RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER WITH RESPECT TO MAKING AND EXECUTING CONTRACTS, LEASES, AND GRANT INSTRUMENTS; TO ALLOW THE CITY MANAGER TO DELEGATE CERTAIN AUTHORITY; AND TO ALLOW THE CITY MANAGER TO TAKE ACTIONS REGARDING BIDS, PROPOSALS, AND BONDS

RESOLUTION #9673

WHEREAS, the City Council finds that the efficiency of the City's operations will be enhanced by authorizing the City Manager to contract and execute documents to expedite the City's business without the delay occasioned by bringing such matters before the City Council for approval;

WHEREAS, after the City Council grants the City Manager the authority to execute contracts and leases, it is generally advisable to allow the City Manager to make some changes without the necessity of bringing the matter back to the Council for further authority; and

WHEREAS, this resolution is made pursuant to Section 17 of the City's Charter and other applicable law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURHAM RESOLVES:

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Section 1. Definitions.
The term "Reasonably Expected Expenditures" means the dollar amount that the City Manager or the City Manager's designee determines, as of the time of executing the instrument in question, to be the sum of the probable payments the City can reasonably be expected to pay, including for liabilities under an indemnification provision if the relevant instrument contains such a provision.

Section 2. Detailed delegations of authority. Except to the extent prohibited by law, the City Manager or the City Manager's designee is authorized to make, approve, award, amend, and execute instruments described in this section. If an instrument is covered under two or more subsections, it must meet the requirements of all of the applicable subsections for the City Manager or City Manager's designee to have such authority. For example, a contract to obtain both services and goods must meet the requirements of sections 2.01 and 2.03.

.01 Service contracts. Service contracts, in which another party to the contract will provide services, including contracts to amend such contracts, provided the Reasonably Expected Expenditures under the original or amended contract do not exceed $50,000.

.02 Construction or repair contracts. Construction or repair contracts, in which another party to the contract will perform construction or repair, including change orders and contracts to amend such contracts, provided the Reasonably Expected Expenditures under the original contract or the contract as modified by amendments and change orders do not exceed $300,000. In addition:

(a) Amendment or change order when original contract is between $250,000 -$300,000. When the contract amount of an original contract is between $250,000 - $300,000, inclusive, the City Manager or the City Manager's designee is authorized to make, approve, award, and execute change orders and contracts to amend as long as the net sum of the Reasonably Expected Expenditures under all change orders and contracts to amend executed pursuant to this subsection (a) does not increase the original contract amount by more than 20%.

(b) Options and alternates. When an original contract as executed provides that the City has options or alternates and specifies the price or the manner of determining the price without requiring the consent of other parties to the contract, the City Manager or the City Manager's designee is authorized to make, approve, award, and execute instruments to exercise some or all of the options or alternates as long as the net sum of the Reasonably Expected Expenditures under all of such instruments executed pursuant to this subsection (b) does not increase the original contract amount by more than 20%.

.03 Purchasing contracts. Contracts to purchase apparatus, supplies, materials and equipment, including contracts to amend such contracts, provided the Reasonably Expected Expenditures under the original or amended contract do not exceed

(a) $300,000 when (i), (ii), or (iii) applies:

(i) Lowest bidder. The award is to the lowest responsive and responsible bidder;

(ii) Buying through a coop. The purchase is made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies; or

(iii) Buying from State contract. The purchase is made from a contract established by the State or any agency of the State, if the contractor is willing to extend to the City the same or more favorable prices, terms, and conditions as established in the State contract.

- or -

(b) $90,000 when subsection (a) does not apply.

.04 Grants. Grant applications; grant agreements in which the amount of any City match is within budgeted appropriations. When a grantor requires City Council authorization before the City Manager may sign, this resolution does not give the City Manager and the City Manager's designee such authority. As with other subsections of this resolution, this subsection is subject to the second sentence of the introductory portion of this section 2, which states "If an instrument is covered under two or more subsections, it must meet the requirements of all of the applicable subsections for the City Manager or City Manager's designee to have such authority."

.05 Electric utilities. Contracts for electric service, including for installation, maintenance, and repair of street lights and for electricity, provided that the Reasonably Expected Expenditures for any individual year do not exceed $100,000.

