. The City shall not be liable for failure on the part of the Vendor or any other party to supply the goods under this contract in accordance with all applicable laws and regulations. Vendor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any

way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

13. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Vendor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

14. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Vendor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Vendor be entitled to any penalty for the termination nor shall the Vendor be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Vendor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Vendor of any such deficiency and in the event that the Vendor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Vendor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Vendor's failure to comply with the terms of the contract. Under no circumstances shall the Vendor be entitled to any lost profits arising from the contract.

CITY:
City of New Berlin

VENDOR:

[Insert Vendor Name]

By: _____

By: _____

[Print Name & Title]

[Print Name & Title]

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**CITY OF NEW BERLIN
GENERAL TERMS and CONDITIONS OF SERVICE**

1. Introduction. This document (hereinafter referred to as "Terms and Conditions") is hereby incorporated and part of the contract between the City of New Berlin (hereinafter referred to as "City") and the contractor identified below (hereinafter referred to as "Contractor"). These Terms and Conditions, along with the Scope of Services and any attachments thereto, shall constitute the entire contract for material, work and other goods and services, collectively referred as to the "Goods" between the City and the Contractor. It is expressly agreed that no statement, arrangement, warranty or understanding, oral or written, expressed or implied, will be recognized unless it is stated in or otherwise permitted by these Terms and Conditions, and the aforementioned Scope of Services. These Terms and Conditions are solely for the benefit of the City and the Contractor and are not intended for the benefit of any other party.
2. Proposal. The Contractor is solely responsible for, and shall have sole control of, construction methods, sequences and coordination of all work described in the Scope of Services, unless expressly stated to the contrary.
3. Services and/or Construction Materials. All materials and work shall be furnished in accordance with normal industry standards and practices. Contractor agrees to install or provide the services set forth in the Scope of Services in a good and workmanlike manner, in accordance with construction practices in the Milwaukee Metro area, using quality materials and products as identified in the Scope of Services.
4. Access to the Site. The City shall provide access to the Contractor to work in and on City property, and to provide utility services as may be agreed to the Scope of Services incorporated herein.
5. Storage of Materials. The storage of materials and storage of Contractor's equipment shall be the responsibility of the Contractor. The City agrees to maintain access for the Contractor at the project site and to keep the project site free from obstructions and conflicting work. The Contractor shall be responsible for obtaining builders risk insurance coverage and in general, for insuring the materials and work being provided hereunder.
6. Insurance. Contractor shall maintain workers compensation, automobile liability and commercial general liability insurance coverage with carriers licensed to do business in the State of Wisconsin, and with such limits as the City may establish and require from time to time. Contractor shall furnish a Certificate of Insurance evidencing the types and amounts of coverage. Said coverage shall be on an occurrence basis and the limits identified in the general liability coverage shall be for this project and not the policy as a whole. Contractor agrees to require that the insurer list the City as an Additional Insured and to provide adequate evidence of said status through the liability insurance endorsement. Contractor shall further obtain an endorsement from the insurance carrier indicating that any material changes to the policy or any cancellation of the coverage subsequent to the issuance of the Certificate, and until the completion of the

services hereunder, shall necessitate that the insurer provide not less than thirty (30) days notice to the City of said fact. Clauses such as that the insurer will endeavor to notify the City are unacceptable and will be rejected.

7. Independent Contractor. The parties warrant that no employer/employee relationship is established between the Contractor and the City by virtue of the terms of this contract. It is understood by the parties hereto that the Contractor is an independent contractor and as such, neither it nor its employees if any are employees of the City for purposes of tax, retirement system or social security withholding.

8. Records and Reports. Records relating to the performance of the services under this contract must be retained for seven (7) years after final disposition. However, if any litigation claim or audit has started before the expiration of the seven (7) year period, then records shall be retained for five (5) years after the litigation or audit is resolved.

9. Advertisements. Contractor shall not identify the City as a client or customer of the Contractor, or utilize the name of the City or its logo in any advertisements or other documents placed in the public domain without the express written consent of the City.

10. Changes. In the event that the parties determine that a modification to the terms of the providing of these goods or services are necessary, said change shall not be effective unless executed by authorized representatives of both parties.

11. Delay. Work shall be completed within the number of working days set forth in the contract or otherwise as soon as reasonably practicable unless delay occurs due to work stoppage, adverse weather conditions, labor disputes or modifications to the Terms and Conditions of the Contract.

