

# Supplemental Agreement Submittal Guidance

Utility Portfolio Section, Right of Way Division  
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# 1. Purpose

This document will aid the District Utility Coordinator or Utility Company in developing a supplement to a Standard Utility Agreement and identifying the appropriate documentation required for the submittal. The information provided is based on general situations. Questions not covered in this guidance document should be forwarded to the Right of Way Division, Utility Portfolio Section.

## 2. General Conditions

One of the following conditions may be the cause for a Supplemental Agreement:

- Total cost increased or decreased by \$100,000.00 or more
- Total cost increased or decreased by 25% or more
- Change in Scope
- Change in betterment
- Change in eligibility ratio
- Correcting deficiencies identified on the ROW Division Compliance Memo
- Other conditions may apply

## 3. Roles and Responsibilities

Both the **Utility Company (“Utility”)** and the **TxDOT District (“District”)** have the responsibility to identify, initiate the development, and collaborate to find solutions while developing a Supplemental Agreement package. Development of a Supplemental Agreement to correct deficiencies from the Standard Utility Agreement compliance review should begin as soon as possible.

The **ROW Utility Specialist** can provide guidance and conduct a courtesy review to identify potential deficiencies.

The **ROW Program Office** guides the Utility Specialists and performs a Compliance Review.

## 4. Common Conditions from the Standard Utility Agreement Compliance Review.

A Standard Utility Agreement (SUA) between the State and the Utility Company is a legal contract. The ROW Division ensures that the SUA complies with Federal Laws, State Laws, and TxDOT policy; the ROW Division conducts a Compliance Review after the SUA is executed. The Compliance Review will outline risks and deficiencies within SUA. TxDOT utilizes a Supplemental Agreement to amend the SUA to correct deficiencies. Not all deficiencies require a Supplemental Agreement. The requirement for a Supplemental Agreement may vary due to various conditions or features associated with the utility accommodation. The list below is some of the common deficiencies found during the Compliance Review.

#### **4.1 Form ROW-U-35**

- Updated form(s) were not utilized
- The form(s) were not filled out correctly.
- The scope was incorrect or lacking information.

#### **4.2 Attachment "A."**

- Cost Estimate
  - Items within the Cost Estimate are Lump Sum. A Breakdown of those items is required as outlined in the ROW Utilities Manual, Chapter 7, Section 2.
  - Estimate missing Buy America indicators.
  - Incorrect Total Costs or Costs that do not match
  - Ineligible Costs included in the cost estimate
  - No detail for Lump Sum items – Depending on the item on the cost estimate
- Plans
  - Plans do not illustrate where the Utility's facility conflicts with the proposed roadway project.
  - The plans are missing critical features outlined in the ROW Utilities Manual, Chapter 6, Section 2.

#### **4.3 Attachment "B."**

- Incorrect accounting method selected.
  - When the SUA lacks supporting documentation for Lump Sum, it has been determined that the Cost Method needs to be changed to the Actual Cost method.

#### **4.4 Attachment "C."**

- No causes for Supplemental Agreement.

#### **4.5 Attachment "D."**

- The incorrect option on Form ROW-U-48 was selected
  - Option for bidders was selected, but the work was to be completed by a continuing contract.

#### **4.6 Attachment "E."**

- A scope change usually causes a change in the proposed joint use area or location.

#### **4.7 Attachment "F."**

- The Eligibility Ratio is not calculated correctly.
- The Eligibility Ratio cannot be confirmed within the plans.

#### **4.8 Attachment "G."**

- The Betterment Ratio is not calculated correctly.
- The calculation is missing information.
- The Betterment Ratio cannot be confirmed within the plans.

#### **4.9 Attachment "H."**

- Insufficient or missing Property Interest.

