

## **ADMINISTRATIVE ORDER NUMBER 4-1**

### **SUBJECT: Processing of Contracts to Which the City is Party**

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**Responsible Department:** City Attorney

**Date Issued:** 12-1-1998

**Date Revised:** 11-9-06; 4-11-20

**Approved:** *Signature on File*

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### **Purpose**

To establish a policy and procedure for processing contracts to which the City is a party.

### **Policy**

The policy for processing contracts to which the City is a party is that, generally, the Council must approve all contracts, and immediately following authorization by the Council, the lead department responsible for the contract shall ensure that the contract is fully executed and that all other City policies regarding contracts are

### **Procedures**

1. "Contract" as used in this policy includes contracts, bid awards, leases, covenants, agreements, applications for grants, final executed grants, and every form of agreement entered into by the City with any public or private person or entity.
2. "Fully executed" within the meaning of this section means dated and signed by both parties, approved as to form by the City Attorney or compliance with Administrative Order 4-4, and attested by the City Clerk. (See order for obtaining signatures in Section 3(f) below.) Proper signatures (which include precise names of corporations and partnerships, and in some cases proof of authority of signers) and data are vital to the effectiveness of a contract and therefore required. (See Attachment A, Instructions for Signature Page, and Attachment B, Sample Signature Page.)
3. Prior to placement of a contract on the Council agenda, or before presenting to the person with authority to approve and sign the contract on behalf of the City, the following steps shall first be completed:
  - a. Ensure compliance with any applicable law, statute or policy, and any related contract to which the City is a party (i.e., CEQA; CAL-OSHA; City Charter section 1208; Chapter 3, Articles 1, 4, 5 and 6 of the Fresno Municipal Code; Administrative Orders 3-1, 3-2, 3-3, 6-19 and 8-10; grant agreements; etc.).

- b. Ensure that all requirements regarding Administrative Order 2-1 are met.
  - c. Except as provided in Administrative Order 4-4:
    - i. All contract language and format must be reviewed by the City Attorney before execution by either party. As a general rule, such review should occur before any City-drafted contract is presented to the other party for review and consideration.
    - ii. All contracts, except those with other public entities, shall be properly executed by the other party, any proof of authority of signers obtained, the issuing bank of any required letter of credit approved by the Treasury Officer of the Finance Department, and any required insurance certificates, endorsements and bonds approved in accordance with Administrative Order 2-1 prior to the signed "approved as to form" by the City Attorney.
    - iii. As a general rule, all contracts should be executed by the other party and "approved as to form" by the City Attorney prior to placement on the Council agenda.
  - d. All contracts of major significance and/or a controversial nature shall be discussed with the City Manager prior to final preparation and execution by either party.
  - e. The City Attorney and the Chief Administrative Officer will approve any determination made as to who shall sign the contract for the City and whether or not the contract document itself shall be presented to Council for approval.
  - f. The department is responsible for preparing a minimum of 3 original contracts for signature (increase number for multiple parties or if other party is a public agency and requires more than one original). Generally, the order for obtaining signatures is as follows:
    - Other party(ies)
    - City Attorney's Office (approval as to form)
    - (Council approval, if applicable) –
    - Person signing on behalf of City
    - City Clerk's Office (attests signature of person signing on behalf of City)
4. Contracts to be presented to Council shall follow the standard procedure for all Council items. (See Administrative Order 5-1) Upon approval by Council, the remaining steps for a fully executed contract shall be completed.

5. Contracts shall be signed and all original signed copies shall be delivered to the Clerk's Office to be attested. The contract is not fully executed until attested by the Clerk's Office. The signed original shall be placed on file in the City Clerk's Office. Following the attesting of contracts, the Clerk will retain one original signed copy for the official City records.
6. It is the department's responsibility to distribute original signed contracts and copies of the contracts to the appropriate parties. This includes providing a copy of the contract to every City department involved in contract fulfillment (e.g., respective Grant Administrator, if applicable, and the Contract Compliance Coordinator in the City Attorney's Office; see Administrative Orders 1-1 and 6-22). Distribution of the original signed contracts is as follows:
  - One to the Clerk's Office (see step 5 above)
  - One to each of the other parties
  - One retained by the department
7. Following the approval and execution of a contract, the responsible department shall observe the requirements as applicable to the City's encumbrance policy and procedure governing contracts. (See Administrative Order 6-22.)
8. In the event the Council approves a contract in concept and authorizes its execution in advance of the preparation of the contract, or if the finalized contract is not otherwise presented to Council, steps 5, 6 and 7 above shall be followed.

