CHAPTER 4
GRANT AGREEMENT SPECIAL CONDITIONS

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CHAPTER 4
GRANT AGREEMENT SPECIAL CONDITIONS

4.0 Introduction

In addition to the standard federal, state, and program requirements, special conditions may apply to the TxCDBG Grant Agreement based on the specific project activity or location. **Grant Recipients must document proof of compliance with all applicable provisions.** The special conditions are generally found in Exhibit A, Section D of the Grant Agreement.

4.1 Special Conditions - Pre Construction

4.1.1 Permit and Approval Certification

In addition to TxCDBG programmatic requirements, the Grant Recipient is responsible for ensuring compliance with all permits, authorizations, or other written approvals required by state or federal regulations. Examples include:

- Texas Commission on Environmental Quality (TCEQ) approval of plans and specifications for water and sewer projects;
- Texas Historical Commission (THC) approval for construction in a designated Main Street area;
- Texas Department of Licensing and Regulation (TDLR) approval for building construction projects;
- Texas Department of Transportation (TxDOT) approval for construction of a bridge project; and other approvals required by state or federal agencies prior to construction.

Although no standard reporting is required, the Grant Recipient must retain copies of all permits and approvals in the local grant files. When corresponding with other agencies about a Grant Recipient's TxCDBG project, please be sure to reference the Grant Agreement number.

NOTE: The Texas Engineering Practice Act requires most public works projects to be designed, supervised, inspected, and accepted by a registered professional engineer. If the project is exempt from this requirement, the Grant Recipient must document the exception through a letter certified by the chief local official.[1]

4.1.2 Temporary Project Signage

All construction projects utilizing TxCDBG funding must have temporary signage erected in a prominent location at the construction project site. For projects with a Citywide benefit but multiple project locations, (E.g., water meter replacement throughout the city, manhole replacement throughout the city, etc.) the temporary signage may be located in a central location such as City Hall or the County Courthouse provided that the temporary signage is accompanied by a description or map of the specific locations. For additional guidance for similarly scattered project locations, contact TDA staff. A photo of this signage must be submitted to TDA prior to the release of construction funds.

[1] Texas Occupations Code, §1001.053

Temporary signage requirements include:

- Placement in a prominent visible public area that is not blocked or obscured,
- Constructed of durable materials,
- Minimum size of 11" x 17" with lettering no smaller than one-half inch, and
- Required text (or similar)*:
  This project is funded by the Texas Department of Agriculture with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Program.

NOTE: The text requirement above is satisfied by using the text in this manual. Alternate wording may be approved by TDA upon request.

Temporary signage may be reused for future TxCDBG projects as appropriate.

4.1.3 Direct Benefit Guidelines

Information on determining if a project provides a "direct benefit" may be found in the *TxCDBG Guide to Meeting a National Program Objective*, located on the TDA website.

TxCDBG funded projects that provide direct benefit to homeowners selected through an application process must receive the following:

- TDA approval for the proposed program guidelines *prior* to the selection of program recipients;
- TDA's release of funds for such activities. Applicable projects are those that provide housing rehabilitation, first-time on-site sewage facilities, replacement of on-site sewage facilities, or scattered first-time water or sewer service yardlines (that are not associated with the installation of a main trunk line). As appropriate, the following documents must be submitted and approved by TDA prior to the release of any TxCDBG construction funds for direct benefit activities:
- *Sample Housing Rehabilitation Guidelines* **(Form C2)**
- *Housing Rehabilitation Work Write-ups and Cost Estimate Worksheet* **(Form C3)**
- On Site Sewer Facilities (OSSF) – *Sample OSSF Guidelines* **(Form CII2)**
- *Yardline Assistance Guidelines Template* (**Form CII2.A**).

If these guidelines were submitted with the application, the Grant Recipient is not required to resubmit these documents. Contact TDA staff regarding approval of the guidelines.