## **5. Typical Supplemental Agreement Submittal Requirements**

### **5.1 Attachment A – Plans / Cost Estimate**

- Costs increase/decrease
  - Provide a side-by-side cost comparison estimate showing where the cost change is. The Utility or District may author. Recommended
    - At a minimum, an updated cost estimate with a justification of the cost change is required.
    - The benefits of a side-by-side cost comparison.
      - A side-by-side cost comparison clarifies line items that have been added or deleted or that the cost has changed.
      - The estimate can show the variance in costs of each line item.
      - It can illustrate the need for a Supplemental. (Additional language may be needed for the justification.)
      - Assist in explaining why the cost changed. (Additional language may be needed for the justification.)
      - Assist line items added or removed due to scope change. (Additional language may be needed for the justification.)
  - Provide a summary of why or the reason the price has changed. The Utility or District may author.
  - Provide revised plans, if needed, to illustrate where and why the change.
- Change in Scope

- Describe the scope change and the resulting change in cost.
- Provide a side-by-side cost estimate showing where the cost change is. The Utility or District can author. Recommended
  - At a minimum, an updated cost estimate may be required to show the change in cost or modify affected line items.
- Provide a summary of why the price has changed. The Utility or District can author.
- Provide revised plans, if needed, to illustrate where and why the change.
  
- ROW Division Compliance Review memo
  - Provide a detailed breakdown of the cost estimate.
    - Include updated cost estimate with corrections.
  - Provide ineligible items to be removed.
    - Include updated cost estimate with corrections.
  
- Updated Cost Estimate – Related to ROW Standard Utility Agreement Review
  - Provide updated cost estimates with any justifications requested.

## **5.2 Attachment B – Utility’s Accounting Method**

- Accounting method change
  - Update the Attachment B insert from SUA with Utility’s initial.
  - An updated cost estimate may be required.
  - Provide an e-mail from Utility confirming the change, optional.

## **5.3 Attachment C – Utility’s Schedule of Work and Estimated Date of Completion**

- Schedule change (This is not a trigger for a Supplemental.)
  - Provide an updated schedule.
  - Provide a summary describing why the change is necessary.

## **5.4 Attachment D – Statement Covering Contract Work**

- Change in contractor or procurement method
  - Provide documentation on how and why the new contractor was selected.
    - Bid tabulations
      - Is this the next lowest qualified bidder, or was there a new bidding event?
      - Bid tabulations (or verification notification by district).
    - Continuing Contract

- It must show that the contract was executed before the SUA execution.
- Rate sheet (or verification notification by district).

## **5.5 Attachment E – Utility Joint Use Acknowledgement**

- Cancellation of Joint Use Agreement (This is not a trigger for a Supplemental.)
  - Revise Attachment “E” Sheet.
  - Provide a memo from the district.
  - Provide a memo/letter/e-mail from the Utility confirming the cancellation of the Joint Use Agreement.

## **5.6 Attachment F – Eligibility Ratio**

- Change in Eligibility Ratio (Cannot be changed unless an additional conflict was discovered.)
  - Explain the change (may be authored by the Utility or District).
  - Provide revised calculations.
  - Provide revised plans.
    - Additional conflicts were added or removed.
    - The plans can clarify or justify the Eligibility Ratio established in the SUA.
    - Revised plans can provide additional property interest not provided in the SUA.
    - Provide updated plans showing updated knowledge of the existing facility and the nature of the conflict.
  - Provide supporting documentation.
    - An existing facility summary sheet.
      - Number of facilities in the Easement
      - Number of facilities in the ROW
    - Proof of property interest.

## **5.7 Attachment G – Betterment Calculation and Estimates**

- Updating Betterment Ratio (Cannot be changed unless there is a change in established elected betterment.)
  - Explain the change (can be authored by the Utility or District).
  - Provide a revised cost estimate.
    - In-Kind estimate
    - Betterment estimate
  - Provide revised calculations.
  - Provide revised justification.
    - Explain the change in scope, which affects the betterment ratio.

- Provide plans
  - Revised plans, if applicable.
- Provide supporting documentation
  - For example, the facility summary sheet with the existing and upgraded facilities.
- For updating forced betterment, provide
  - Justification and,
  - Supporting documentation.
    - The Attachment should include the updated plans and estimates.
    - Provide an explanation and justification for the forced betterment.
- If updating the betterment ratio from the original executed standard utility agreement:
  - Explain the change in detail (can be authored by the Utility or District).
  - Provide revised cost estimates.
    - In-Kind estimate (the cost estimate to accommodate the existing facility, not the SUAs betterment estimate)
    - Betterment estimate (this is the revised betterment estimate)
  - Provide revised calculations.
  - Provide revised justification.
    - Explain the change in scope, which affects the betterment ratio.
  - Provide updated plans

