

CONTRACTOR AUTHORIZATION GUIDE

I. INTRODUCTION

This Contractor Authorization Guide (“Guide”) serves to help State of Connecticut contractors draft and procurement personnel (“State Personnel”) review the appropriate contractor authorizations (“Contractor Authorizations”), also known as corporate resolutions, that are necessary before entering into contracts with the State of Connecticut. Some of the information in this Guide is included specifically to address commonly asked questions about Contractor Authorizations.

The purpose of Contractor Authorizations is to ensure that the person signing a contract for an entity has the requisite authority to bind that entity, and consequently, that the State agency is entering into a legally authorized and binding agreement. Before executing a contract with an entity, including nonprofits, agencies must obtain Contractor Authorizations. Appropriate Contractor Authorizations must evidence the following three facts (“Facts”):

- (1) the entity itself has authority to enter into contracts;
- (2) a particular individual has authority to execute contracts on behalf of the entity; and
- (3) the individual signing for the entity currently holds the office or position that they represent they hold (this is the “incumbency” resolution, which, if adopted, means that there’s no need for an Incumbency Certificate).

What is an entity? An “entity” is an organization created in accordance with the laws of a particular state. It has a separate and distinct legal existence from the person who creates the entity and from any individual who acts on behalf of the entity. Examples of entities include corporations and various types of LLCs and partnerships, as further explained in Part II of this Guide.

Contractor Authorizations are not required when entering into contracts with Connecticut municipalities, other states, Federal entities or foreign countries. For Connecticut municipalities, it is not necessary to obtain resolutions from their governing bodies. Rather, it is necessary to obtain only a certificate from the town clerk stating that the officer signing the contract holds that office and has the authority to sign contracts.

Are Contractor Authorizations required when entering into a contract with an individual or a sole proprietorship? No. An individual is not an entity; their signature on a contract binds them without anything else being required. A sole proprietorship is merely an individual using a nickname to conduct business. Sole proprietorships are not entities because the sole proprietorship itself is not organized as an entity in accordance with state law. This means that it does not have a separate and distinct legal existence apart from the individual person. A sole proprietorship’s signature on a contract consists of a signature line for the given, proper name of the individual, followed by “d/b/a” and then the name of the business.

What about joint ventures? It depends. A joint venture may or may not have a separate and distinct legal existence from those who form the joint venture (in accordance with the laws of a particular state). Regardless of whether a joint venture is a separate and distinct legal entity, ensuring that a joint venture submits the appropriate Contractor Authorization can be complicated. Please contact the Contract

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Specialist responsible for your bid or contract with questions regarding Corporate Authorization requirements for joint ventures.

II. WHAT CONSTITUTES CONTRACTOR AUTHORIZATIONS?

An entity may satisfy the requirement to submit Contractor Authorization in accordance with the following, as applicable depending on the form of entity involved. The underlined word “duly” below means that it is done in accordance with an entity’s governance and management documents. The date of the referenced certificate (as distinguished from the date that the contractor entity took action to grant authorization) cannot be more than thirty (30) days from the date that the entity executes the contract.

a. **Corporations.** Corporations may submit *just one* of the following, with appropriate language to evidence the Facts, as Contractor Authorization:

1. A certificate from the Secretary or other duly authorized officer setting forth a copy of the actual resolutions adopted by the board of directors (the resolutions begin with “RESOLVED, that . . .”). Below is a sample form for this certificate. It is not important for the resolutions in the certificate to read exactly the same as the form below, only that the three Facts are appropriately satisfied;
2. A certificate from the Secretary or other duly authorized officer attaching a copy of the applicable section of the corporation’s bylaws (and any “company plan” to which they might refer for such authority, if applicable); and
3. A certificate from the Secretary or other duly authorized officer attaching a copy of the minutes of the board of directors.

