

SUBJECT: COMPLETION AND EXECUTION OF CITY CONTRACTS

Purpose: This APM establishes policies and procedures for negotiating and signing contracts on behalf of the City. Except where indicated, this APM applies to all types of City contracts. A “contract” may have another title such as memorandum of understanding (MOU), agreement, quote, or order form. Consult the City Attorney if you are unsure whether a document meets the definition of a contract. The City contracting process involves four stages: authorization, selection, drafting, and signature.

I. CONTRACT AUTHORIZATION

- A. Authorization of Contracts: **All contracts must be made in the name of the City of Madison. Individual City departments and agencies do not have authority to contract on their own and department and division heads have no authority to sign contracts.** All contracts must be properly authorized by the Common Council or through an official procedure before being signed. Sec. 4.26(1) of the Madison General Ordinances (MGO) explains that only the Mayor, City Clerk and, in some cases, the Finance Director can sign City contracts. However, the Mayor and City Clerk must be given authority before signing. This includes contracts for public construction (“Public Works”) over \$25,000, per Wis. Stat. § 62.15. Exceptions: the Finance Director or designee is authorized by Sec. 4.26 to sign certain contracts for goods and services, and Sec. 33.21 grants certain contracting authority for Monona Terrace.

Any contract not specifically authorized by ordinance or resolution requires express authorization by the Common Council. The primary method to authorize a contract is through a resolution. The resolution can authorize a single contract or a series of contracts (such as special duty police contract or multiple grant awards). Rarely, contracts are authorized through the budget (e.g. CDBG and Community Services). Unless specifically authorized through one of these methods, all contracts must be individually authorized by resolution. **Department and division heads, City employees, boards, committees and commissions do NOT have authority to sign a contract, unless specifically authorized by the Common Council.**

- B. Resolution Requirements: Every resolution authorizing a City contract must:
- accurately identify the contracting party by its full legal name;
 - establish the maximum amount of funds to be expended (if any);
 - establish the contract term (duration), including any renewal or extension options;
 - provide enough information about the substance of the agreement or nature of the work, so that, in the event of a legal dispute, a court can reasonably determine that the contract was authorized by the Council and the Council was informed as to the expectations for the contract;
 - Specify who is authorized to sign the contract on behalf of the City (see Section IV.C.);
 - Follow a standard format when required for certain contract types.
- C. Departments/Agencies with Different Rules: The Monona Terrace Community and Convention Center Board, the Madison Public Library Board, and the Board of Health for

Madison and Dane County have the power to make certain contracts without Common Council authorization. These bodies must follow applicable laws governing their contracting authority. In the absence of such authority these bodies should follow City contracting and purchasing guidelines.

The Board of Health for Madison and Dane County has the authority to contract on behalf of Public Health Madison and Dane County, pursuant to an Intergovernmental Agreement between the City and Dane County and Wis. Stat. § 251.04(1).

The Community Development Authority (CDA) is a legal entity separate from the City, with authority to enter into contracts in its own name. CDA contracts are signed by the CDA Board Chair and/or Executive Director, and CDA is not required to follow this APM or City contracting ordinances, except where it has elected to do so.

- D. Department/Division Head Responsibilities: Department and division heads cannot sign any contract unless given express authority through a resolution. However, where a contract provides that certain decisions may be made by the City, such as requests for extra services (within the dollar limit of the authorizing resolution), requests for reports, signing off on completion of work, etc., such decisions are the responsibility of the department or division head administering the contract (or their designee.) See paragraphs III.J., “Amendments and Change Orders,” and III.K., “Terminations” for additional duties.

II. CONTRACTOR SELECTION

- A. Purchasing/Procurement: When the city *buys* something (goods, services, public construction), there are competitive selection requirements to follow. This APM gives a brief overview of such requirements. See applicable ordinances, state laws and Finance Department guidelines for details.

Competitive Selection: A contract to purchase goods or services will not be approved unless the appropriate competitive selection process was used to select the vendor. The Finance Department’s Purchasing unit oversees this process, which is governed by Sec. 4.26 and the Purchasing Guidelines established by the Finance Director.

1. Purchase Order (PO): Some contracts may be entered into by means of a purchase order, according to the procedures established in APM 1-4, Sec. 4.26 and the Finance Department’s Purchasing Guidelines. If so, the PO serves as the contract document, but it is not signed by the contractor. Most goods/supplies and small dollar services are purchased with a PO instead of a written contract. Do not sign a vendor’s quote, order form, or any other document. See also APM 3-20 for software purchases.
2. Purchase of Services: Section 4.26(3) authorizes the Finance Director/designee to sign service contracts without Council authorization when **all** of the following apply:
 - (a) The funds are included in the approved City budget.
 - (b) An RFP or competitive process was used, or the contract is exempt from competitive bidding for one of the reasons listed in Sec. 4.26(4)(a).
 - (c) The City Attorney has approved the form of the contract.
 - (d) The contract complies with other laws, resolutions and ordinances.