12. Dispute. These Terms and Conditions shall be deemed to have been made and governed by the laws of the State of Wisconsin. Any legal suit or action with regard to these Terms and Conditions or the project as a whole shall be venued in the Waukesha County Circuit Courts, Waukesha County, Wisconsin, unless the parties mutually agree to arbitration and/or mediation in place of civil litigation.

13. Limitation on Liability. The City's liability to the Contractor shall not exceed the sums paid by the City to the Contractor under this contract. In addition, to the extent that the Contractor seeks indemnification from the City, that indemnity shall be subject to the limitations set forth herein. No indemnity provided under any contract hereinunder shall be construed to be a waiver or estoppel of the City of New Berlin or its insureds' ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to those set forth in Wisconsin Statute §893.80, §895.52 and §345.05. To the extent indemnification is available and enforceable, the City of New Berlin or its insured shall not be liable in indemnity or contribution for any amount greater than the limits of liability for municipal claims established by Wisconsin law. The City's obligations to indemnify hereunder are further subject to the availability limits of applicable insurance coverage. Under no circumstances shall the City be required to indemnify the Contractor for its own negligence or intentional conduct.

14. Modification and Assignability. This contract, including all documents incorporated by reference herein, may not be enlarged, modified or altered except upon written agreement signed by both parties. The Contractor may not subcontract or assign its rights, including rights to compensation, or terms of performance arising hereunder without the prior written consent of the City. Any subcontractor or assignee shall be bound by all of the terms and conditions of the contract, and will be required to enter into a written agreement with the City.

15. Termination of Contract. This contract may be terminated as follows:

- A. *Termination for Convenience.* City may terminate this contract in whole or in part for the convenience of the City when the City determines that the continuation of the project is not in the best interests of the City. Contractor shall be entitled to payment for all of the services performed at the date of the termination, together with its direct costs of termination. Under no circumstances shall the Contractor be entitled to any penalty for the termination nor shall the Contractor be entitled to any payment for lost profits.
- B. *Termination for Cause.* If the City determines that the Contractor has failed to comply with any of the terms and conditions of the contract and the scope of services and related documents thereto, the City may give written notice to the Contractor of any such deficiency and in the event that the Contractor fails to cure said deficiency within ten (10) days of the notice of such failure, the City may, with no further notice, declare this contract to be terminated. Contractor will therefore be entitled to receive payment for those services performed at the date of termination, plus the amount of reasonable damages suffered by the City by reason of the Contractor's failure to comply with the terms of the contract. Under no circumstances shall the Contractor be entitled to any lost profits arising from the contract.

16. Warranty. Contractor warrants and guarantees to City that all materials and equipment and the work to be performed hereunder will be of good quality and free from faults and defects. This warranty shall cover materials for the manufacturer stated warranty period and workmanship for one (1) year from the date of substantial completion or as provided in the Scope of Services attached hereto, whichever is greater.

17. Conflicts. If there is any inconsistency between these Terms and Conditions and the Scope of Services or any attachments thereto, these Terms and Conditions shall apply.

18. Protection of the Project Site. Contractor agrees to post signage and to appropriately guard the area in which the contract work is being performed, and to take all other steps that may be necessary in accordance with requirements of OSHA and/or other governmental agencies with jurisdiction to ensure that the project site is maintained in a safe manner so as to prevent workers and passersby from entering the project site.

19. Hold Harmless. The contractor will defend and hold harmless the City as and against any claims, actions, demands or causes of action brought by a third party for damages or losses arising out of Contractor's performance of the work under these Terms and Conditions and the attached Scope of Services. Said indemnification shall include the City's actual attorney fees. Notwithstanding the foregoing, the obligation to indemnify shall not exist to the extent of the City's gross negligence or intentional conduct.

20. Indemnity. The City shall not be liable for failure on the part of the Contractor or any other party performing under this contract in accordance with all applicable laws and regulations. Contractor waives any and all claims and recourse against the City including the right of contribution for loss of damage to persons or property arising out of or growing out of any way connected with or incident to the performance of this contract, except for liability arising out of the sole negligence of the City or its officers, agents or employees.

21. Working Hours. Unless specifically noted, all work included in this contract is to be performed during normal business hours, Monday through Friday. Work performed at any other time or on legal holidays must be specifically approved by the City.

CITY:
City of New Berlin

CONTRACTOR:

[Insert Contractor Name]

By: _____

By: _____

[Print Name & Title]

[Print Name & Title]