4.1.4 Colonia Street Lighting Funds

TxCDBG-funded projects that include street improvements in colonia areas are required by state law to include adequate street lighting in the project.[2] Prior to the release of any TxCDBG construction funds, the Grant Recipient must submit a written determination of whether street lighting is adequate for the TxCDBG funded target area. If current street lighting in the target area is determined to be absent or inadequate, the written determination must include an engineer's cost estimate, bid tabulation, or other documentation to demonstrate that between 5% and 15% of the TxCDBG grant funds allocated for street improvements are designated for street lighting.

4.1.5 Projects Involving Model Subdivision Rules/Ordinances

NOTE: This special condition is only applicable to projects funded by the Colonia Construction Fund.

[2] Texas Government Code, §487.354

Certain communities are considered **economically distressed areas** and are subject to comprehensive platting requirements known as Model Subdivision Rules. Communities meet the definition of economically distressed areas if they are:

- Unincorporated areas located outside of the corporate limits of municipalities and outside of the extraterritorial jurisdiction of municipalities;
- Lacking adequate water or sewer services to meet the minimal needs of residents; and
- Eligible for the Texas Water Development Board Economically Distressed Areas Program.

Counties that are awarded grant funds under the Colonia Fund to benefit economically distressed areas are required to document compliance with these requirements, pursuant to Chapter 232 of the Texas Local Government Code. No grant funds may be expended until the Grant Recipient has submitted to TDA a resolution adopting the Model Subdivision Rules, which must contain provisions equivalent to or more stringent than the provisions included in Texas Administrative Code, Title 31, Part 10, Chapter 364, Model Subdivision Rules.

The Grant Recipient may execute the TxCDBG Grant Agreement prior to adoption and enforcement of the Model Subdivision Rules; however, any TxCDBG funds expended before the Grant Recipient follows this requirement will be disallowed and not eligible for reimbursement.

4.1.6 Projects Involving First-Time Water or Sewer Service Beneficiaries

To ensure that projects involving first-time service will serve the anticipated number of beneficiaries, TDA requires that Grant Recipients document the number of first-time service beneficiaries **prior** to bidding construction. If fewer than 75% of the beneficiaries proposed in the application intend to connect to the TxCDBG funded infrastructure, the project may not proceed without written approval from TxCDBG.

Prior to bidding construction for a project with first-time service activity, the Grant Recipient **must** submit to TxCDBG the following:

- A list of households that were identified in the original application, including any additional households that will receive first-time service.
  NOTE: If the households to receive first-time service were not identified in the application, i.e., using an average household size to calculate beneficiaries, a list of the households identified using the selection guidelines for housing activities should be submitted instead, see *Section Housing Rehabilitation* for additional guidance on selection guidelines;
- The list must identify the households that have granted temporary construction easements for the project or similar authorization to conduct grant activities on the property;
- The list must identify the low-to-moderate income (LMI) status of all households, with TxCDBG Standard Questionnaires for all households retained in local files unless requested by TDA staff; and
- The list must be certified via signature or written statement by the chief local official or authorized signatory.

No TxCDBG construction funds will be released until the list has been approved.

NOTE: TxCDBG funded projects that include construction activities on private property are considered to provide direct benefit to homeowners, even if the project does not provide first-time utility service. As such, grant funds may only be expended for this work for households documented as LMI.

EXAMPLE: Yardline replacement made necessary due to a more expansive 03J project that will relocate the collection line is a direct benefit to those households, and grant funds must benefit 100% LMI households.

This Special Condition does **NOT** require the Grant Recipient to resurvey the households if they were originally surveyed at the time of application. Please contact TDA staff if you have any questions regarding this Special Condition.

4.1.7 Buy America Preference

Pursuant to the Buy America Build America Act (BABA), Grant Recipients that receive funding for infrastructure project must ensure that:

1. All iron and steel used in the project are produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. Specifically listed manufactured products - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and:
    a. Metals other than iron or steel (non-ferrous metals),
    b. Lumber,
    c. Composite building materials, and
    d. Plastic and polymer-based pipe and tube materials, including PVC pipe.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.[3][4]

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project. The Grant Recipient must provide an itemization to identify the products, quantities, and costs as support documentation. The bid tab is generally not sufficiently detailed to itemize each separate product or material.