- (e) The contract is for a period of 1 year or less, **or** not more than 5 years AND the average cost is not more than \$100,000 per year.

The most common contracts signed by Finance are for services under \$50,000. Service contracts of \$50,000 or more, if not selected with a competitive process, must be authorized by a Council resolution and signed by the Mayor and City Clerk, per Sec. 4.26.

- 3. Sole Source and Other Noncompetitive Contracts: The City Attorney and Finance Director have prepared guidance and sample resolutions to seek Council approval for contracts for goods or services that are not competitively selected.
- B. Public Construction: Contracts for more than \$25,000 in public improvements are bid through the Board of Public Works and governed by state statute, Wis. Stat. § 62.15 and § 66.0901. If you are not sure if your project amounts to “public construction” consult City Engineering and/or the City Attorney as the very first step.
- C. Selection of Software / Technology Services: A purchase of software, web-based services, or other technology products or services are contracts like any other, subject to this APM, the competitive selection process for goods and services, and APM 3-20, Software Acquisition Policy. Requests for software must be submitted to City IT before any procurement activities.
- C. Competitive Selection for Other Contract Types: Contracts that do not involve a purchase still may require competitive selection, and in most cases require a resolution to approve the contracting party and other contract details. Examples include real estate transactions, grants from the City, licenses, TIF, developer or subdivision agreements, etc. Contracts where the City *receives* money (such as a grant) or where the City agrees to perform a service for another party also require Council approval through a resolution. This APM cannot list every possible contract type. In the absence of a known process, assume a resolution meeting the requirements of this APM is required for your contract.

III. CONTRACT DRAFTING

- A. Approval by City Attorney: It is the policy of the City of Madison that all City contracts must be in a form approved by the City Attorney. “Approval as to form” means that, in the opinion of the City Attorney:
 - 1. The contract is authorized.
 - 2. The contract terms do not violate any law or regulation (including this APM) and the contract contains all the provisions that applicable statutes and ordinances require.
 - 3. The signature page contains all necessary dates and signatures.
 - 4. Surety documents, when required, are in proper form.
- B. Contract Forms: Contracts come in many forms, such as memoranda of understanding (MOU), acceptance of terms from vendors, or clicking a box of terms and conditions electronically (as with software – see Resolution RES-17-00762). The City prefers to use its own contract forms for all transactions. Many forms have been pre-approved by the City Attorney. These forms are designed to meet all legal requirements for the type of contract in

question. It is the policy of the City Attorney to use these forms without modification whenever possible, and no change can be made without the City Attorney's approval.

Approved forms include the Contract for Purchase of Services (POS Contracts) found at www.cityofmadison.com/employeenet/toolkit/contract-forms, Public Works contracts approved as part of the Standard Specifications for Public Works Construction, and a number of custom forms. Community Development Division, Police, Planning, Arts Coordinator, Information Technology, Metro Transit, PHMDC, CDA and the Food Policy Director all use custom forms approved by the City Attorney.

Sample Contracts in Solicitations: Every request for proposals (RFP), bid, or other solicitation shall contain a sample copy of the appropriate form contract.

Changes to Form Contracts: No changes can be made to a City form contract without the City Attorney's approval. If a contractor proposes a change, staff shall consult with the City Attorney. If a change in the form contract is approved, the change shall be limited to the particular contract that was the subject of the negotiations, unless approved by the City Attorney for future use with the same contractor.

- C. "Notices:" Where a contract provides a place to list a person for official "Notices," this person shall be the department or division head and identified by job title. The department or division head must notify the City Attorney if s/he is served with an official notice under a contract.
- D. Custom Contracts: Occasionally a contract will be needed for which no form exists. Staff assigned to work on such a project shall consult the City Attorney's Office, as far in advance as possible, to determine the appropriate form or draft a custom document as needed.
- E. Preparing Scope of Services and Schedule of Payment: Agencies that administer contracts for services are responsible for preparing the contract's scope of work or scope of services. The "scope" is a document that describes the work. It must be thorough and clear. It must provide definite answers to the questions: who? what? where? when? and how? It must contain a performance schedule and may provide for penalties or damages for delayed or inadequate performance, if appropriate. The scope should not contain legal terms and must not contain any language that conflicts with the contract form or City ordinances. Agencies are also responsible for the payment details of their contract, by negotiating and preparing an accurate and detailed price and payment schedule for the contract, to include the total price, method of billing and rates if appropriate, invoicing details, due dates, whether payments are withheld until certain services are accepted, etc.

