



Memorandum of Understanding (MOU) Assessment

Governance & Audit Report No. 2021-4

Report Issued September 10, 2021

EXECUTIVE SUMMARY

Background

The FY 2021 Internal Audit Work Plan approved by the Governance and Audit Committee included a Memorandum of Understanding (MOU) assessment.

IndyGo enters into MOUs, Interlocal Cooperation Agreements (ICAs), Utility Reimbursement Agreements (URAs) and other arrangements with local governments, utility companies and other entities, as needed. IndyGo had nine active agreements with seven separate counterparties at the time of our review (see Appendix B).

Our assessments are performed in accordance with the professional practice standards of the Institute of Internal Auditors. This report was prepared for use by IndyGo's Board of Directors, Governance and Audit Committee and management.

Objective and Scope

- Obtain an understanding of IndyGo's processes and controls related to managing MOUs and related agreements.
- Review key processes and test selected transactions, related to:
 - Agreement scope
 - Terms and conditions
 - Financial, operational or reporting requirements
 - IndyGo monitoring of agreements
 - Billing and payments
- Assess the effectiveness of the design and operation of internal controls
- Identify potential opportunities for process and control improvements or revenue enhancement.

Overall Report Rating & Observations

(See Appendix A for definitions)

	Report Rating	Number of Observations		
		High	Medium	Low
Memorandum of Understanding Agreements	Medium	1	1	0

Overall Summary and Review Highlights

IndyGo does not currently have a high volume of Memorandum of Understanding or related agreements. However, these agreements are increasing in frequency and financial impact as the Bus Rapid Transit (BRT) projects continue.

Our following report includes two recommendations. We have rated the overall risk associated with this assessment as Medium.

Our observations relate to:

- Agreement Format and Terms – IndyGo can continue to standardize and update its format and terms for MOUs and related agreements.
- Agreement with the City Supporting the Transit Plan Implementation – IndyGo should continue to seek clarifications to this agreement, which is integral to its operations, budget and the riding public.

We would like to thank IndyGo staff and all those involved in assisting us in connection with the review.

Questions should be addressed to the IndyGo Department of Governance and Audit at: batkinson@indygo.net.

1. Format and Terms of Agreements

Observation:

The agreements do not contain a consistent format or terms.

Recommendation:

Continue to enhance the format and terms of the agreements to clarify and protect IndyGo's rights.

Observation Rating: Medium

IndyGo has established procedures and templates for competitively procured contracts. IndyGo has begun to update and standardize the format of some agreements, particularly related to utilities.

However, the agreement terms and related oversight procedures vary according to the counterparty, scope and project nature.

Of the 12 Agreements reviewed, we noted:

- **Termination** – There was no specified termination date (three agreements). One agreement automatically renews annually.
- **Format** – The counterparty's format was used without any applicable IndyGo provisions (one agreement).
- **Indemnification** - IndyGo was not indemnified (five agreements).
- **Insurance** - The counterparty or the involved contractors were not required to maintain insurance (five agreements).
- **Monitoring** – IndyGo is monitoring the agreements and performing site inspections, although the agreements do not state this right.

IndyGo should continue to enhance its standard template and required terms for MOUs and related agreements. Although the volume of MOUs and related agreements is relatively low, and the counterparty may be another local government, the frequency and financial commitments in agreements are increasing.

IndyGo should consider whether its MOUs and related agreements:

- Contain applicable IndyGo standard terms and conditions, especially when a federal funding source is utilized, or the counterparty is engaging consultants. (Or IndyGo should document why such terms were not applicable or not applied).
- Have a specified termination and/or review date, and not be "evergreen" in duration.
- Include a specific provision that permits regular oversight and monitoring by an assigned IndyGo project manager.
- Be submitted to IndyGo's General Counsel's Office for filing.

Management's Action Plan:

The IndyGo Legal and Procurement Departments have been moving toward standardized formats for MOUs and Contracts when a standardized format can be utilized.

When engaging in an agreement with particular vendors, utilities and Government Agencies, IndyGo may be required to use a format that has been provided.

Responsible Party:

IndyGo Legal Department

Due Date:

On-going.

2. Agreement Supporting the Transit Plan Implementation

Observation:

The agreement supporting IndyGo's Transit Plan Implementation is not clear on certain provisions, or on procedures related to Operations and Maintenance expense reimbursement.

Recommendation:

Continue negotiations to amend the agreement and clarify the terms, especially related to cost sharing and definitions of allowable expenses.

Observation Rating: High

IndyGo entered into an Interlocal Cooperation Agreement (ICA) in 2018, regarding the overall implementation of its Transit Plan with the City of Indianapolis and Marion County. The IndyGo Transit Plan is central to IndyGo's operations, budget and the riding public.

The ICA covers all three planned Bus Rapid Transit (BRT) lines, and lays out specific financial and other obligations.

1) General Provisions

Our review of the ICA disclosed that it:

- Could extend for 30 or more years (based upon asset useful lives).
- Requires IndyGo to be financially responsible for a portion of non-BRT lanes, at the City's discretion. No methodology (i.e., traffic studies) or cost allocation process has been identified.
- Does not provide an indemnification to IndyGo from the City, while IndyGo has provided indemnification to the City.

The City is a key partner in the planning and execution of IndyGo's Transit Plan and the three planned BRT lines. The ICA agreement could be in effect for over 30 years.