## 5.8 Attachment H – Proof of Property Interest

- Discovery of new property interest documentation.
  - Provide supporting documentation.
    - Affidavit
    - Easement documentation
    - Validation of property interest by ROW Attorney

## 6. TxDOTCONNECT Supplemental Information Entry

If the adjustment has a supplemental agreement(s), the agreement can be added by clicking “+ Supplemental Agreement.” The required fields below should be completed before submitting the executed agreement to the ROW Division ([ROW\\_UTILITYREQUESTS@TXDOT.GOV](mailto:ROW_UTILITYREQUESTS@TXDOT.GOV)).

Supplemental Agreements											+ Supplemental Agreement	
Agreement Number	Increased/Decreased Amount	Execution Date	Betterment Ratio	Salvage Credit	Eligibility Ratio	Estimated ROW Replacement Cost	Includes Material(s) To Be Buy America Compliant	Agreement Type	Agreement Process	Comment	Remove	
	\$0.00	MM/DD/Y		\$0.00		\$0.00	<input type="checkbox"/>					

## 6.1 Increased/Decreased Amount

- Enter the amount change from the existing Total Cost Estimate to the new Total Cost Estimate.
  - Review Attachment A for the updated information.
  - Increase Example: The SUA Total Cost Estimate is \$400,000.00, and the Total Cost Estimate from the Supplemental Agreement is \$550,000. Therefore, the amount to enter in the “Increased/Decreased Amount” is \$150,00.00.
  - Decrease Example: The SUA Total Cost Estimate is \$400,000.00, and the Total Cost Estimate from the Supplemental Agreement is \$300,000. Therefore, the amount to enter in the “Increased/Decreased Amount” is \$-100,00.00.

## 6.2 Execution Date

- It is located on the signature block of the Supplemental Agreement—the Date executed by the district.

<p><b>THE STATE OF TEXAS</b></p> <p>Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.</p> <p>By: _____ District Engineer (or designee)</p> <p>Date: _____</p>
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## 6.3 Betterment Ratio (if appropriate)

- Current betterment value.
  - Review Attachment G if the betterment ratio is updated.

## 6.4 Salvage Credit (if appropriate)

- Current Salvage Credit value

## 6.5 Eligibility Ratio

- Current Eligibility Ratio
  - Review Attachment F if the eligibility ratio is updated.

## 6.6 Estimated ROW Replacement Cost

- Current Estimated ROW value
  - Review cost estimate for line items related to replacement easements

## **6.7 Includes Material(s) To Be Buy America Compliant**

- Check box if there are Buy America items in the project
  - Review cost estimate for any notations of Buy America. See the Buy America Program Guide for more information.

## **6.8 Agreement Type (Attachment B of the agreement)**

- Actual Cost
- Lump-Sum

## **6.9 Agreement Process**

- LUP – When the LPA is responsible for relocating the Utility, TxDOT reimburses the LPA.
- FUP – For all projects programmed as an Interstate project
- SUP – For projects programmed as non-Interstate project

## **6.10 Comment**

- Enter a comment if essential details about the project or Supplemental Agreement need documentation.

# **7. Submitting a Complete Supplemental Agreement Assembly Package**

## **7.1 Agreement Transmittal Memo**

- Note the nature of the supplemental agreement
- Note the general information that the reviewer needs to know

## **7.2 Utility Accommodation / Adjustment Checklist – Form ROW-U-AgmntCheck**

## **7.3 Standard Utility Agreement Supplemental Agreement – Form ROW-U-COA**

- Add the reason for the increase or decrease in the approved cost estimate, which should be documented on the first page of the form.
- Enter the updated Total Cost Estimate amount at the bottom of the first page of the form.

