CHAPTER 11
GRANT AGREEMENT AMENDMENTS

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CHAPTER 11
GRANT AGREEMENT AMENDMENTS

11.0 Introduction

During the course of administering a TxCDBG Grant Agreement, situations may occur that require a change in the original terms of the agreement. These changes are referred to as Grant Agreement amendments. The type and scope of change as it relates to the scope, location, or beneficiaries of the project determine whether a minor amendment is acceptable or whether a full amendment is necessary. All changes must be related to the project.

Request any changes to the agreement using the *Amendment* page in the TDA-GO system.

NOTE: While an amendment is pending in TDA-GO, no Payment Requests, Performance Reports, or other related documents may be created. For complex or significant project changes, please discuss with TDA staff prior to beginning an amendment in the system.

Detailed step-by-step instructions for completing and submitting an amendment request in TDA-GO may be found on the TDA website.

11.1 Performance Statement Changes

Grant Agreements are awarded based on the information presented in the original application. TDA will review any change to the Performance Statement to ensure that federal, state, and programmatic requirements continue to be satisfied.

The Grant Recipient should evaluate the Performance Statement once a bid has been accepted and submit an amendment as appropriate to accurately reflect the project that will be awarded. A copy of the bid tabulation or project plan sheets should be submitted with this request.

NOTE: Generally, construction quantity changes of 15% or less will not require an amendment, see *Chapter 12 Grant Agreement Closeout.*

Requests to Revise the Original Project
Grant Recipients were selected for funding based on their proposed project and are expected to carry it out as proposed. Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application.

- A change in the construction work required to complete a project may be approved if the resulting benefit to the community is the same need identified in the application.
  EXAMPLE: The city needs to increase storage capacity but has determined that a ground storage tank is more cost-effective than the new standpipe originally proposed.
- The revised project will be re-evaluated according to the scoring criteria used at the time the original application was submitted. If the proposed amendment alters the original application score to the degree that the project would not have been recommended for funding, the amendment request will not be approved. Major reductions in the scope of the proposed work can result in grant reduction or termination.
- The revised project must meet all environmental review requirements. The Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether any previous clearance still applies to the revised project. It is

critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

Requests for Additional Work Requests to be Added to the Performance Statement

- Once construction has begun for the original project, and remaining funds are identified that will be available for additional work, the Grant Recipient may request to expand the scale of the current project.
- The Grant Recipient may also request to add a separate project listed in the original application as a community need. The application must describe a project and not simply name the activity in order to be considered.
  EXAMPLE: "Replace water lines in the NE area of town to improve water pressure" vs. "Water activity".
- Re-evaluated application scoring is not required for additional work added when the original project is substantially complete.

Requests for Substitute Project

TDA will not approve requests to add a different or new project or activity that was not identified in the application, unless the new project is proposed because the original project has been determined unsuccessful or not feasible as a direct result of either:

- A natural disaster event, documented by presidential or governor's declaration, or
- A decision by a federal or state agency which prevents the contractor from completing the original project.
- Failure of the Grant Recipient to do due diligence in identifying the need for the proposed project is not grounds for an alternative project or location, and at TDA's discretion, may result in grant reduction or termination.
  EXAMPLE: "Upon inspection, it was determined that the line on Main Street had recently been replaced and still has useful life remaining"; "The city has reevaluated the proposed street reconstruction and determined that the street is in fair condition"; or similar conditions that a reasonable person should have identified prior to proposing the project.
- Changes in local priorities or staff are not grounds for approval of an alternative project or location.

11.1.1 Performance Statement Amendment Support Documentation

Performance Statement Track Changes

All Performance Statement Amendments for TxCDBG grants require upload of a document identifying the specific language to be revised.

1. Generate a copy of the current Performance Statement in Word Format by clicking the link below the summary text box.
2. Enable the track changes feature. Manual tracking of edits, such as text manually formatted with strike through and underline font, is not acceptable.
3. Edit the document and the track changes feature will show all text proposed to be added, deleted, or revised.
4. Upload the Track Changes document in the field provided in TDA-GO.

Performance Statement Amendments also require completion of the second page in the *Amendments* section, called *Proposed CDBG Performance Statement Revisions*. Responses to the questions on this page may require additional documentation to be uploaded.

Public Participation
Performance Statement Amendments require public participation unless the proposed changes meet the requirements as a Minor Amendment. A public hearing allows the residents of the Grant Recipient's jurisdiction to have an opportunity to comment on the proposed changes.