The Secretary’s or officer’s certificate must be dated within thirty (30) days from the date that the officer executes the contract. In addition, the certificate must include an “incumbency statement.” An incumbency statement is a certification that the officer or authorized representative signing the State contract currently holds that office or position. The contractor can either include the incumbency statement within one of the certificates listed above or provide it as a separate document (see samples on pages 4 and 8 of this Guide).

b. **Limited Liability Companies.** The governance of limited liability companies is often set forth in an agreement called an operations agreement. Since operations agreements sometimes impose conditions and restrictions on the authority of a particular manager or member to bind the LLC, an LLC may submit *just one* of the following, with appropriate language to evidence the Facts, as Contractor Authorization:

1. A unanimous consent signed by all members or managers. Below is a sample form for this consent. In addition, the LLC must also submit a duly authorized officer’s certificate attaching a true and complete copy of those parts of the operations agreement that identify all of the current members or managers;
2. A certificate from a duly authorized officer (i) setting forth resolutions that the managers or members have adopted and (ii) attaching a true and complete copy of those parts of the operations agreement that identify all of the current members or managers; and

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3. A certificate from a duly authorized officer attaching a true and complete copy of those relevant portions of the operations agreement that identify (i) which members or managers have the authority to bind the LLC in contracts and (ii) all of the current members or managers.
- c. Partnerships.** The governance of partnerships is set forth in a partnership agreement. Since partnership agreements sometimes impose conditions and restrictions on the authority of a particular partner to act on behalf of the partnership, a partnership may submit just one of the following, with appropriate language to evidence the Facts, as Contractor Authorization:
1. A unanimous consent signed by all partners. Below is a sample form for this consent. In addition, the partnership must also submit a duly authorized officer's certificate attaching a true and complete copy of those parts of the partnership agreement that identify all of the current partners;
 2. A certificate from a duly authorized partner (i) setting forth resolutions that the partners have adopted and (ii) attaching a true and complete copy of those parts of the partnership agreement that identify all of the current partners; and
 3. A certificate from a duly authorized partner attaching a true and complete copy of those relevant portions of the partnership agreement that identify (i) which partners have the authority to bind the partnership in contracts and (ii) all of the current partners.
- d. Opinion Letters.** In lieu of the Contractor Authorization, contractors may submit a formal "legal opinion" from their attorney attesting to the three Facts above. The attorney must either issue the opinion directly to the contracting agency or provide in the opinion that the contracting agency is authorized to rely on the opinion. An opinion from outside, private counsel is preferred over one from in-house counsel, but either will suffice. The particular statements in the legal opinion are set forth in a sample opinion letter below. The opinion letter cannot be dated more than thirty (30) days from the date that the officer executes the contract.

Agencies need not obtain a new Contractor Authorization for an additional and new State contract if the contractor provides a copy of the previously submitted Contractor Authorization and the date of that Contractor Authorization is less than one year from the date that the contractor executes the new contract. If the contractor submits a copy of a previous Contractor Authorization, then the contractor must also submit an incumbency certificate, dated within thirty (30) days from the date that the contractor executes the new contract, affirming that the officer or authorized representative signing the contract currently holds the office that they represent they hold (see Fact 3). If needed, below is a sample incumbency certificate.

The following pages are sample Contractor Authorizations designed for different entities. Each can be modified, but, each must accomplish verification of the three Facts enumerated in the first paragraph above.

SECRETARY'S CERTIFICATE

I, _____, Secretary of _____, a [STATE] corporation, (the "Corporation"), certify that the following are true and complete resolutions which were adopted [INSERT HERE EITHER (1) "UNANIMOUSLY" OR (2) "BY QUORUM"] at a duly called and held meeting of the Board of Directors of _____ on the _____ day of _____, 20____, and that such resolutions have not been amended or modified and continue to be in full force and effect:

RESOLVED, that the Corporation execute and deliver all contracts which it deems to be necessary or appropriate to carry out its business; and

RESOLVED, that [NAME OF OFFICER], as [TITLE OF OFFICE] of the Corporation, is directed to execute and deliver all contracts on behalf of the Corporation [INSERT HERE LIMITATIONS, IF ANY, ON THE AUTHORITY TO SIGN, SUCH AS UP TO A MAXIMUM DOLLAR AMOUNT] and to do all things necessary or appropriate to carry out the terms of those contracts, including executing and delivering all agreements and documents contemplated by those contracts.