Section 3. Reserved.

Section 4. Exemptions from qualifications-based selection procedures. The City Manager or the City Manager's designee is authorized to exempt projects from Article 3D of Chapter 143 of the General Statutes, pursuant to G.S. 143-64.32, as follows:

.01 Smaller Projects. Any proposed project requiring the selection of one or more firms to provide architectural, engineering, surveying, or construction management at risk services where an estimated professional fee is less than $30,000.

.02 Larger Projects. Any particular project requiring the selection of one or more firms to provide architectural, engineering, surveying, or construction management at risk services where an estimated professional fee is $30,000.00 or more but less than $100,000, provided that the City Manager or the City Manager's designee states in writing the reasons and circumstances for each exemption.

Section 5. Authority to change the text of instruments approved by Council.

.01 The City Manager or the City Manager's designee may make changes before or after execution to a contract or lease approved or authorized by Council if all of the following three conditions are met:

(a) The changes do not increase the Reasonably Expected Expenditures.
(b) The contract or lease is not significantly changed.
(c) The changes do not make the contract or lease as a whole less favorable to the City.

In applying subsections (b) and (c), the changes will be assessed in light of the information and documents presented to Council.

.02 Section 5.01 is not intended to reduce authority granted elsewhere in this resolution.

.03 Section 5.01 applies only to instruments that the City Manager is authorized to sign by Council decisions made after the date of adoption of this resolution.

Section 6. Designees. The City Manager may appoint only City employees as the City Manager's designees under this resolution. All such appointments must be made in writing by the City Manager and must specify the type and limits of the designee's authority. The instruments containing appointments are to be maintained as required by the records retention schedule.

Section 7. Reserved.

Section 8. Advertising bids, and proposals; rejecting bonds, bids, and proposals. The City Manager or the City Manager's designee may solicit and advertise for bids and proposals; reject bonds, bids, and proposals; and re-advertise to receive bids and proposals. This section applies to all contracts and projects, regardless of whether they qualify under other provisions of this resolution.

Section 9. Authority to complete actions. The City Manager or the City Manager's designee may take any action that the City Council is required or authorized to take under applicable law in making, approving, awarding, or executing contracts, leases, and other instruments pursuant to this resolution. When acting pursuant to the authority granted by this resolution, the City Manager or the City Manager's designee may take any action that the City Council is required or authorized to take under Article 8 of Chapter 143 of the General Statutes if that action is with respect to advertising, making, approving, awarding, and executing contracts, including complying with the procedures in G.S. 143-129(b) that apply when the lowest responsible bids are in excess of the funds available for the project or purchase.

Section 10. Reports. The City Manager shall report to the City Council, on a quarterly basis, (i) all instruments executed pursuant to section 2, and (ii) the projects exempted under Section 4.02 with a statement of the reasons and circumstances for each exemption.

Section 11. Repeals. The following are repealed:

.01 Resolution 7172, adopted 11-7-1988, titled Resolution Waiving the Requirements for Bid Bonds or Other Deposits.

.02 Resolution 7638, adopted 3-2-1992, titled Resolution Authorizing the City Manager to Award Contracts for Routine and Operational Services.

.03 Resolution 7867, adopted 9-20-1993, titled Resolution Authorizing the City Manager to Make, Approve, Award and Execute Contracts for the Purchase of Apparatus, Supplies, Materials and Equipment, and Contracts for Construction and Repair Work.

.04 Resolution 8720, adopted 12-18-2000, titled Resolution Authorizing City Manager to Award Contracts for Transportation Engineering and Planning Services.

.05 Resolution 8980, adopted 3-17-2003, Resolution Authorizing the City Manager to Enter into Contracts in Consideration of Foreign Conflict.

.06 The motion adopted on 9-7-2005 that authorized the City Manager to approve contracts up to and equal to $30,000 and then subsequently bring a list back to the City Council after the fact monthly.

This resolution does not repeal other resolutions or reduce other authority previously given to the City Manager.

Section 12. Effective date. This resolution shall be effective upon passage.

APPROVED BY
CITY COUNCIL

OCT 5 2009

CITY CLERK