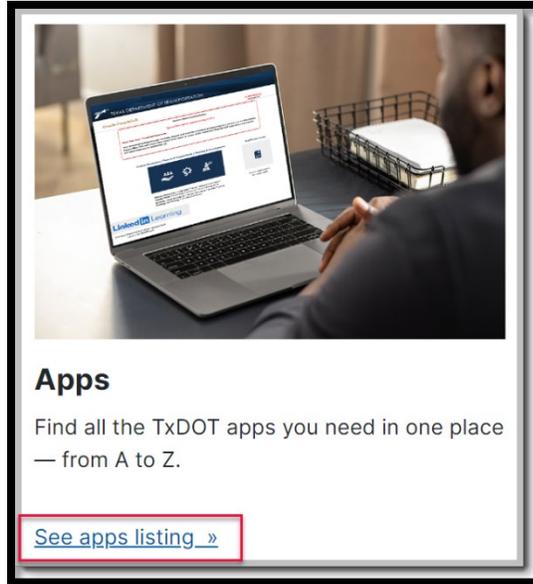
- Attachment "A" - Plans / Cost Estimate (Plans must be legible)
- Attachment "B" - Utility's Accounting Method
- Attachment "C" - Utility's Schedule of Work and Estimated Date of Completion.
- Attachment "D" - Statement covering Contract Work
- Statement Covering Utility Construction Contract Work – Form ROW-U-48.
- Continuing contract rate sheet, if applicable
- Bid tabulations, if applicable
- Attachment "E" - Utility Joint Use Acknowledgement
- Permit approval page, if applicable
- ii. Utility Joint Use Agreement – Form ROW-U-JUA, if applicable
  - Be sure to include the map with the area being joint-used highlighted
- Attachment "F" - Eligibility Ratio (include Calculations to be reviewed)
- Attachment "G" - Betterment Calculation and Estimates (include the second estimate for work to be done with betterment)
- Attachment "H" - Proof of Property Interest (include all supporting documents required for Proof of Property Interest)

## 8. Review by Right of Way Division

All executed agreements must be submitted to the ROW Division shortly after the execution of the agreements.

### 8.1 District Submits Supplemental Agreement Package

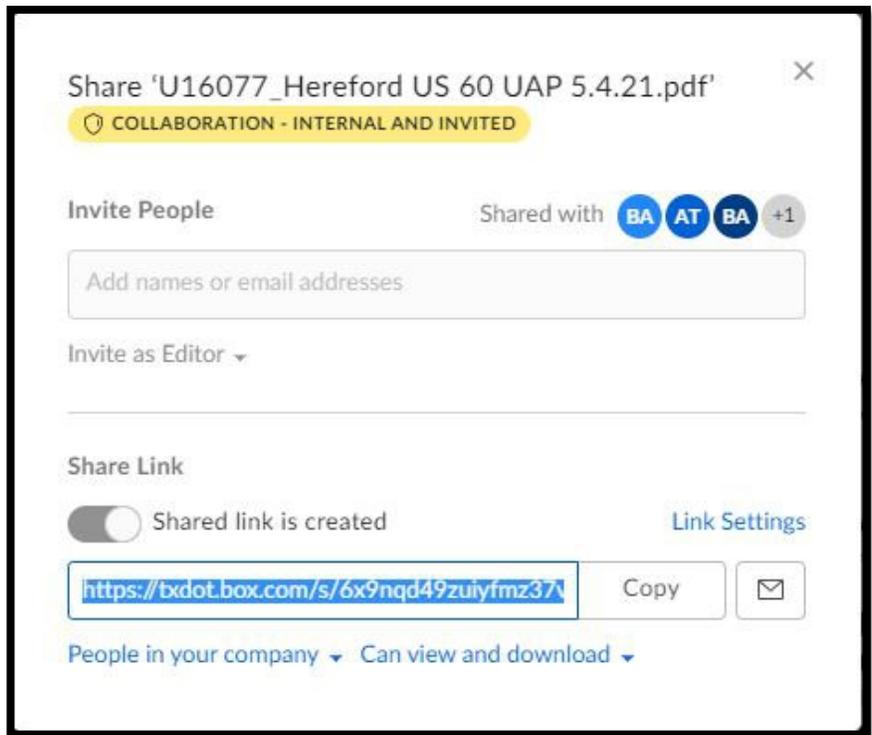
- The district should follow the guidelines in the above section, "Submitting a Complete Supplemental Agreement Assembly Package".
- Method of submitting the package
  - **E-mail:** The district must submit the package to [ROW\\_UtilityRequests@txdot.gov](mailto:ROW_UtilityRequests@txdot.gov).
  - **Box.com:** If the package is too large to e-mail (Larger than 25 Mb), the district may place the file in Box.com and send an e-mail with the file link to [ROW\\_UtilityRequests@txdot.gov](mailto:ROW_UtilityRequests@txdot.gov). Below are instructions to assist with uploading the file, including a link from Box.com.
    - Set up an account with Box.com.



