Chapter 4 **Agreements**

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EXHIBITS

Exhibits applicable to this chapter can be found at:
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm#goHere8

Exhibit 4-B: Local Agency Agreement Execution Checklist
Exhibit 4-C: Master Agreement
Exhibit 4-D: Sample - Program Supplement Agreement

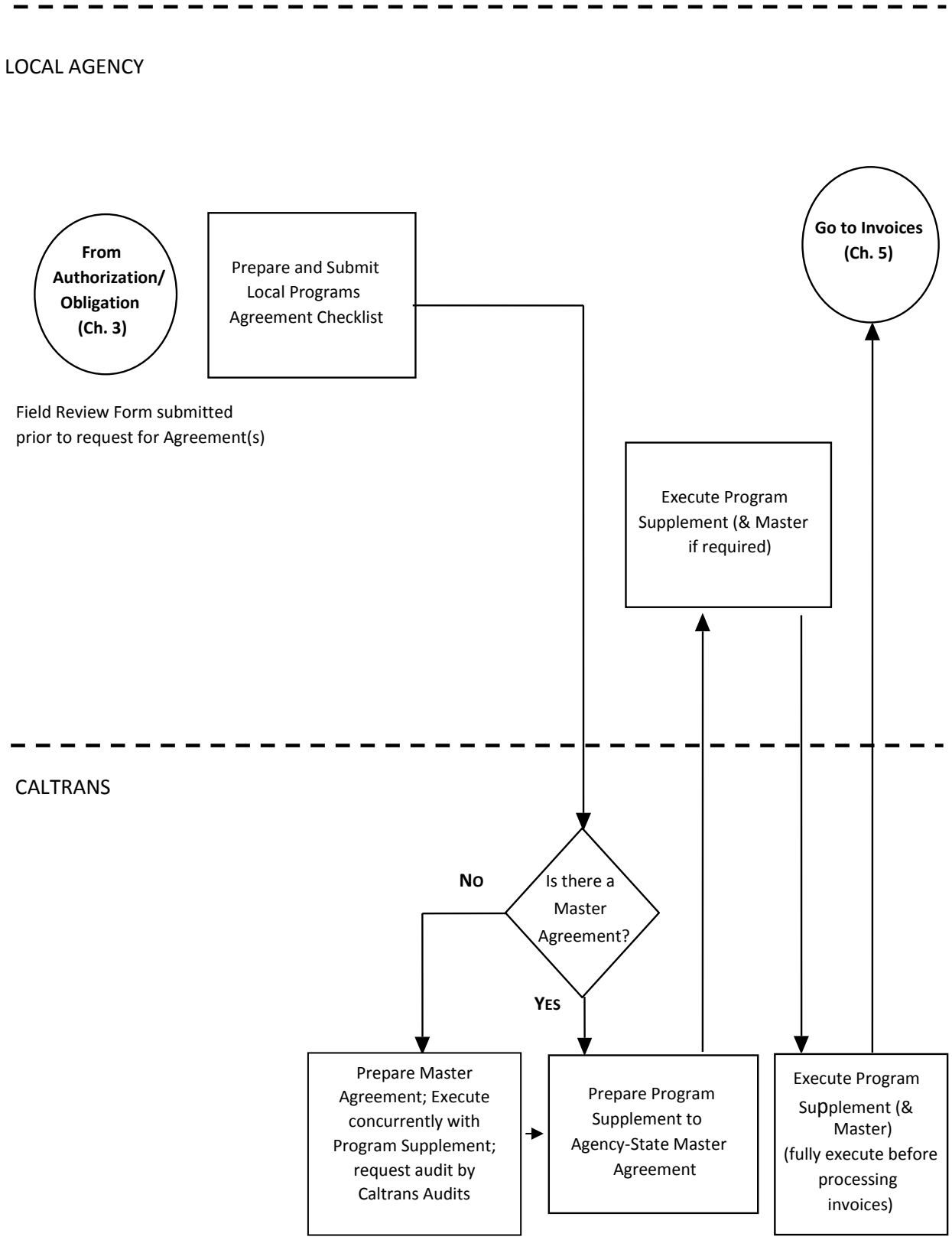

Figure 4-1: Developing Local Federal-Aid and State-Funded Projects

Chapter 4 **Agreements**

4.1 INTRODUCTION

The Federal-Aid Highway Program and most local programs funded from the State Highway Account are reimbursable programs. Agreements (contracts) must be executed in order to pay funds to the local agency. The Division of Local Assistance (DLA) prepares and sends these agreements directly to the local agency. The agreements must be executed before any invoices for payment can be processed.