The Scope of Services and Schedule of Payment are considered "business details" and are the *agency's responsibility* to negotiate and finalize.

- F. Indemnification and Insurance clauses provide important legal protections to the City and have been approved in a standard form by the Risk Manager and City Attorney.
 - 1. Insurance Requirements: If a prospective contractor proposes changes to the City's standard insurance requirements, staff responsible for negotiations shall consult the Risk Manager.

2. Nonstandard Indemnification Language: If prospective contractors propose ANY change to the City's standard indemnification clause found in an approved contract or permit form, staff responsible for the negotiations shall consult the Risk Manager and City Attorney. With the exception of the insurance clause, only the City Attorney can approve changes to the City's form contracts.

3. Indemnification of Other Parties: The City of Madison does not agree to indemnify, defend or hold harmless any party ("indemnification") without the express approval of the Common Council, with the following exceptions:

State of Wisconsin, United States of America, or any agency or department of either. The Risk Manager and the City Attorney may authorize indemnification of the State of Wisconsin or the United States, and any agencies or departments thereof, under any of the following circumstances:

- a. When indemnification is a condition of state or federal financial assistance;
- b. When necessary to commence a public works project; or,
- c. When made a condition of any state or federal permit or approval.

Public Works Emergency. In the event of a public works emergency (as defined by state law), the indemnification of another party, whether by contract, permit or other agreement related to the emergency, may be approved by the Risk Manager and the City Attorney.

Click-through End User License Agreements (EULAs). The City may agree to the indemnification of a software vendor if authorized by Resolution RES-17-00762, Legistar File No. 47764. All of the procedures in that resolution must be followed.

4. Indemnification in Public Works Contracts: The indemnification provisions for public works contracts are part of the "Standard Specifications for Public Works Construction" approved by the Board of Public Works. No changes are permitted. Any change to the Standard Specifications must go through the City Attorney and Board of Public Works.

G. Other Mandatory Contract Language: The City has many requirements for contract language set forth by ordinance or resolution. For example, Chapter 39 establishes mandatory requirements that contractors not discriminate, file affirmative action plans, and "ban the box" in hiring practices. Other clauses are designed to deal with specific legal issues such as termination, intellectual property, governing law and venue, subcontracting and assignment, to name a few. The City's standard form contracts have been designed to meet all legal requirements for the type of contract in question. It is the policy of the City Attorney to use these forms without modification whenever possible.

H. Special Contracts: Grants Awarded to the City: There are three stages of approval for a grant: application, grant acceptance, and contract authorization. It is desirable, but not mandatory, to seek Council approval before **applying** for a grant. If the **grant application** requires a signature, consult the City Attorney before signing. To **accept** grants on behalf of the City, agencies must have Council approval. Approval may be granted in the agency's approved budget or a separate resolution. **To enter into a grant contract** (i.e. a document that requires signatures to accept the grant funds and perform the obligations of the grant)

agencies must have Council approval. These approvals can be combined into one resolution if all necessary details are known at the time. Agencies applying for grants shall furnish the City Attorney with a copy of the proposed grant contract (if any) as early as possible so that grant conditions may be compared with applicable City policies. Grant contracts are an exception to the requirement which calls for all contracts to be signed first by the other party. Grant contracts are not an exception to the policy that the City of Madison does not agree to indemnify another party without the express approval of the Common Council, except as noted in Section III. F.3.

I. Special Contracts: Other Governmental Bodies (Intergovernmental Agreement or IGA): Contracts with other governmental bodies present unique issues. City staff contemplating such agreements should consult the City Attorney as early as possible.

J. Contract Amendments, Change Orders, Extensions and Renewals:

A contract **amendment** is a written **change** to an existing contract. Unless authorized within the contract itself, changes to ongoing contracts must be made in writing and signed by the same people/positions who signed the original contract (unless another procedure is described in the original contract.) The nature of the amendment should be reviewed to determine if the Council must approve the amendment. Some contracts include provisions to allow department heads or staff to authorize changes, if so, those procedures should be followed. Sample amendment forms may be available on EmployeeNet or from the Purchasing unit.

Changes to a Public Works contract are handled through the **Change Order** procedure established by the Board of Public Works. Anyone requesting a Change Order must use the Change Order Form and follow the “Instructions for City Approval of Changes Orders” on the back of that form. Service contracts can also include a change order process.

Renewals or Extensions: If the only change to your contract is to **extend** the end date, or exercise an optional extension or renewal period, please see <http://www.cityofmadison.com/employeenet/toolkit/contract-forms> for a renewal or extension form. Consult City Purchasing or the City Attorney’s office for assistance. **Renewals/Extensions** must be signed *before* the current contract term expires.