- Once the file has been uploaded, click on the file and then the link symbol at the top.



- This action will open a window to copy a link.



- Write the standard e-mail requesting a Courtesy Review or submit an executed agreement to [ROW\\_UTILITYREQUESTS@TXDOT.GOV](mailto:ROW_UTILITYREQUESTS@TXDOT.GOV).
- Include the link (copy into) the e-mail. The reviewer can click on the link directly to the file.

## 8.2 Assignment for Review

- The lead worker or designee will assign the package to ROW staff for review.

## 8.3 Review Agreement Package

- Review for completeness and legal sufficiency of the agreement package.
- Verify that each Attachment contains appropriate information.
- Verify that TxDOTCONNECT information matches the package.
- Verify compliance with all State and Federal laws, rules, and policies.

## 8.4 Deficiencies Identified

- If identified deficiencies can be remedied within 48 hours, ROW will contact the district requesting additional information.

## **8.5 Compliance Review Memo Creation**

- A memo is drafted and signed by the Utility Portfolio Section Director.
- The memo will identify deficiencies and risks associated with the agreement package.

## **8.6 District Receipt of Memo**

- The district must address all critical deficiencies and conditions identified in the ROW Division Compliance memo before submitting the final billing.

## **8.7 Supplemental Agreements May Be Required to Remedy Deficiencies**

- The reviewer will verify if a Supplemental Agreement will be required before sending a memo to the district.

## **8.8 Duration From Begin to End**

- Reviewing and communicating with the district could take 5 to 14 business days.

# **9. Items in Supplemental Agreements that Trigger Additional Supplemental Agreements**

The execution of subsequent Supplemental Agreement must resolve any deficiencies remaining after executing a Supplemental Agreement.

## **9.1 Out-of-date forms were used in the submittal.**

- Before executing the Supplemental, verify that the latest version of the forms is being used.

## **9.2 Forms/attachments need to be filled out correctly.**

- Ensure that all the attachments are completed.

## **9.3 The reason for the increase or decrease still needs to be provided.**

- The Supplemental package should identify the cost change and the cause/justification for the cost change. The explanation may include a short narrative, side-by-side cost estimate, revised plans, or a combination.

#### **9.4 Incorrect updated total cost estimate on the first page of the supplemental agreement.**

- ROW Division recommends that the incorrect amount is struck out and both District and Utility initials next to the correction. ROW Division also suggests that the person who signed and executed the supplemental agreement initials the changed amount.

#### **9.5 Deficiencies requiring a supplemental in the division review memo have yet to be addressed.**

- Before submittal, review the ROW Compliance Memo and verify that all deficiencies have been addressed in the supplemental.

#### **9.6 A detailed estimate does not allow comparison with the actual records of cost accumulation at billing.**

- ROW Division recommends that it includes a side-by-side cost comparison.

#### **9.7 Updated plans have yet to be provided when there is a scope change.**

- Significant scope changes would require revision to the plans.

#### **9.8 Buy America complaint items have yet to be identified when there is a scope change.**

- When a scope change is proposed, the additional item may be subject to Buy America compliance, and proper notation is required.

#### **9.9 The eligibility Ratio, betterment Ratio, and property interest document have yet to be addressed when additional work is performed.**

- When revising the eligibility ratio and, at times, betterment ratio, property interest documentation is required as supporting documentation.
- When the adjustment requires revision to the scope by increasing the length or area of adjustment, then property interest documentation is necessary to justify eligibility for reimbursement.

## **9.10 The supplemental agreement assembly needs to include critical items.**

- The supplemental agreement assembly needs supporting documentation that justifies the scope or cost change.
- Supplemental agreement assembly needs to include appropriate documentation to correct or fix deficiencies outlined in the ROW Compliance Memo.