**ATTACHMENT A**

**INSTRUCTIONS FOR SIGNATURE PAGE**

<b>CORPORATIONS OR LIMITED LIABILITY COMPANIES:</b>	SIGNATURE AUTHORIZATION REQUIREMENT (see 5(a) below), INCLUDE ACKNOWLEDGMENT OF SIGNATURE BY NOTARY IN CORPORATE FORM IN APPROPRIATE INSTANCES
<b>INDIVIDUALS OR SOLE PROPRIETORSHIPS:</b>	SIGNATURE AUTHORIZATION REQUIREMENT (see 5(b) below), INCLUDE ACKNOWLEDGMENT OF SIGNATURE BY NOTARY IN APPROPRIATE INSTANCES.
<b>PARTNERSHIPS OR JOINT VENTURES:</b>	SIGNATURE AUTHORIZATION REQUIREMENT (see 5(c) and (d), respectively, below), INCLUDE ACKNOWLEDGMENT OF SIGNATURE BY NOTARY IN APPROPRIATE INSTANCES.

1. The name of the parties must be the same as that on the first page of your Agreement. If the party is a corporation or limited liability company, enter the exact name of the corporation/limited liability company under which it is incorporated/formed; if party is an individual, enter name; if party is an individual operating under a trade name, enter name and dba (trade name in full); if a partnership, enter the correct trade style of the partnership; if a joint venture, enter exact names of entities joining in the venture.
2. Identify the legal identity or form of the name shown under (1), i.e., corporation (including state of incorporation), limited liability company (including state of formation), individual, partnership or joint venture.
3. Enter the respective addresses to which all communications and notices regarding the Agreement are to be addressed. Include telephone and FAX numbers. List all attachments to the Agreement.
4. Insert the signature lines for the City Clerk to attest the City's execution following the signature lines for City. Insert the signature lines for the City Attorney to approve the document as to form.
5. Insert sufficient number of signature lines to accommodate the parties (if a corporation or limited liability company, allow lines for 2 signatures). Each signature line should also include a line to print the name of the person signing and a line for the person's title.

- a. If the party is a corporation or limited liability company (LLC), the Agreement must be signed by either (i) the President or Vice President (or a member in the case of an LLC) and by the Secretary or Treasurer, Assistant Secretary or Treasurer, or Chief Financial Officer; or (ii) by an officer, member or employee authorized to sign contracts on behalf of the respective corporation or LLC evidenced by inclusion of one of the following:
- a certified copy of the Bylaws authorizing the officer, member or employee to sign contracts
  - a certified copy of the Board Resolution or Minutes authorizing the officer, member or employee to sign contracts.

Any certification shall be by the respective corporation or LLC secretary and such certification shall include that the document is a true and correct copy, has not been modified and remains in full force and effect (see sample certification attached). All signatures must be notarized (in the corporate form for corporations) in appropriate instances (e.g., contracts to be recorded).

- b. If the party is an individual, he/she must sign the Agreement; or if the Agreement is signed by an employee or agent on behalf of the party, a copy of a power of attorney must be provided. If the party is a sole proprietorship, the owner of the business must sign the Agreement. The signature must be acknowledged by a notary in appropriate instances (e.g., contracts to be recorded).
- c. If the party is a partnership, the Agreement must be signed by all general partners; or by a general partner(s) authorized to sign contracts on behalf of the partnership evidenced by inclusion of one of the following, as applicable:
- a copy of the Partnership Agreement
  - a copy of a recorded Statement of Partnership

All signature(s) must be acknowledged by a notary in appropriate instances (e.g., contracts to be recorded).

- d. If the party is a joint venture, the Agreement must be signed by all joint venturers; or by a joint venturer(s) authorized to sign contracts on behalf of the joint venture evidenced by inclusion of one of the following, as applicable:
- a copy of the Joint Venture Agreement
  - a copy of a recorded Statement of Joint Venture

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If the joint venturer(s) is a corporation, LLC or a partnership signing on behalf of the Joint Venture, then Paragraphs (a) and (c) above apply respectively. All signature(s) must be acknowledged by a notary in appropriate instances (e.g., contracts to be recorded).



**Attachment B**

**SAMPLE SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,  
a municipal corporation

[NAME]  
[legal identity]

By \_\_\_\_\_  
WILMA QUAN  
City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

Title: \_\_\_\_\_  
(if corporation or LLC, Board Chair, Pres.  
or Vice Pres.)

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Name: \_\_\_\_\_

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: \_\_\_\_\_  
(if corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

By: \_\_\_\_\_  
[Name] Date  
Assistant/Sr. Deputy/Deputy

Addresses:  
CITY:  
City of Fresno  
Attention:  
[Title]  
[address]  
Fresno, CA  
Phone: (559)  
FAX: (559)

CONSULTANT:  
[Name]  
Attention:  
[Title]  
[address]  
Fresno, CA  
Phone: (559)  
FAX: (559)

Attachments:

1. Exhibit A – Scope of Services and Schedule of Fees
2. Exhibit B – Insurance Requirements
3. Exhibit C – Conflict of Interest Disclosure Form