

**MEMORANDUM**

Public Works Department

DATE: June 2, 2021

TO: Council Policy and Procedures Committee

FROM: Angela LaMonica, Real Property Program Administrator
Dawn S. Cameron, Public Works Director

VIA: Kimbra McCarthy, City Manager

SUBJECT: **Modification to Council Policy A-10, Authorization to Execute City Contracts and Agreements and Increase Certain Limited Appropriations – Proposed Revisions to Categories 5 and 6**

BACKGROUND

Council Policy A-10 is the general policy for the authorization to execute City contracts and agreements and increase certain limited appropriations related to grants, donations, and reimbursed expenditures.

CATEGORY 5 – LEASES OF CITY REAL PROPERTY TO AND FROM OTHERS

On [December 4, 2018](#), the City Council approved amending Council Policy A-10 to increase the City Manager's authority regarding the acquisition of property and leases by the City to third parties. One of the amendments was to Category 5 – Leases of City Real Property to and from Others. According to the definition for Category 5 in Council Policy A-10, Exhibit A: "This category includes all written leases in which the City is the lessor, landlord, lessee or tenant."

The approved amendment as stated in the December 2018 Council report and in the adopted resolution included the following:

1. Increase the City Manager's delegated authority from \$100,000 to \$500,000 for the lease of property to others; and
2. Change the cumulative value of leased term to the annual rent.

The redlined Council Policy A-10 attached to the December 2018 Council report that was intended to reflect these changes indicated the following for Category 5: “Leases of City Real Property to and from Others (~~cumulative value of lease term, not~~ cumulative value of leased terms to the annual rent ~~annual value~~).”

The redline changes approved by Council are inconsistent with the adopted resolution in two ways:

1. The resolution states that the increase in the City Manager’s delegated authority from \$100,000 to \$500,000 is only for the lease of City property to others; however, the redlined changes indicate it is for the lease of property to and from others. In considering a recent lease of property from others, staff reviewed Council Policy A-10 and was not certain if the increase in City Manager’s delegated authority applied or if staff needed Council approval of price and terms for the lease. Staff further reviewed the April 17, 2018, Council Policy and Procedures Committee meeting materials and minutes and subsequent December 4, 2018 Council report. While the language in the adopted resolution only addressed the lease of City property to others, from review of this additional background material, staff believes that exclusion of leases from others was an oversight.
2. The redlined wording of “cumulative value of leased terms to the annual rent” is confusing as to how to determine the City Manager’s delegated authority. The resolution states the value was to be changed to “annual rent.”

Staff recommends clarifying Category 5 by approving the increase in the City Manager’s delegated authority to \$500,000 for both the lease of property to and from others and to make clear that the value is determined by the annual rent.

CATEGORY 6 – TRANSFER OF REAL PROPERTY

Category 6, Transfer of Real Property, Including Deeds, Easement, Escrow Instructions, etc., is defined as including “deeds, easements and other conveyances, and escrow instructions and other documents relating to the transfers of real property. It does not include leases.”

Exhibit A includes the terms “Informal Bid” for transactions up to \$100,000 and “Formal Bid” for transactions over \$100,000 for Category 6. Many transfers of real property as defined in Category 6 do not require bidding, and the inclusion of these terms in Exhibit A has created some confusion, such as a recent case where PG&E is purchasing an easement on City property for PG&E’s utility purposes. To provide clear direction on

when bidding is required, it is recommended to add the following statement to the Category 6 definition: “Informal and formal bidding is applicable to the sale of real property in accordance with Mountain View City Code Sections 2.207 and 2.208.”

RECOMMENDATION

Staff recommends modifying Council Policy A-10 to clarify the intent of the December 2018 changes related to City Manager-delegated authority for Category 5 and the bidding requirements for Category 6 and that the Council Policy and Procedures Committee approve these changes and recommend City Council adoption. These revisions are shown in the redlined Council Policy A-10 in Attachment 1.

ALM-DSC/EP/6/PWK
901-06-02-21M

Attachment: 1. Council Policy A-10 Exhibit A (redline)

cc: CM, CA, CC, FASD

EXHIBIT A

**SCHEDULE OF AUTHORIZATIONS TO
SIGN CITY CONTRACTS AND AGREEMENTS
AND INCREASE APPROPRIATIONS FOR GRANTS, DONATIONS,
AND REIMBURSED EXPENDITURES**

| <u>Type of Contract or Agreement</u> | <u>Up to \$20,000*</u> | <u>Over \$20,000 to \$100,000*</u> | <u>Over \$100,000*</u> | <u>No Funds</u> |
|--|------------------------|---|---|-----------------|
| 1. Construction or Improvement of Public Buildings, Works, etc. (Charter Sec. 1107) | DH | CM Informal Bid | CC Formal Bid | DH |
| 2. Other Construction or Improvement of City Facilities | PA Informal Bid | PA Informal Bid | CM Formal Bid | PA |
| 3. Lease of Equipment or Purchase of Supplies, Equipment, or Certain Services (cumulative value of lease term, not annual value) | PA Informal Bid | PA Informal Bid | CM Formal Bid | PA |
| 4. Acquisition of Real Property | | 110% percent of the appraised value for an authorized project | | |
| 5. Leases of City Real Property to and from Others (cumulative value of leased term to the value based on annual rent) | - | CM <u>to \$500,000</u> - | CC <u>over \$500,000</u> *CM \$100,000 to \$500,000 | CM |
| 6. Transfer of Real Property, Including Deeds, Easements, Escrow Instructions, etc. | CM Informal Bid | CM Informal Bid | CC Formal Bid | CM |
| 7. Acceptance of Deeds, Easements, Dedications, or Other Conveyances to City | CM | CM | CC | CM |
| 8. Professional or Specialized Services | DH | CM | CC | DH |
| 9. Recreation Program Contracts | DH | CM | CM | DH |
| 10. Contracts Required as a Condition of a City Approval | DH | CM | CM | DH |

