

CDOT / LOCAL AGENCY INTER-GOVERNMENTAL AGREEMENTS CHAPTER 3

Introduction

After the Local Agency project has been selected for funding, a detailed sequence of events is initiated by CDOT and the Local Agency to bring the project to completion. The Federal Highway Administration (FHWA) requires all Federal-Aid Highway funds available to the Local Agency to be administered by CDOT, and it assigns responsibility to CDOT for proper expenditure of the funds and proper completion of the work. CDOT's main objective is to assist the Local Agency in completing each project successfully with as little administrative oversight as possible while ensuring that all Federal and State requirements are fulfilled. If the Local Agency has been working on the project during the application and selection process, all work and right-of-way acquisition should stop until the necessary project agreements described below are in place.

Inter-Governmental Agreement Overview

An Inter-Governmental Agreement (IGA) is required between CDOT and the Local Agency to define project scope, project responsibilities, detailed funding amounts, and payment obligations. Project maintenance responsibilities must also be defined and are typically set out in a separate stand-alone IGA. Also, work within CDOT right-of-way may require additional licensing agreements.

There are several "standard" agreements templates for Local Agency projects and the CDOT Agreements Unit determines the appropriate agreement template for each project. The Outline IGA is the most commonly used template on Local Agency projects. Information used to develop the agreement is based on the written scope of work (or CDOT Form 463 - Design Data), Local Agency Contract Administration Checklist (CDOT Form 1243), required phases (i.e., design, environmental, right-of-way, utilities, miscellaneous, and construction), project schedule (including phase end dates), 2 CFR 200 risk assessment, and associated funding. This information is gathered during

meetings with the Local Agency or simply submitted to the CDOT Project Manager by the Local Agency. The Encumbering IGA template, another common standard template, is used on single phase Local Agency projects and on traffic/highway maintenance projects. Templates for projects with federal funds follow the requirements outlined in 2 CFR 200.331(a).

More detail on the information needed for the IGA is provided below:

- The scope of work should provide sufficient detail to fully explain the project, yet allow for unanticipated conditions during project development. The scope should be narrative and explain who will do the work, what work will be done, where the work will be done, the project schedule, why the work will be done, and who will maintain the project after completion. Once an IGA is fully executed, the project scope can only be modified by amendment which can be a lengthy process and have a significant impact on the project schedule.
- The Local Agency Contract Administration Checklist (CDOT Form 1243) identifies the contract administration responsibilities of the individual parties to the IGA and is part of the contractual agreement between the Local Agency and CDOT. After the IGA is executed, the CDOT Form 1243 can only be modified by amendment..
- The project schedule should include sufficient time to enter into and execute the IGA, design and construct the work, and closeout the project. It should include the planned start and end date for each phase of the project and the planned construction Ad date. It is particularly important that the dates for the initial phases of work are realistic and allow adequate time to complete the work.

On federally-funded projects, work that occurs outside the performance phase period or is invoiced after the end date is not eligible for reimbursement. Performance period start and end dates are shown on “Exhibit C” of the document that encumbers project funds. Under 2 CFR 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, greater emphasis and scrutiny is now placed upon phase end dates and performance periods. The Local Agency should work with the CDOT Project Manager to establish end dates. While an end date can be modified during project development, the approval process can add two to eight weeks to the project schedule. See Appendix

B for the “End Date Extension Request Policy and Procedure Guide” for further detail on modifying end dates.

On state-funded projects, end dates are not shown on Exhibit C, but are used by the CDOT Project Manager to monitor compliance with funding program requirements such as to expend funds within a specific number of years from project award.

- Under 2 CFR 200.331(b), CDOT, as an entity that passes-through federal funds to a Local Agency (also referred to as a subrecipient), must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the (sub) award. The Local Agency should complete the 2 CFR 200 risk assessment spreadsheet provided by CDOT and return it to the CDOT Project Manager who will complete the evaluation and file it in CDOT's electronic document management system.

For state-funded projects, a 2 CFR 200 risk assessment is not required.

CDOT IGA Unit always generates the CDOT/Local Agency IGA and sends to the Local Agency for review. The Local Agency is responsible for reviewing the IGA, providing comments and providing the name of the approvers and signatories to the IGA. After all review comments are addressed and any outstanding issues resolved, the IGA Unit electronically routes the IGA to the Local Agency for signature. The Local Agency electronically signs the agreement committing to provide its share of project costs. The agreement is electronically returned to CDOT for final signature. One fully executed copy is then electronically sent to the Local Agency for its records. The steps to an Outline IGA are depicted in Figure 2, “Inter-Governmental Agreement (IGA) Process” on Page 3-6.

The CDOT/Local Agency agreement defines the financial responsibilities of both parties. The IGA includes the total amount payable to the Local Agency. CDOT's payment obligation is the amount of Federal or State funds that are to be paid to the Local Agency. Exhibit C of every agreement contains the financial and budget details of the agreement. Local Agencies may provide additional local funds to a project above the required local match, which are known as overmatch. Overmatch must be shown in the STIP. In most cases overmatch is not identified on Exhibit C. If the project has

overmatch and the State is doing the work, then the overmatch must be budgeted and shown in the IGA.

The term of the IGA is most commonly set at 10 years; however, the CDOT IGA Unit has the flexibility to set a shorter term depending on project characteristics. The Local Agency should be aware that any work performed outside the term dates of the IGA are not reimbursable. If the term dates are set to expire during the encumbered phase of the project, the Local Agency should contact the CDOT Project Manager at CDOT to amend the existing contract. Also, the Local Agency should be cognizant of the project's funding program and any nuances of that particular program. For example, Permanent Water Quality Program funds must currently be expended within three years of approval/award, even though the term of the IGA may be longer. The first three letters of the project number indicate the fund type. For a list of funding categories, prefixes and funding splits, see the "Federal Funds Crosswalk" and "State Funds Crosswalk" in Appendix B.

After the Outline IGA is fully executed by CDOT, the project phase is authorized (See Chapter 4) and project funds are encumbered by phase via a unilaterally-signed (by CDOT) Option Letter prepared by the CDOT IGA Unit. The CDOT Project Manager will then issue a Notice to Proceed to the Local Agency. Any work performed by the Local Agency prior to receipt of the Notice to Proceed is not eligible for reimbursement. Option Letters modify the IGA for specific purposes, such as to extend phase end dates, to begin a new phase of work, to transfer funds from one phase to another phase, or to update a phase performance period.

The Local Agency is financially responsible for all cost overruns. If the Local Agency becomes aware that the costs will exceed the agreement amount, the Local Agency must immediately contact the CDOT Project Manager to determine if additional Federal or State funds are available. If funds are available, the Local Agency then submits a request with justification to the CDOT Project Manager. If CDOT approves the request, the IGA will be amended, which will revise the funding and/or scope. In certain circumstances, an additional TIP/STIP amendment may be necessary.

The IGA contains FHWA Title VI assurances.

If the Local Agency plans to request reimbursement for design phase costs and plans to hire a consultant to do the work, the Local Agency is allowed to begin the Request for Proposal/Consultant Selection process simultaneously with development of the IGA. See Chapter 5, Section 5.3 - Conduct Consultant Selection / Execute Consultant Agreement of this *Desk Reference*. The Local Agency must comply with all federal rules and requirements of 23 CFR Part 172 if the design phase is federally funded, or CRS §24-30-1401, *et seq.* if state funded. While the Local Agency can begin the selection process, the Local Agency may not execute a contract with the selected firm until after both the Local Agency and CDOT fully execute the IGA.

INTER-GOVERNMENTAL AGREEMENT (IGA) PROCESS

