



Leanne Scott <scottl@rochesterhills.org>

What does Not to Exceed mean?

Theresa Mungioli <mungiolit@rochesterhills.org>
To: Lisa Cummins <cummins1@rochesterhills.org>
Cc: Leanne Scott <scottL@rochesterhills.org>

Thu, Jun 19, 2025 at 11:49 AM

Lisa,

Thank you for all your help with the RARA Master Plan bid. You and your team do a fabulous job for the city.

I noticed in the upcoming City Council agenda that there are several "Not to Exceed" bids we have to approve. Also on the Consent Agenda is the Splashpad cost that asks to increase the Not to Exceed. When this Not to Exceed concept came forward I was thrilled because I was told that meant the cost would not Exceed the original bid. Why is anything considered Not to Exceed if they can come back to ask for more money? Why is the contractor not being held to the original bid? Is there a better term for us to use if a Not to Exceed can be increased? Thanks!

Theresa Mungioli

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What does Not to Exceed mean?

Lisa Cummins <cummins1@rochesterhills.org>
To: Theresa Mungioli <mungiolit@rochesterhills.org>
Cc: Leanne Scott <scottL@rochesterhills.org>

Thu, Jun 19, 2025 at 3:15 PM

Hi Theresa,

Thank you for the kind words. We love the work we do, even though it can be challenging at times 😊. I'm glad the Master Plan for RARA was approved last night and I'm looking forward to seeing the final product. I'm working with Dave right now to get the contract together and over to McKenna so we can get them onboard ASAP.

These are good questions and I'll do my best to try and explain. The not-to-exceed amount is used as an identifier for the maximum financial authority the City has available to spend on a project/service without returning to City Council for additional approval. It is also used as a tool to ensure we stay within approved budgets, but there are some nuances to this and times when a not-to-exceed may need to be requested for an increase. Here are a couple of times when that may occur:

When we bring forward as-needed services, or time and material contracts we ask for that overall not-to-exceed as a "cap" to the amount we have the ability to spend with that contractor over the term of the agreement. We don't always know the exactly number or cost of each service we will need, but we want the contractor to know that no matter the number or cost of the services the maximum amount of work we can do with them is let's say \$75,000 and they can never come to the City asking for more than that unless the scope or work needed to be done exceed our contract amount. Then at that time when it does, we would then bring back the contract/blanket for that service to ask for an increase with an explanation as to why we are needing the additional funds. So in this case, the not-to-exceed sets the maximum for an ongoing service, versus that of a defined scope of work.

Now on a single bid, such as a brookland project, or park building project, with a defined scope, the initial not-to-exceed amount is the not-to-exceed cost bid around the posted Scope. However, sometimes situations come up where the City may direct a scope change, or unforeseen "scope creep" occurs during the project. These changes, if requested by the City, can lead to increased costs beyond that of the contractor's original bid. In these cases the contractor isn't responsible for those changes because the Scope changed beyond what they originally bid and when this happens we then need to bring back the request to Council to request an increase to the not to exceed amount with a request for the new, expanded, or changed scope.

In relation to the Splash Pad specific item you are seeing for Gordian, this request to increase the not to exceed was an oversight by Purchasing and I take full responsibility for this. We should have presented the request in the manner you are seeing it now, with a requested contingency for that maximum not-to-exceed amount. When we reviewed the contract I missed, or frankly, just didn't think it through fully, the section where it indicates that if a change order occurs (credits or increases) the City will be credited or charged the JOC administration fee based on the amount of that change order. Knowing the complexity and size of the Brooklands project, and the likelihood that there would be change orders, we should have included in the initial request for the Gordian approval an allowance/contingency amount for this potential JOC admin fee. I did not, and I do apologize for that and the confusion it is causing. Gordian is in full compliance with their contract. This was entirely a mistake on my end in not properly anticipating and fully connecting that clause of their contract with the initial project approval request. With bringing the request back, I am correcting the oversight.