This discussion applies to all local agency projects receiving federal-aid highway project funds administered by FHWA and State Highway Account funds administered by the DLA as discussed in this chapter.

4.2 GENERAL AGREEMENTS

Local (Administering)[1] Agency-State Master Agreement (Master Agreement) – An agreement between a city, county, or other local public agency and the State defining the general terms and conditions which must be met to receive federal-aid or state funds for the following programs:

- Federal-aid Highway Program
- State-only Funded Projects

Referred to as the Master Agreement.

Program Supplement Agreement – A Local Agency-State Agreement, which amends the Master Agreement to describe the phases, costs and special conditions, that apply to a specific project.

Master Agreement

A Master Agreement is required with a local agency whenever federal or state funds are to be used on a local project funded from the programs noted above.

In the Master Agreement, a local agency agrees to comply with all federal and state laws, regulations, policies and procedures relative to the design, right of way acquisition, environmental compliance, construction and maintenance of the completed facility. It is normally processed once with the agency when it begins its first federal-aid or state funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

The titles for the Master Agreements vary with the program as follows:

1. Federal-Aid Highway Program
   - Local Agency-State Agreement for Federal-Aid Projects, or
   - Administering Agency-State Agreement for Federal-Aid Projects[1]

[1] The latter title is being used for new or updated agreements executed after ISTEA.

2. State-only Funded Projects
   - Administering Agency-State Agreement for State-Funded Projects (with no federal funds)

Program Supplement Agreement

The supplement to the Master Agreement formalizes the financial responsibilities and provisions for a specific federal-aid or state funded project in the categories defined above. This program supplement identifies the types and amounts of federal, state and local funds used to finance the locally sponsored project. It is the contractual basis for the state to pay the local agency for work done.

Special covenants or clauses in the agreement define the agencies' specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

No reimbursement payments can be made until the Program Supplement Agreement has been fully executed. Invoices shall not be submitted prior to this execution.

4.3 Special Program Agreements

Agreements are required for several programs which are prepared on a programmatic or project-by-project basis and do not follow the Master Agreement/Program Supplement pattern. These are briefly described below. Refer to the Local Assistance Program Guidelines for full details of the agreement process and conditions for these programs.

Federal Apportionment Exchange Program and State Match Program Agreement

This program is commonly called the Exchange/Match or Match and Exchange Program. Under the provisions of S&H Code 182.6 et seq., MPOs, RTPAs and counties are allowed to exchange certain portions of their federal-aid funds for State Highway Account funds (see the Local Assistance Program Guidelines (LAPG) Chapter 18: Optional Federal Exchange and State Match Programs, for details).

The DLA prepares the agreement for the maximum allowable amount that each agency can exchange and sends it for signature by the agency. Signed agreement is sent back to DLA. The agreement takes effect upon signature by appropriate DLA staff. If the agency does not wish to participate, they will send the agreement back with a letter notifying DLA to cancel the agreement.

Bicycle Transportation Account Agreement

Applications are submitted to the DLA for annual project selection. Upon selection, agreements for all projects for the year are prepared and submitted to the Accounting Service Center for the encumbrance of State funds and then processed for execution. The title for this agreement is Local Agency-State Agreement, Bicycle Transportation Account Project.

Proposition 116: Bicycle Project Agreement

A fund allocation vote is required by the California Transportation Commission (CTC) for each project. When this is complete, Caltrans DLA prepares a Fund Transfer Agreement for execution by the local agency and state. The full agreement title is Fund Transfer Agreement, Clean Air and Transit Improvement Act of 1990 (Proposition 116) Bond Funds.

Environmental Enhancement and Mitigation (EEM) Project Agreements

After program adoption, a fund allocation vote (2nd vote) is required by the CTC for each project. When this is complete, Caltrans DLA prepares an Applicant-State Agreement for execution by the applicant and state. If acquisition of real property is to occur, an Agreement Declaring Restrictive Covenants is also required (see LAPG Chapter 20: Environmental Enhancement and Mitigation (EEM) Program for agreement format and processing details).

