

Tips for Contract Amendments - 2023

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WHAT IS A CONTRACT AMENDMENT? An “amendment” is a change to a contract *after it has been signed* and before it expires. Almost all contracts have a clause that says you can’t change the contract without a signed, written amendment –signed by the person (or position) that signed the original contract for each party.

OK, BUT HOW DO I MAKE ONE? A contract amendment is just a document that describes the original contract, what is being changed, identifies those changes clearly, and includes signatures of the people authorized to sign the contract amendment. It has some required formalities (see next page in **RED**.)

The change can be anything – money, description of work, dates, people, etc. Anything that is a change from what is written in the original signed contract.

(if the only change is to extend the end date or renew the contract, you can use a form designed for [Renewal/Extensions](#) on employeenet as a sample. That form is designed for POS contracts but you could modify it if you need to renew or extend some other kind of contract.)

CAN I AMEND AN EXPIRED CONTRACT? NOPE. A contract CANNOT be amended, renewed, or extended after it has terminated or expired. You have to start out with a new contract. Why? Because there is no contract left to amend.

CAN YOU GIVE ME A SAMPLE FORM? MAYBE ☺ The City doesn’t have a *standard* contract amendment form on Employeenet because each contract amendment is unique....

DO I NEED A RESOLUTION? HOW MUST THE AMENDMENT BE AUTHORIZED?

1st – did the original contract require a resolution? If so, read that resolution to see what was authorized: price, term, nature of the work. If you are changing anything that was specifically authorized in the resolution, you probably need another reso to authorize the amendment.

More money - Increase in price over what the reso authorized always requires a new resolution.

Less money – lowering the price does NOT require a new resolution.

Longer term? If the resolution said 3 years and now it will be 4, you need a new reso.

Major change in scope? This is rare, but read the original resolution to see if the proposed amendment will change the nature of the work so much that a person could say the Council did NOT authorize the new work.

Same goes for a contract other than POS... look at the original resolution.

2nd - if the original contract did not require a resolution in the first place (i.e. one that Purchasing signs) then Purchasing can sign the amendment too –

UNLESS – the amendment causes the contract to exceed Mary’s authority to sign:

- If amendment makes total contract term more than 5 years
- If amendment exceeds \$100k for a multi-year service contract
- If amendment creates a question about competitive selection... ask Mary

MOST COMMON THINGS AMENDED IN A CONTRACT and HOW TO AMEND THEM:

- **PRICE**
 - Always have to amend POS section 23, “Compensation” section
 - Probably have to amend any payment exhibit too- replacing it might be easiest.

- **DATES/TERM**
 - If ONLY changing the contract term, can use Renewal /Extension form
 - If amending something else and changing dates, use an amendment
 - Must amend section 4, Term
 - Must amend anything in the scope or exhibits that refers to the dates you are changing

- **ADDING OR REMOVING WORK**
 - Where is the work described? How is it changing?
 - Options include:
 - ADD a new exhibit to describe the additional work.
 - REPLACE entire exhibit / scope of work with a completely new one.
 - WRITE a description in the body of the amendment to describe what’s changing in the Scope of Work. Here are different methods:

Strike outs & underlines: “The parties agree to amend section 2 of Exhibit A, Scope of Work, as follows: “2. Contractor will conduct ~~10~~ 5 public engagement sessions.”

Description: “The parties agree to amend section 2 of Exhibit A, Scope of Work, to change the required number of public engagement sessions from 10 to 5.”

Replacement of a Section: “The parties agree to **replace** section 2 of Exhibit A, Scope of Work, with the following: “2. Contractor will conduct 5 public engagement sessions.”

Replacement of Attachment/Exhibit: “The parties agree to **replace** Exhibit A, Scope of Work, with the attached version entitled “Replacement Exhibit A, Scope of Work – 3/30/23.”

Adding an Exhibit: “The parties agree to add Exhibit D, Additional Scope of Work, to the Original Contract.”

- **CONTRACTOR NAME** – SEE SAMPLE FORM to amend the contractor name – this happens with a merger or acquisition or somethings a vendor just changes their name. See OCA with questions.

THINGS REQUIRED IN ALL CONTRACT AMENDMENTS:

- ✓ Accurately identify the “Original Contract” by its complete name and date, including vendor.
 - Include any previous amendments - if your original contract was amended before, the previous amendment(s) are part of the “original contract”, you MUST list them.
 - If so, **number** your amendments sequentially – Amendment #1, #2, etc.
- ✓ **Precise description of all changes (see above.) Use the same level of detail as the original contract to describe change in price, dates, new work / tasks / scope / schedule, as well as anything removed from the contract.**
- ✓ **Important:** a statement that everything else about the original contract remains the same: “Except as expressly amended herein, the terms and conditions of the Original Contract remain in full force and effect.”
- ✓ **Signature lines and dates** for the people who need to sign it.
- ✓ **EFFECTIVE DATE of the changes** – can be the date the amendment is signed, or a specific date.

WHO SIGNS CONTRACT AMENDMENTS? The general rule is the same people (or positions) that signed the original contract. But review the resolution for the original contract first. If you are doing a reso for the amendment, your reso must say who will sign the amendment for the City – just like any contract resolution.

ROUTING: Must “route” if mayor/clerk are signing. Always include link/copy of Original Contract.

If Purchasing (Mary Richards) is signing your contract amendment, send it to her in Munis or communicate directly with Mary to find out how she wants to receive it. She will also want to see the original contract.

SIGNATURE ROUTING: Contract amendments to be signed by the Mayor/Clerk are routed for signature the same way as the original contract.

- a. Always include 1 copy or link to the FULLY SIGNED ORIGINAL CONTRACT when routing a contract amendment.
- b. If the contract was amended before, also include fully signed copy of any previous amendments when routing.
- c. Include a copy of the authorizing resolution(s) for the original contract AND the current amendment (if a new reso was required.)
- d. For contracts that require insurance - No need to reroute the COI but be prepared to answer questions from Risk if they can't find a current COI on file.

WHAT'S THE DIFFERENCE BETWEEN AN AMENDMENT AND A CHANGE ORDER?

Some contracts have a “change order” process written into the original contract – to authorize *staff* on both sides to sign for certain changes *without* a formal contract amendment. Often change orders are only allowed if they do not increase the price. READ your contract to see if there is a “Change Order” procedure. Do a word search of the signed PDF. Likewise, read the resolution (if any) to see if it mentions any a change order or amendment procedure.