The agreement allows for modifications. Management is currently in discussions with the City to amend the agreement.

1) General Provisions

To facilitate the continued successful implementation of its Transit Plan and maintain strong relationships with the City, IndyGo should continue to seek enhancements to its ICA. IndyGo should:

- Establish a timeline with the City to clarify the terms and each party's obligations.
- Seek a periodic re-assessment and amendment process, especially if the ICA duration remains at 30+ years.
- Seek mutual indemnification from the City (IndyGo provided indemnification to the City)

Management's Action Plan:

We agree and will work in good faith to strengthen and clarify the terms of the agreement through future amendments. While we may not be successful in incorporating all the recommendations of this audit, we believe we can get to consensus on modifications that will decrease IndyGo agency risk as compared to the current situation.

Responsible Party:

Vice President of Infrastructure, Strategy, and Innovation

Due Date:

On-going. Next amendment executed by Q3 2022.

2) Operations and Maintenance

The ICA contains a provision for the “City’s Obligation to Maintain City Infrastructure.” A separate provision then requires IndyGo to participate in “Operations and Maintenance (O&M) Cost Sharing”.

We noted that:

- O&M expenditures and related billing support are not clearly defined.
- The agreement specified that the City’s budget include an annual allocation for \$1.5 million for O&M costs. The City is to adjust the O&M cost share to reflect actual expenditures. IndyGo has not received any such “true-up” to date.
- There is no billing cap or ceiling stated.
- The City provided an invoice for \$1.5 million. The documentation attached was a spreadsheet of various costs that exceeded \$1.5 million. There were no supporting invoices or descriptions. IndyGo was not able to perform a review to responsibly validate the billed costs.
- There is no amount or process specific for O&M reimbursement for the Purple and Blue lines.

2) Operations and Maintenance

IndyGo should clarify the Operations and Maintenance (O&M) and cost sharing provision of the agreement, and:

- Define IndyGo’s cost sharing obligations.
- Specify the supporting documentation to be provided with the City’s invoices to allow IndyGo to conduct its standard review prior to payment.
- Reimburse the City for actual O&M expenses incurred, not the estimated \$1.5 million budget allocation amount.
- Establish a cap or ceiling for the actual expense reimbursement, to allow for project budgeting and control.
- Establish a defined amount or process for any O&M billings related to the future Purple and Blue lines.

APPENDIX A – RATING DEFINITIONS

Observation Rating Definitions		Report Rating Definitions	
Rating	Definition	Rating	Explanation
Low	Process improvements exist but are not an immediate priority for IndyGo. Taking advantage of these opportunities would be considered best practice for IndyGo.	Low	Adequate internal controls are in place and operating effectively. Few, if any, improvements in the internal control structure are required. Observation should be limited to only low risk observations identified or moderate observations which are not pervasive in nature.
Medium	Process improvement opportunities exist to help IndyGo meet or improve its goals, meet or improve its internal control structure, and further protect its brand or public perception. This opportunity should be considered in the near term.	Medium	Certain internal controls are either: <ul style="list-style-type: none"> Not in place or are not operating effectively, which in the aggregate, represent a significant lack of control in one or more of the areas within the scope of the review. Several moderate control weaknesses in one process, or a combination of high and moderate weaknesses which collectively are not pervasive.
High	Significant process improvement opportunities exist to help IndyGo meet or improve its goals, meet or improve its internal control structure, and further protect its brand or public perception presents. This opportunity should be addressed immediately.	High	Fundamental internal controls are not in place or operating effectively for substantial areas within the scope of the review. Systemic business risks exist which have the potential to create situations that could significantly impact the control environment. <ul style="list-style-type: none"> Significant/several control weaknesses (breakdown) in the overall control environment in part of the business or the process being reviewed. Significant non-compliance with laws and regulations. Observations which are pervasive in nature.
Not Rated	Observation identified is not considered a control or process improvement opportunity but should be considered by management or the board, as appropriate.	Not Rated	Adequate internal controls are in place and operating effectively. No reportable observations were identified during the review.

Appendix B – MOU and Agreement Summary

Counterparty	Description	Effective Date
City of Indianapolis and Marion County, through Department of Public Works (DPW)	Interlocal Cooperation Agreement (ICA) re: Transit Plan implementation	7/10/2018
City of Indianapolis and Marion County, through Department of Metropolitan Development (DMD)	Memorandum of Understanding (MOU) re: Blue Line Transit Oriented Development	4/23/2019
Citizens Energy Group (CEG)	Agreement re: Purple Line Storm Water Separation Project	5/29/2020
Citizens Energy Group (CEG)	Utility Reimbursement Agreement (URA) re: Purple Line Water Main Offsets	3/17/2021
Indianapolis Power and Light (IPL)	Utility Reimbursement Agreement (URA) re: Purple Line Electric Distribution Facility Relocation	2/26/2021
CSX Railroad	Preliminary Engineering Agreement Re: Lower Rural Street Grade Crossing	5/1/2019
City of Lawrence, IN.	Agreement re: Purple Line Utility Relocation	2/18/2020
Speedway Public Transportation Corporation	Revenue Agreement re: Bus Service	6/19/2014
Federal Transit Administration (FTA) and Indiana State Historic Preservation Office (ISHPO)	Memorandum of Agreement (MoA) re: Section 106 Archeological Consultation	12/12/2017