## **10. Frequently Asked Questions**

### **10.1 If there is a scope change in the field, do we have to stop working until a Supplemental Agreement is executed?**

No, the Utility may obtain written approval via e-mail from the district.

### **10.2 What is needed in the Supplemental Agreement if there is a scope change?**

In most cases, the following is needed:

- Summary of what the change is and why
- Revised cost estimate
- Revised plans illustrating the change

### **10.3 If the Utility is changing Contractors, does the district need to execute a Supplemental Agreement?**

It is necessary to document which contractor is working on the project.

- Summary of what the change is and why
- The method of selecting the new contractor
- Provide the associated Bid Tabs or Rate Sheet
  - The district may verify the rates if the Utility does not provide supporting documentation.

### **10.4 If the Accommodation is no longer needed (for whatever reason) and the Utility wants to be paid for the work that has been done. Is a Supplemental Agreement required?**

Yes, this is commonly identified as a scope change.

- Need an explanation of the situation
- Revise the cost estimate
- If possible, revise plans to show what was adjusted

**10.5 If the Utility submitted an invoice, Accommodation meets one of the conditions above (in the General Conditions). Can the District process the invoice package?**

No, The District must execute the Supplemental Agreement before processing the invoice.

**10.6 Is a Supplemental Agreement required if the eligibility or betterment ratio increases?**

Yes, the executed Standard Utility Agreement establishes the ratios. A supplemental agreement is required to establish the new ratio if either is modified.

**10.7 During the Utility's facility adjustment, it has been determined that additional work is required. After evaluating the situation, the adjustment is less than \$100,000 and less than a 25% increase in the cost. Is a Supplemental Agreement required?**

No, this would be considered a minor scope change, and the district is not required to execute a Supplemental Agreement. ROW encourages the District and Utility to monitor the adjustment if the cost or percentage change exceeds the established threshold.

**10.8 Suppose the adjustment is planned to be a joint bid with the TxDOT roadway contractor, and the bids are higher than estimated. Does the district need to execute a Supplemental Agreement to document the increased recommendations?**

An executed Supplemental Agreement is only required if the reimbursable amount increases by \$100,000.00 or 25% of the cost. A revised AFA (Voluntary Utility Relocation Contributions on State Highway Improvement Projects) is optional if the Utility owes TxDOT more to complete the adjustment for the TxDOT roadway contractor. The Utility may submit a check for the difference between the estimated and actual costs.