Is This a Minor Amendment?	
Will the project as requested serve substantially the same beneficiaries as the current Performance Statement? ☐ no change in beneficiaries, regardless of quantities; ☐ increase in beneficiaries, but no new Benefit Area; or ☐ decrease in beneficiaries of less than or equal to 25%—based on number of persons or households. AND ☐ does not remove a section of the project to create two or more non-contiguous Benefit Areas.	☐Yes ☐ No
Are the activities' categories the same as the current Performance Statement?	☐Yes ☐ No
Does the project still solve the same problem identified in the current Performance Statement?	☐Yes ☐ No
If the answer to all three questions is **Yes**, respond "No" to Question 1 on the *Proposed CDBG Performance Statement Revisions page* If the answer to any question is **No**, public participation is required.	

Public participation for an Amendment includes:

- A resolution from the city council or commissioner's court that indicates support for the proposed changes; and
- Notice of the public hearing held regarding the amendment, including a brief description of the proposed project changes. See *Chapter 1 Administration and Reporting* for detailed instructions regarding public hearings, notices, and documentation. TDA reserves the right to require Public Participation in its sole discretion.

Beneficiaries
Any change to project beneficiaries requires a Grant Agreement amendment.

Amendments requesting to add or delete an entire Benefit Area cannot be submitted without first contacting TDA. After an initial discussion, TDA staff will check the box beneath Question 2 to acknowledge this significant change.

Upload appropriate beneficiary documentation in the field provided.

Locations
Amendments proposing to change the locations of the work to be performed must provide Census Information and two maps.

- Census Table – Identify the County, Census Tract, and Block Group information for the proposed locations. Click the "+" to create a new row for each census tract.
- Upload color-coded revised project maps showing the locations of the original and amended project activities in the fields provided. The map(s) must use separate colors/markings to identify on the same map:
  - Original/previously approved project locations;
    BEST PRACTICE: For expedited TDA review, mark these locations in purple and/or single solid lines;
  - Locations proposed to be deleted from project;
    BEST PRACTICE: Mark deleted locations in orange and/or dashed lines;

- Locations proposed to be added to the project;
  BEST PRACTICE: Mark added locations in yellow and/or double solid lines; and
- Service area for the project;
  BEST PRACTICE: Mark service area with black delineating lines.
- Or the maps should include a detailed map legend identifying map changes.

- Project map showing the locations **of all work as proposed**. This "clean" map will become a Figure in the Grant Agreement if the Amendment is approved.

Environmental Review
The revised project must meet all environmental review requirements. If an Authority to Use Grant Funds has previously been issued for the grant, the Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether the previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

- Navigate to the existing *Environmental Review Performance Report*, *Environmental Review Re-evaluation* page. Complete the form and save the page.
- Return to the *Proposed CDBG Performance Statement Revisions* page. The Authorized Official must check the box to acknowledge the re-evaluation of the environmental review.

Additional Documentation

- Engineer's Explanation - Upload an engineer's explanation if technical justifications are necessary, or if requested by TDA in order to certify that the benefit area is appropriate. TDA may require a signed and sealed letter, or may accept a copy of an email, depending on the circumstances and information provided.
- Upload other documentation as appropriate.

11.2 Budget Changes

A Grant Recipient may request to transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project.

Budget Amendment Requests for Administration and Professional Services

- TDA will not approve a budget change to allow the general administration activity grant funds to exceed 16% of construction and acquisition/relocation grant funds.
- If a proposed budget change causes the engineering activity grant funds to exceed 25% of construction and acquisition/relocation grant funds, additional justification must be submitted for approval by the TDA Deputy Commissioner.
- Any administration or engineering costs greater than the amount available through the activity budget line items are the responsibility of the Grant Recipient but may be included as matching funds unless otherwise disallowed.
- Requests to move TxCDBG funds from construction and/or acquisition activities to engineering or general administration activities must be submitted in TDA-GO prior to the date work is completed on the Materials and Services Report, *Work Completed* page. The request must include a description of the additional tasks required by these services providers for the project.

11.2.1 Budget Amendment Documentation

When the Exhibit B box is checked on the Amendment Request Form, a table becomes available to document the requested change.

- Enter positive numbers in the row for budget item requested to be increased; enter negative numbers for the budget item proposed to be decreased.
- If a new activity is proposed to be added to the grant funding, enter the appropriate information in the blank row.
- Enter $0.00 for activities where no budget change is requested.
- Additional rows may be added by clicking the "+" button.
- The last row in the table calculates the total request. Ensure that the column for Requested Change reflects the amount of $0.00 in the last row.