I further certify that [NAME OF OFFICER] now holds the office of [TITLE OF OFFICE] and that he has held that office since [DATE APPOINTED].

I am signing this certificate on _____, 20__.

NAME
Secretary

NOTE: IF THE BOARD INTENDS TO REFERENCE THE PARTICULAR STATE CONTRACT, THEN OMIT THE ABOVE TWO RESOLUTIONS AND SUBSTITUTE THE FOLLOWING IN THEIR PLACE:

RESOLVED, that the Corporation execute and deliver to the State of Connecticut a certain _____ agreement (the "Agreement"), in the form previously distributed to the Board of Directors, pursuant to which the Corporation would _____; and

RESOLVED, that [NAME OF OFFICER], as [TITLE OF OFFICE] of the Corporation, is directed to execute and deliver the Agreement on behalf of the Corporation and to do all things necessary or appropriate to carry out the terms of the Agreement, including executing and delivering all agreements and documents contemplated by the Agreement.

_____, LLC
CONSENT TO ACTION

The undersigned, **[INSERT HERE JUST ONE OF THE FOLLOWING TWO PHRASES, WHICHEVER APPLIES, USING EITHER “member” or “manager” AS APPLICABLE: (1) “being all of the members/managers” OR (2) “being the sole member/manager”]** of _____, LLC (the “Company”), a Connecticut limited liability company, in accordance with the Connecticut General Statutes and the Company’s governing agreement, unanimously resolve as follows:

that the Company execute and deliver any and all contracts which it deems to be necessary or appropriate to carry out its business; and

that **[NAME OF MEMBER/MANAGER]**, as **[TITLE OF OFFICE]** of the Company, is directed to execute and deliver all contracts on behalf of the Company **[INSERT HERE LIMITATIONS, IF ANY, ON THE AUTHORITY TO SIGN, SUCH AS UP TO A MAXIMUM DOLLAR AMOUNT]** and to do all things necessary or appropriate to carry out the terms of such contracts, including executing and delivering all agreements and documents contemplated by those contracts.

The undersigned are signing this consent on _____, 20__.

NAME
[TITLE]

NAME
[TITLE]

NOTE: IF THE GOVERNING BODY INTENDS TO REFERENCE THE PARTICULAR STATE CONTRACT, THEN OMIT THE ABOVE TWO RESOLUTIONS AND SUBSTITUTE THE FOLLOWING IN THEIR PLACE:

that the Company execute and deliver to the State of Connecticut a certain _____ agreement (the “Agreement”), in the form previously distributed to the **[MEMBERS/MANAGERS]**, pursuant to which the Company would _____; and

that **[NAME OF MEMBER/MANAGER]**, as **[TITLE OF OFFICE]** of the Company, is directed to execute and deliver the Agreement on behalf of the Company and to do all things necessary or appropriate to carry out the terms of the Agreement, including executing and delivering all agreements and documents contemplated by the Agreement.

_____ PARTNERSHIP
CONSENT TO PARTNERSHIP ACTION

The undersigned, being all of the General Partners of _____ Partnership (the "Partnership"), a Connecticut general partnership, in accordance with their partnership agreement and the Connecticut General Statutes, unanimously resolve as follows:

that the Partnership may execute and deliver all contracts which it deems to be necessary or appropriate to carry out its business; and

that **[NAME OF PARTNER]**, as **[TITLE OF OFFICE]** of the Partnership, is directed to execute and deliver all contracts on behalf of the Partnership **[INSERT HERE LIMITATIONS, IF ANY, ON THE AUTHORITY TO SIGN, SUCH AS UP TO A MAXIMUM DOLLAR AMOUNT]** and to do all things necessary or appropriate to carry out the terms of those contracts, including executing and delivering all agreements and documents contemplated by those contracts.

The undersigned are signing this consent on _____, 20__.