K. Termination: Whenever a department or division head responsible for administering a contract believes that the contractor is in default or when the department or division head has serious concerns about the ability of the contractor to perform the work acceptably, he/she shall consult the City Attorney immediately.

IV. CONTRACT SIGNATURES

A. Signature by Other Party: It is City policy that the other party signs first, and the City signs last (except contracts with other governmental bodies, and grants to the City, which may be signed in any order.) The contractor / other party, not the City, determines the appropriate person(s) to sign on its behalf.

B. Electronic Signatures: Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be transformed into electronic format, and may be signed or

given effect with an electronic signature if the electronic signature meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Where only one electronic signature line is provided, such contract shall be signed electronically by the Mayor and manually by the other city signatories. The document may be executed in one or more counterparts, one or more of which may be effectuated by electronic signatures(s); each of which shall be deemed an original; but all of which together shall constitute one and the same instrument. In addition to true electronic signatures, an electronic copy (scanned PDF, fax, etc.) of a hard copy signature is acceptable when the contract includes language to authorize it.

C. Obtaining City Signatures:

1. Signature Page: The signature line must make clear the signer(s) is signing on behalf of the City of Madison, *not* a department, agency, or themselves. The default signers for the City are the Mayor and City Clerk. The Finance Director's designee may sign for certain purchases as authorized in Sec. 4.26. Other officials may sign only if expressly authorized by resolution or ordinance. However, other City officials *review* and *approve* contracts and indicate such approval through the routing process and in some cases on the signature page. Always use the appropriate signature block approved by the City Attorney.

2. Routing: The agency that originates the contract is responsible for obtaining signatures. Contracts signed by the Mayor and Clerk must be "routed" for signature using the City's designated contract routing system. (Contracts signed by the Finance Director/designee are sent directly to Finance for signature.) The purpose of this routing process is for each department to approve different aspects of the contract before final signature.

For contracts to be signed by Mayor/Clerk:

Obtain hard copies with contractor's original signature, and assemble packet in this order:

- a. Cover sheet generated from the contract routing system, with all fields completed.
- b. 1 full copy of adopted authorizing resolution, including the fiscal note.
- c. 1 copy of the certificate of insurance, if the contract calls for insurance.
- d. At least 2 hard copies of the full contract (including all attachments/exhibits) with original signatures by contractor, stapled. A print-out of a signed PDF can be used if the contract includes language to allow it. Flag each signature page and any other place where some action is needed (like a date being filled in).

*Do NOT staple the resolution or insurance certificate to the contracts.

**For some contract types such as Public Works it may not be necessary to attach all exhibits/specifications - consult the City Attorney for clarification.

Enter contract into designated computer routing system.

Deliver packet to City Clerk's office to begin routing process.

Routing process and order:

- (1) **City Clerk** – checks for the authorizing resolution and that all copies are signed by contractor.
- (2) **Department of Civil Rights** – reviews for Chapter 39 requirements, including language for nondiscrimination, Affirmative Action, nondiscrimination based on disability when applicable. The Affirmative Action Division confirms the contractor has checked the

- appropriate box in the Affirmative Action section, and that non-exempt contractors have, or will, file the required Affirmative Action Plan documents as required by Sec. 39.02(9).
- (3) **Risk Manager** – reviews Certificate of Insurance for sufficiency and reviews indemnification, liability and insurance clauses.
 - (4) **Finance Director** – confirms funds are available for the expenditure when applicable. Finance Director (comptroller) signature is required by Wis. Stat. § 62.09(10)(f) when money is spent.
 - (5) **City Attorney** – approves the entire contract “as to form” and must indicate this approval by signing the contract before the Mayor can sign.
 - (6) **Mayor** (or other authorized signer per a resolution) – signs last. Mayor’s office (or office of final signer if not the Mayor) returns all hard copies to the City Clerk (after any digitization / scanning protocol.)

Original to City Clerk: After signatures are complete, one complete original signed copy must be filed with the City Clerk, remaining copies are returned to the agency that originated the contract, who must return one signed copy to the Contractor.

- D. Digitization: Following the receipt of a fully executed copy of the contract, the department responsible for the contract shall have a copy of the contract scanned digitally and saved on the database established for that purpose, if any. Procedures for contract digitization may be established and modified with the approval of the City Attorney, in consultation with affected agencies such as Information Technology and Finance, and in keeping with the public records laws, APM 3-6, records retention schedules, and any other applicable laws.

V. AUTHORITY & INTERPRETATION

The City Attorney or his/her designee shall maintain and interpret this policy.



Paul R. Soglin
Mayor

APM No. 1-1
(3/28/19)

Original APM dated 7/7/75
(Revised 12/9/99, 4/7/03, 12/11/07, 2/15/08)