As to whether or not there is a better term than not to exceed, I am not sure that there is. This is a pretty standard term. We could potentially add more explanation with our requests, but I feel like that could lead to more confusion due to varying circumstances of each request. I can assure you that we never allow a contractor to request an increase if the work being done is required as part of their contract. We hold firm to that and we push back significantly in those cases. We will only ever consider/ask for an increase in instances such as those described above, or where the scope or circumstances genuinely change beyond the contractor's original obligation.

I hope this helps address your concerns. Please feel free to let me know if there is any additional explanation needed.

Lisa

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What does Not to Exceed mean?

Theresa Mungjoli <mungjolit@rochesterhills.org>
To: Lisa Cummins <cummins1@rochesterhills.org>
Cc: Leanne Scott <scottL@rochesterhills.org>

Sun, Sep 7, 2025 at 9:43 PM

Lisa,

This explanation helped me a lot. However, as I look at the agenda for this Monday, September 8, I am seeing a lot of Not to Exceed changes. Is there another term we can use? I read each of these and it appears the city is asking for the changes due to costs not included in the original bid, changes due to new information, and the list goes on. Not to exceed that changes more than once is no longer Not to Exceed. If each of the bids can change multiple times for any number of reasons, what is a better way to describe what is approved? Looking for clarity of terminology. Thanks!

Theresa

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Leanne Scott <scottl@rochesterhills.org>

What does Not to Exceed mean?

Lisa Cummins <cummins1@rochesterhills.org>

Mon, Sep 8, 2025 at 12:31 PM

To: Theresa Mungioli <mungiolit@rochesterhills.org>

Cc: Leanne Scott <scottL@rochesterhills.org>, Bryan Barnett <barnettb@rochesterhills.org>, Joe Snyder <snyderj@rochesterhills.org>

Good Afternoon,

I can see why the term "not-to-exceed" can be confusing, especially when we have to ask for an increase. I think the key distinction is that the "not-to-exceed" amount is the financial authorization for administration, separate from the contractor's agreement. It is a standard term used universally and comes from Michigan's Uniform Budgeting and Accounting Act and our Ordinance. It mainly acts as an internal control to ensure a project's funding is properly appropriated and that the City is not spending unauthorized, or unappropriated funds.

When the City asks for "not-to-exceed" approval, it is essentially requesting that the City Council grant a maximum spending authority for a project. This amount is derived from initial proposals or bids and is based on what is anticipated to be found during the course of a project. This allows administration to manage the project and spend up to that amount without having to return to Council for further approval, unless a situation arises that could not have been anticipated. For example, the upcoming request for an increase to the ambulance billing fees is a direct result of us being unable to anticipate the types of costs that would be incurred, which has caused the fees to exceed the original projections. Other examples include cases where a scope change is needed because it improves upon a project in regards to safety or longevity, or an oversight on administration's part requires a request to correct an issue. It may also be helpful to note that the ordinance limits the City to a 10% project contingency, so we do have some limitations on the requested authorizations.

The only way the City can exceed that approved financial authority is by bringing a new request back to City Council for approval. This then gives the City the authority to amend our agreements with vendors to finish a project, especially if the scope of work has changed or there were unforeseen circumstances. The City cannot amend agreements without this amended authorization from City Council. This also serves as an additional internal control ensuring we are remaining within budgeted appropriations as required by the State.

The "not-to-exceed" approval is strictly about the project's budget and the authority to award a contract. It's not a direct part of the vendor's contract language, which is managed separately. While other terms are used in different types of contracts, such as Guaranteed Maximum Price (GMP), Cost-Plus, Lump Sum, or Fixed Price, we typically don't use those for most of the agreements that come before the Council.

I did some research this morning into other entities' requests, just to see if there was a way they were wording their requests that were different from ours, and I found them to utilize not-to-exceed and other similar terminology . I hope this helps somewhat to clarify. Please let me know if you have any more questions.

Lisa

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