A Grant Recipient may request to transfer funds between budget categories identified in the budget as a minor amendment to the original Grant Agreement if:

- The cumulative dollar amount of transfers among budget categories is less than or equal to 20% of the total amount of the agreement as specified in Exhibit B of the TxCDBG Grant Agreement;
- The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG agreement; and
- Funds are to be transferred into professional services, the total dollar amount in the line item does not exceed the following:
  - General Administration – 16%.
  - Engineering (all line items) – 25%.

11.3 Agreement Period Extensions

TxCDBG agreements allow a specific time period to complete the activities identified in the Performance Statement. This timeline can be found in *Exhibit A, Section C* of the TxCDBG Grant Agreement.

C. Timeline

Grant Recipient will comply with the following Project Schedule. Failure to meet any of the below milestones may result in sanctions as outlined in the TxCDBG Project Implementation Manual, Requests for Applications, other published guidance, and conditions of this agreement.

Pre-Agreement Cost Begins:	5/3/2021
Grant Contract Period Begins:	3/1/2022
Environmental Review/Plans & Specifications Recommended to be Complete:	9/1/2022
Group B Forms Required to be Complete:	3/1/2023
Project Recommended to be Complete, including inspections:	11/1/2023
Grant Contract Period Ends:	2/29/2024
Final Payment and Closeout Documentation Required to be Submitted:	4/29/2024

Rarely, extenuating circumstances beyond the control of the Grant Recipient may prevent the completion of agreement activities within the prescribed agreement period. If a Grant Recipient is reasonably assured that project costs will be incurred beyond the agreement end date and that incurring these costs is beyond the control of the Grant Recipient, an amendment for an agreement extension must be requested from TDA to extend the original agreement end date. In addition, the Grant Recipient may request a short extension to complete additional work if the original project has been completed.

Agreement extensions are appropriate only when construction cannot be completed and/or the beneficiaries will not receive the service or benefit from the use of the new or improved facilities within the agreement period. If construction is completed and beneficiaries are receiving service, but additional reporting is required, see *Chapter 12 Grant Agreement Closeout*, or contact TDA staff.

Agreement extensions granted by TDA shall not be construed as a waiver of the Administrative Threshold Requirements, see *Chapter 1 Administration and Reporting*. The Progress Threshold #2 will still be applied to open contracts/agreements that have extended the contract/agreement period.

Deadline for Agreement Period Extension Requests
To avoid interruptions to the agreement or possible exclusion of reimbursement for project costs, Grant Recipients should notify TDA staff to discuss an agreement extension as soon as a delay is foreseen and an appropriate timeline can be proposed.

- Because certain other actions cannot be taken in TDA-GO while an amendment is pending, TDA does NOT recommend beginning the amendment request greater than ninety (90) days prior to the agreement end date unless directed to do so by TDA staff.
- Agreement extension requests must be submitted **no later than thirty (30) days** prior to the expiration date of the agreement.
- A request for agreement extension received **less than thirty (30) calendar days** prior to the expiration date will only be considered under the following circumstance:
  1. Disruption at the end of the project.
     - The project was reasonably expected to be completed within the agreement period; **AND**
     - Either a natural disaster event, documented by presidential or governor's declaration, or a decision by a federal or state agency occurred in the 60 days prior to the agreement expiration date which prevented the chief elected official from certifying the project's completion. Normal weather conditions are not considered extenuating circumstances.
  2. Financial penalty for noncompliance with Amendment Timeline requirements. If a Grant Recipient's agreement extension request does not comply with both of the above requirements, the Grant Recipient must accept a financial penalty in order for TDA to consider the extension request. See section *11.4.1 Amendment Timeline* of this chapter.

Progress Required for Extension Requests
Requests for extensions to agreements that have not made sufficient progress during the existing agreement period will not be approved.

- Extensions requests for agreements that have not submitted a Request for Release of Funds for Environmental Review will not be considered, as the project is not ready to proceed.
- Extension requests for agreements that have not submitted Materials and Services Record(s) demonstrating the obligation of 50% of all grant funds may be considered, but TDA will include additional Special Conditions for the agreement that may include financial or program eligibility penalties if future milestones established by the extension amendment are not satisfied.
- When considering an agreement extension amendment that is not for additional work, TDA will only consider circumstances clearly beyond the control of the Grant Recipient.
- While extenuating circumstances may exist, TDA will also consider the milestones not related to those circumstances in evaluating the Grant Recipient's capacity to effectively complete the project.
  EXAMPLE: Failure to complete the required environmental review within 12 months of the Grant Agreement start date indicates serious capacity concerns.