| <u>Type of Contract or Agreement</u> | <u>Up to \$20,000*</u> | <u>Over \$20,000 to \$100,000*</u> | <u>Over \$100,000*</u> | <u>No Funds</u> |
|--|------------------------|--|----------------------------|-----------------|
| 11. Intergovernmental Agencies | | | | |
| Procurement of Goods and Services | PA | PA | CM | PA |
| Contract for Professional or Specialized Services | DH | CM | CC | DH |
| 12. Joint Powers Agreements | CC | CC | CC | CC |
| 13. Other Intergovernmental Agreements Not Included in Nos. 11 or 12 Above | CM | CM | CC | CM |
| 14. Sponsorship Agreements | DH | CM | CC | - |
| 15. Increase to Appropriations for Grants and Donations not Previously Budgeted | DH** | CM | CC | - |
| 16. Increase to Appropriations for Reimbursed Expenditures not Previously Budgeted | DH** | CM | CC | - |
| 17. Liability Claims | - | CM and CA*** | CC | - |
| 18. Developer Deposits Received | - | CM | CC | - |

KEY: CC = CITY COUNCIL (Council approval constitutes authorization for the City Manager to sign on behalf of the City.)
CM = CITY MANAGER or ~~his/her~~ representative designated in writing.
CA = CITY ATTORNEY or ~~his/her~~ representative designated in writing.
DH = DEPARTMENT HEAD or ~~his/her~~ representative designated in writing.
PA = PURCHASING AGENT

NOTE: Contracts and agreements or grants, donations or reimbursed expenditures not covered by the schedule are to be presented to the City Council for approval.

Amounts pertain to annual operating budgets with the exception of capital improvement projects which are on a project life basis.

* Indexed to 2011 dollars.

** Authority limited to Finance and Administrative Services Director.

*** Authority limited to City Manager and City Attorney concurring authority.

DEFINITIONS

- Category 1: Construction of Improvements of Public Buildings, Works, etc. This category includes all Public Works construction listed in Section 1107 of the City Charter. The formal bid provisions of Section 1107 must be followed for such work.
- Category 2: Other Construction or Improvement of City Facilities. This category includes all construction or improvement of City facilities not covered by Section 1107 of the City Charter. The necessity for bidding for such construction or improvement is covered by Sections 2.79 and 2.80 of the City Code.
- Category 3: Lease of Equipment or Purchase of Supplies, Equipment, or Certain Services. This category includes all acquisition of supplies or equipment and certain services not following Categories 7 and 10, whether by purchase or lease.
- Category 4: Acquisition of Real Property. This category includes the City's acquisition of any interest in real property and is also governed by Council Policy H-1, Acquisition of Real Property.
- Category 5: Leases of City Real Property to and from Others. This category includes all written leases in which the City is the lessor, landlord, lessee, or tenant.
- Category 6: Transfers of Real Property. This includes deeds, easements, and other conveyances, and escrow instructions and other documents relating to the transfers of real property. It does not include leases. Informal and formal bidding is applicable to sale of real property in accordance with Mountain View City Code Sections 2.207 and 2.208.
- Category 7: Acceptance of Deeds, Easements, Dedications, and Other Conveyances to the City. This category is to satisfy the legal requirements that the City certify the acceptance of any deeds, easements, dedications, or other grants or conveyances to the City prior to their recording.
- Category 8: Professional or Specialized Services. This category involves obtaining professional or specialized services, including, but not limited to, services of engineers, architects, and specialized consultants.
- Category 9: Recreation Program Contracts. This category includes the routine contracts for the recreation program, including contracts to teach City recreation classes, referee athletic events, etc.
- Category 10: Contracts Required as a Condition of City Approval. This category includes all contracts and agreements required in order to satisfy a condition of a City approval. Examples would be agreements required in order to satisfy conditions imposed as part of subdivision approvals, SPAR Development Review approvals, PC permits, Conditional Use Permits, building permits, and encroachment permits.
- Category 11: Other Intergovernmental Agencies. This category includes all agreements for the procurement of goods and services, and contracts for professional or specialized services with another governmental agency.
- Category 12: Joint Powers Agreements. This category includes all joint powers agreements.

- Category 13: Other Intergovernmental Agreements Not Included in Nos. 11 or 12 Above. This category includes other agreements not included in Nos. 11 or 12 above. Examples may be maintenance agreements or intergovernmental joint projects whereby agencies are jointly contracting with an outside party for services.
- Category 14: Sponsorship Agreements. This category includes all sponsorship agreements.
- Category 15: Grants and Donations. This category includes all grants and donations received by the City.
- Category 16: Reimbursed Expenditures. This category includes all moneys received by an outside entity for the purpose of reimbursing the City for goods or services not budgeted.
- Category 17: Liability Claims. This category includes liability claims paid by the City governed by Council Policy B-5: Liability Claims Procedure.
- Category 18: Developer Deposit Received. This category includes advances provided by developers to pay for project-related services and requests to approve appropriations of the funding advances.