NAME
[TITLE]

NAME
[TITLE]

NOTE: IF THE GOVERNING BODY INTENDS TO REFERENCE THE PARTICULAR STATE CONTRACT, THEN OMIT THE ABOVE TWO RESOLUTIONS AND SUBSTITUTE THE FOLLOWING IN THEIR PLACE:

that the Partnership execute and deliver to the State of Connecticut a certain _____ agreement (the "Agreement"), in the form previously distributed to the partners, pursuant to which the Partnership would _____; and

that **[NAME OF PARTNER]**, as **[TITLE OF OFFICE]** of the Partnership, is directed to execute and deliver the Agreement on behalf of the Partnership and to do all things necessary or appropriate to carry out the terms of the Agreement, including executing and delivering all agreements and documents contemplated by the Agreement.

OPINION LETTER FORM

[DATE]

[NAME]

[TITLE]

[AGENCY NAME]

[AGENCY STREET ADDRESS]

[AGENCY CITY AND STATE]

Re: [STATE OF CONNECTICUT CONTRACT No. _____
For _____] (the "Contract")

Opinion Letter

Dear [SALUTATION]:

I have acted as corporate counsel to [CONTRACTOR] and have the authority to deliver this opinion letter to you. You may rely on this opinion letter in connection with all matters relating to the above-referenced Contract with [CONTRACTOR]. In my capacity as such counsel I have reviewed or am familiar with [CONTRACTOR'S] authorizing resolutions, by-laws, corporate organization documents [MODIFY PRECEDING LIST DEPENDING ON THE TYPE OF ENTITY] and the subject Contract with the State of Connecticut. Based upon the foregoing, I am of the opinion that:

1. [CONTRACTOR] is authorized to transact business in the State of Connecticut.
2. [CONTRACTOR] has the corporate power and authority to execute and deliver the Contract.
3. The Board of Directors [MODIFY PRECEDING TO REFERENCE APPROPRIATE GOVERNING BODY] has authorized [CONTRACTOR] to enter into the Contract.
4. [OFFICER NAME], as [OFFICER TITLE] of [CONTRACTOR], has the requisite power and authority to execute the Contract on behalf of and to bind [CONTRACTOR].

Sincerely,

INCUMBENCY CERTIFICATE

[NOTE: THIS INCUMBENCY CERTIFICATE IS NOT NECESSARY IF THE SECRETARY'S OR OFFICER'S CERTIFICATE ALREADY INCLUDES THE CERTIFICATION REFERENCED IN THE ABOVE CERTIFICATES]

INCUMBENCY CERTIFICATE

I, **[OFFICER 1 NAME]**, certify that I am the duly appointed, qualified and acting **[TITLE]** of **[CONTRACTOR NAME]**, a **[STATE] [TYPE OF ENTITY]**, and that as **[TITLE]** I am familiar with its officers.

I further certify that the persons named below now hold the respective offices set out to the right of their names and that they have held those offices since the corresponding and respective dates.

<u>NAME</u>	<u>TITLE</u>	<u>DATE</u>
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[OFFICER 2 NAME]	[Title]	
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[OFFICER 3 NAME]	[Title]	
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I am signing this certificate on _____, 20__.

[OFFICER 1 NAME]

[TITLE]

[QUESTION FROM NANCY LENT – IS THIS ALTERNATIVE PHRASING TO THE INCUMBENCY CERTIFICATE SHOWN IMMEDIATELY ABOVE?]

I, **[OFFICER 4 NAME]**, certify that I am the duly appointed, qualified and acting **[TITLE]** of **[CONTRACTOR NAME]**, a **[STATE] [TYPE OF ENTITY]**, and that as **[TITLE]** I am familiar with its officers.

I further certify that **[OFFICER 1 NAME]** is the duly appointed, qualified and acting **[TITLE]** of **[CONTRACTOR NAME]** and that **[OFFICER 1 NAME]** now holds that office and has held that office since **[DATE]**.

I am signing this certificate on _____, 20__.

[OFFICER 4 NAME]

[TITLE]