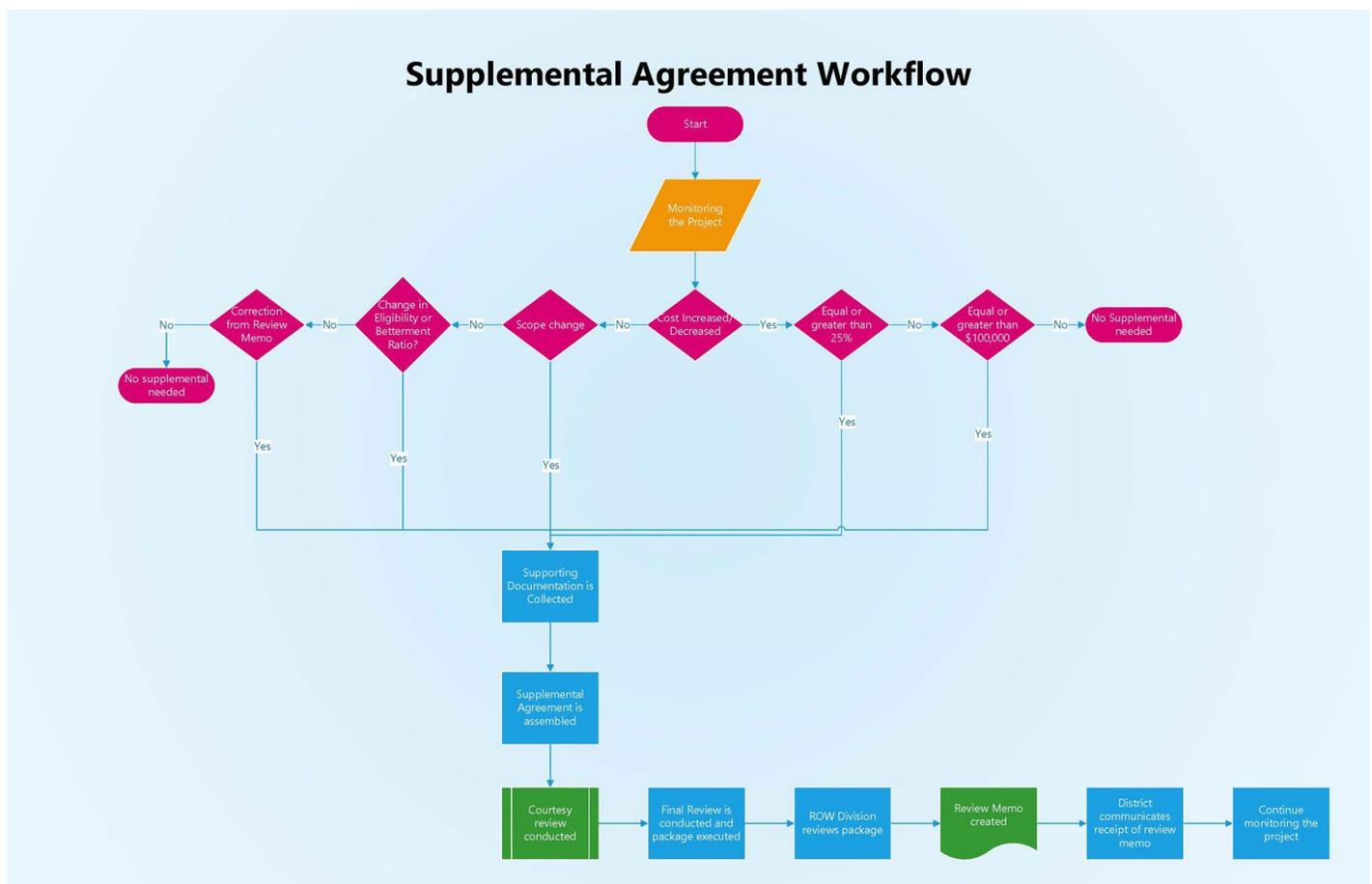
**10.9 If the Utility completes the construction, can the Utility request to adjust the betterment ratio to match the actual cost?**

No, the betterment is based on estimated costs. It is recommended that the Utility and District execute a Supplemental Agreement as soon as possible when a scope change may affect the adjustment's cost. At that time, the betterment ratio can be re-evaluated.

### 10.10 Can payment be made (partial payment or 90%/100% payment) before processing the supplemental agreement?

No. Supplemental agreements need to be executed, and the compliance memo from the division with approval of corrected deficiencies before a payment can be processed.

## 11. Workflow



## 12. Resources

- Right of Way Utilities Manual
  - Chapter 7 – Utility Cost Estimates, Section 2 – Cost Estimate Methods and Categories
  - Chapter 9 – Forms and Agreements, Section 4 – Agreement Assemblies

- Chapter 9 – Forms and Agreements, Section 5 – Prepare and Submit the Agreement Assembly
- Chapter 10 – Performing the Utility Adjustment, Section 2 – Inspection Activities
- ROW Utility Accommodations Toolkit – <https://www.txdot.gov/business/resources/utility-accommodations.html>
- ROW 101 – <https://www.txdot.gov/inside-txdot/division/right-of-way/utility-training.html>
- SharePoint (For TxDOT Use Only) – <https://txdot.sharepoint.com/sites/division-ROW/SitePages/Utilities.aspx>
  - Utility Coordination Job Aides
    - 2020-01 Utility Agreement Review Guide TPD-DE
    - Electronic Execution and Submittal of Utility Accommodation Documents
  - Guides
    - Document Review Guidance
  - Templates
    - AGMT Supplemental Memo Cover Letter Template
    - Eligibility %
    - Spreadsheet – Standard Estimate Tool
- Utility Installation Review (UIR) System (The UIR permits from this system are migrated to OnBase and RULIS)
- Right of way utility and leasing information system (RULIS) – [RULIS](#)