11.3.1 Extension Amendment Support Documentation

When the **C. Request to Change Timeline** box is checked on the Amendment Request Form, a table will show the current end date of the agreement and allow for a new proposed end date.

In addition, provide response to each narrative question. Failure to provide detailed responses that justify the extension request will delay the amendment review process.

Grant Recipients should expect to provide periodic updates for the intermediate steps identified. Examples include, but are not limited to:

- Change order for additional work, estimated to be complete February 20XX.
- Regulatory approval for second phase, estimated May 20XX.
- Purchase and delivery of electrical equipment, estimated to be complete July 20XX.
- Construction completion – 70% complete to date, estimated to be complete July 20XX.

11.4 Amendment Submittal Process

Complete the required fields and save the form:

- Purpose of Amendment – Provide a brief summary of the request that can be used to distinguish between Amendments.
  EXAMPLE: Remove Main Street water line; adjust final quantities; extension for acquisition delays, etc.
- Justification – Explain why the Amendment is necessary, including technical recommendations, description of any extenuating circumstances, and alternatives that have been considered.
- Exhibits – Check the box for each section of the Grant Agreement in which a change is being requested. If a proposed project change will impact more than one section of the contract, check all appropriate boxes in a single Amendment as TDA must consider all related changes at once.
  EXAMPLE: If a grant period extension will be needed to complete additional work proposed in a Performance Statement Amendment, the extension should be included in the same amendment.
- If the requested Grant Agreement amendment is related to a construction contract change order, a request to approve the change order must be submitted at the same time as the amendment request.

Once all supporting information for the request has been entered and saved, the Authorized Official may submit the request to TDA. TDA staff will review the request. If recommended for approval, TDA will assign an amendment number.

- All amendments are numbered sequentially, including minor amendments and full amendments, and regardless of the Grant Agreement sections to be revised.
- Only one amendment request may be active at any given time.
- Grants with multiple amendments can be reviewed by selecting the relevant amendment from the submenu for each *Amendment* page in the navigation menu. Until a number is assigned, the current amendment will have a blank space, while prior amendments will be identified by number.

Each amendment must be approved by TDA staff and the TxCDBG Director(s).

- During the review process, TDA staff may request clarification, revisions, or additional justification.
- Minor amendments, if approved, require no additional action by the Grant Recipient to become effective. The persons assigned as Authorized Official, Project Director, and Consultant will receive an email notification of the approval, and the status of the grant will be returned to Grant Executed.
- Full amendments, if approved, require the amendment document to be executed by both the Grant Recipient and TDA authorized staff.
  - Once notified by email that the amendment is ready to execute, the Authorized Official must navigate to the Amendment Certification Form.

- Click the link to generate the Grant Amendment for review. Check the signature box and save the form to execute the amendment.
- Status change the grant to *Send Agreement to TDA for Signature*.
- A second email will be sent to the project team when the grant amendment is fully executed.

11.4.1 Amendment Timeline

All Grant Agreement amendment requests **must** be submitted in a timely manner:

- Extension amendments - *minimum of 30 days prior* to the current Grant Agreement end date, except as described in *Section 11.3* of this chapter.
- Substantial amendments requiring citizen participation **AND** any amendment that revises the number of beneficiaries served by the project - minimum of 30 days prior to the Grant Agreement end date.
- Minor amendments that do not revise beneficiaries served by the project - minimum of 30 days prior to the Project Completion Report due date.

A penalty of $3,000 will be applied for each amendment request that the Grant Recipient fails to submit within TDA-GO by the above deadlines. These penalties are cumulative and separate from the financial penalty for failure to submit the Project Completion Report timely. Generally, these penalties are applied first to the administrative line item; however, if no administrative line item is available, the penalties may be applied to any other Grant Agreement budget line item.

If the Grant Recipient fails to submit an amendment request and certifies on the Project Completion Report that work was completed that was not in fact performed, the Grant Recipient will be found to be substantially out of compliance with the terms of the Grant Agreement. TDA may resolve this non-compliance through a financial penalty and corrective action plan, without approval of an amendment to the Grant Agreement.

Resources

Resource Number	Description	URL
Step-by-step guidance	How to Initiate and Complete an Amendment Request	TDA Forms Page
Step-by-step guidance	How to Cancel an Amendment Request	TDA Forms Page

*Note: these items will be updated as needed.