

	<b>POLICY</b>	<b>Owner Department:</b> Legal
	<b>Contract Execution Policy</b>	
<b>Effective Date:</b> December 17, 2018	<b>Last Reviewed Date:</b> December 17, 2018	
<b>Approving Authority:</b> Moncton City Council	<b>Replaces No.:</b> N/A	

## 1. Preamble

According to the *Local Governance Act*, no contract, instrument or other document to which a local government is a party has any force or effect unless it is sealed with the corporate seal of the local government and signed by the mayor and city clerk.

The City of Moncton enters into many contracts each year, for everything from vehicle rentals to large scale capital projects. Generally speaking, it is recognized that a municipality may only act through its council. However, it is also recognized that some contracts are of such a routine, day to day nature, and fall within spending authorities approved by Council, that approval to enter into such contracts should not require the attention and approval of Council.

Through this Policy, Moncton City Council wishes to delegate some power to approve certain contracts to the City Manager, who may delegate such authority as he or she sees appropriate. This Policy further serves to clarify the proper approvals and authorities required in order to enter into a contract on behalf of the City of Moncton.

## 2. Purpose

The purpose of this Policy is to:

- Specify the signing authority required for various types of contracts which may be entered into on behalf of the city;
- Specify which types of contracts require approval of council; and
- Specify which types of contracts require legal review prior to execution.

## 3. Application

This Policy applies to all contracts to which the city is a party, including but not limited to contracts involving the city's departments, operating units and unincorporated entities.

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This Policy does not apply to:

- Cheques and other banking instruments;
- Applications for funding or other in-kind assistance from other levels of government or other organizations;
- Internal spending authorities and related authorizations or approval processes which have already been approved by council and do not include a separate contract document; and

Purchases made under the Purchasing Policy without a contract document using a purchase card, purchase order or standing purchase order.

## 4. Definitions

In this Policy,

“contract” means any written agreement, deed or other document which creates an obligation or which may be binding upon the City;

“council” means Moncton City Council;

“signing authority” means an individual with authority to execute a contract on behalf of the City of Moncton.

## 5. Policy

No member of City administration is authorized to enter into any contract on behalf of the City unless authority to do so has been provided for in this Policy, in another policy or by-law, or by resolution of council.

### 1. Execution of contracts

- (1) All contracts shall be sealed with the corporate seal of the city, and signed by the Mayor and City Clerk.
- (2) “City of Moncton” is the legal entity which must be listed as a party on all contracts entered into on behalf of the City. Internal departments (e.g. Codiac Transpo, Magnetic Hill Zoo, Events Moncton, etc.) are not permitted to enter into contracts in their own names.

### 2. Council approval of contracts

- (1) Subject to (2), approval to enter into a contract on behalf of the City shall require authorization of council.
- (2) Council hereby delegates approval of the following types of contracts to the City Manager, who may sub-delegate such approval authority as deemed appropriate in his or her sole discretion:

## **Contract Execution Policy**

- (a) Facility rental agreements;
- (b) The awarding of contracts for the purchase of goods or services through any procurement method, within spending authorities below the level of council as established under the City's Purchasing Policy, and provided that such purchases are in compliance with the Purchasing Policy; and
- (c) Lease or rental agreements for equipment or vehicles.

### (3) Despite (2),

- (a) in accordance with the Land Disposition Policy, any agreement for the acquisition or disposition of land shall always require council authorization via by-law or resolution, regardless of the value;
- (b) any contract may be brought forward to council for approval when deemed by the City Manager to be in the best interests of the city; and
- (c) any contract prescribed by legislation to be made by council shall only be approved by council.

### **3. Mandatory legal review**

All contracts shall be reviewed by the Legal Department prior to being signed or presented for signature, taking into consideration:

- Financial obligations on the city;
- Level of risk to the city;
- Whether the contract is of a routine nature;
- Whether the contract is in a standard-form previously approved by the Legal Department; and
- Public interest/stakeholders involved

In all circumstances, client departments shall be responsible for ensuring that the business terms of the contract accurately reflect what has been agreed to between the client department and the other party to the contract, and that the contract does not conflict with any other existing city obligations or agreements. Unless the Legal Department has been involved in the negotiations leading up to the final contract, or has been asked to review the terms of a contract prior to seeking final approval, its role is to ensure that contracts are approved as to form and authority in order to be executed by the Mayor and City Clerk.

Whenever possible, client departments should contact the Legal Department as early as possible in the contract negotiation/drafting process so that any issues can be addressed without causing delay to the project.

## 6. Procedures

1. For contracts which require council approval, client departments are responsible for informing the Legal Department when such contracts need to be drafted or reviewed for execution.
2. Contracts which are ready for execution must be sent by the responsible department to the Legal Department with the following information attached:
  - (a) A copy of the council approval resolution, if applicable;
  - (b) A brief covering memo explaining the purpose of the contract; and
  - (c) Sufficient final hard copies so that each party to the contract shall have their own fully-executed hard copy.
3. In rare circumstances, electronic signatures may be acceptable in lieu of original hard copies, subject to approval of the Legal Department.
4. Contracts must be executed by the other party prior to being presented to the Mayor and City Clerk for signature, unless otherwise agreed to by the Legal Department.
5. A fully-executed original copy of each contract shall be retained by the City Clerk's Office. Client Departments will receive a copy of the fully-executed contract for their records.

## 7. Administration and Contact

**City Hall**

**655 Main St., Moncton, NB E1C 1E8**

**Telephone: 506.853.3550**

**Email: [info.clerk@moncton.ca](mailto:info.clerk@moncton.ca)**