4.4 Process and Procedure

A new Locode and Master Agreement will normally be requested by local agency soon after their first Local Assistance project is selected and programmed for inclusion or amended into the FTIP/FSTIP or STIP. Neither a Master Agreement nor project specific requests or agreements will be processed until after the associated pre-award audit process is completed and no findings (if there are any) remain (see *LAPM Chapter 3: Project Authorization*, Section 3.2: Prior to Federal Authorization).

All project specific agreements are contingent on budget actions by the federal and state governments.

Federal-aid projects must be authorized and have funds obligated before an agreement is prepared. For projects in the State Transportation Improvement Program (STIP), Transportation Congestion Relief Program (TCRP), Conservation Lands, Statewide Transportation Enhancements (STE) Program, and Environmental Enhancement and Mitigation (EEM) Program, an allocation vote is required by the CTC. Caltrans does not prepare the agreement until the authorization, obligation and vote allocation are complete.

An agreement is prepared only once for each project after the initial authorization/obligation. In certain cases, more than one agreement is required. In such instances, the DLA will identify the need and prepare a revised agreement.

Processing

To initiate the preparation of the Local Agency/State agreement, the local agency must submit *Exhibit 7-B: Field Review Form* to the DLA through the DLAE.

After the funds have been obligated/allocated and upon receipt of *Exhibit 7-B*, the DLA prepares the agreement. Once the requested funds have been encumbered by Local Programs Accounting, the DLA sends the agreement to the local agency for signature. The agreement must be signed by the local agency and returned to the DLA along with the signed and dated resolution as soon as possible. *Exhibit 4-B: Local Agency Agreement Execution Checklist*, identifies key data or actions which should be provided in the agreement execution process. Any changes in funding or agreement language made by the local agency will void the agreement.

A local agency may pass a resolution for each agreement as it is presented or may pass a resolution authorizing an individual, e.g., public works director, to execute specific types of agreements as they occur. The latter method can save significant amounts of work and time and should be considered by any agency, which constructs a large number of federal-aid, or state funded projects. In either case, the resolution should clearly indicate the title of the person who is authorized to sign and for which agreement(s) or agreement types.

Upon receipt of the signed agreement and resolution, the DLA must review and sign the agreement before it can be conformed and executed. A copy of the executed agreement is then sent to the local agency and Local Programs Accounting at which time invoices may then be submitted for payment.

4.5 Federal-aid Project Authorization to Proceed (E-76)

Section 106(a) of Title 23 of the United States Code (USC), as revised under the Transportation Equity Act for the 21st Century (TEA-21) and as superseded by the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) combined the project authorization, obligation of funds, and the execution of the federal-aid project agreement into a single action. To support SAFETEA-LU, the Federal-Aid Data System (FADS) was upgraded and implemented this new federal-aid processing requirement. Under the upgraded FADS, one electronic form entitled Authorization to Proceed (E-76) replaced the PR-2, PR-2A, and FNM-76. The E-76 now acts as both project authorization and federal-aid project agreement with Caltrans.

4.6 State Highway System and Other Agreements

Various types of agreements are required when working within the State highway right of way or with other State agencies. Included are: Grade Separation Fund, Cooperative, Joint Powers, Highway Powers, Highway Improvement, Escrow, Maintenance, Petroleum Violation Escrow Account (PVEA), and Contribution Agreements and Service contracts. These are not processed to agencies by DLA but are developed and processed as defined in other Caltrans manuals and documents. The local agency should not overlook the need for one or more of these agreements during project development.

Railroad Service Contracts

These contracts are required when a railroad company will perform work on a project. When the work is funded with Grade Crossing funds, the contracts are made between Caltrans and a railroad company and are directly processed to the railroad.

The Program Supplement Agreements for these federal-aid projects are processed as described previously.

4.7 References

- *23 U.S.C. 630.301 et. Seq*
  https://www.gpo.gov/fdsys/granule/CFR-1999-title23-vol1/CFR-1999-title23-vol1-sec630-301

- *Published Memos: Weaver/Kiff, 2/20/93, Everitt 5/28/93 & 1/5/95 (Exchange & Match procedures)*
  http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=EBA8691C812310BE36ADCF73671E5400?doi=10.1.1.297.8908&rep=rep1&type=pdf

- *SAFETEA-LU*
  http://www.fhwa.dot.gov/safetealu/factsheets.htm

- *Section 106 (a) United Codes revised under TEA-21*
  http://www.fhwa.dot.gov/Tea21/oversite.htm