TDA has not received guidance as to the documentation necessary to support the Buy America status of the project. Until further guidance is provided, the Grant Recipient must provide written evidence from the manufacturer or supplier that:

- Identifies the item purchased;
- Affirms the location of manufacture as within the United States; and
- If signed by an authorized company representative.

In rare instances, a BABA waiver may be available. To request such a waiver, the Grant Recipient must provide a letter to the TxCDBG Director requesting a BABA waiver, citing the relevant exception, and providing a narrative justification and any supporting documentation for how the exception applies to the project.

NOTE: TDA does not have the authority to waive BABA requirements; all requests for waivers will be evaluated by TDA and, if applicable, forwarded for review and potential approval by both HUD and the

[3] White House Memorandum M-22-11
[4] HUD Public Interest Phased Implementation Waiver

Office of Management and Budget. Any project delays due to the waiver process will not be considered for proposed Grant Agreement extensions.

4.1.8 Grant Agreement-Specific Special Conditions

At its sole discretion, TDA may require programmatic special conditions specific to a project. Such conditions may be incorporated into the original Grant Agreement or amended into the Grant Agreement as necessary.

4.2 Special Conditions – Project Completion

Certain projects require written approval from other state or federal agencies upon completion of construction. For applicable projects, the written approval must be submitted to TDA, as well as being included in the local files. However, under specific circumstances, when the approval cannot be obtained by the Project Completion Report deadline, see *Chapter 12.2.5* to determine if a Conditional Project Completion Report is applicable.

4.2.1 Water Well Projects

Prior to submission of the Project Completion Report (PCR) to TDA for the water system improvements described in the Performance Statement of the TxCDBG Grant Agreement, the Grant Recipient must submit a letter from the Texas Commission on Environmental Quality (TCEQ) that the constructed well is approved for use and may be placed into service.[5]

4.2.2 Septic System Replacement Projects

Prior to submission of the Project Completion Report for on-site sewer facilities improvements described in the TxCDBG Grant Agreement, the Grant Recipient must provide documentation that final plans, specifications, and installation of its sewer and/or septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by TCEQ.

NOTE: All septic tanks installed in the State of Texas are required to be inspected by TCEQ or an authorized representative licensed by TCEQ. All existing facilities being replaced or abandoned must have the wastewater removed by a registered waste transporter, and all tanks or pits shall be filled or otherwise decommissioned.[6]

4.2.3 Building, Parking Lot, and Sidewalk Projects

This special condition applies to projects where accessibility to the public is a fundamental goal of the project and/or is a key factor in meeting the National Program Objective.

EXAMPLE: Sidewalk improvements, public health clinics, senior centers, etc. are only able to meet the National Program Objective if members of the public are able to access the building/improvements.

Prior to submission of the Project Completion Report for buildings, parking lots and/or sidewalks constructed, or renovations where:[7]

- The building or facility is subject to Chapter 469 of the Texas Government Code and
- The estimated construction cost is at least $50,000.

[5] 30 TAC Chapter 290, Rules and Regulations for Public Water Systems
[6] 30 TAC §285.36.
[7] Texas Government Code, §469.101

The Grant Recipient must submit a copy of the Registered Accessibility Specialist's signed and dated inspection transmittal letter. This letter affirms that the building, renovations, parking lots and/or sidewalk construction activities follow Texas Department of Licensing and Regulation (TDLR) requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act and Texas Accessibility Standards.

For building construction projects, such as fire stations, private employers assisted through Texas Capital Fund (TCF), and other projects where the general public is not expected to access the building, the following requirements apply.

The Contractor shall provide documentation to TDA verifying that plans and specifications for construction, significant renovation, or modification of a building or facility subject to §469.101 of the Texas Government Code has been registered with the Texas Department of Licensing and Regulation (TDLR). Plans and specifications must be designed by an architect or engineer licensed in the state of Texas. Documentation verifying submittal of the plans to TDLR must include an "Architectural Barriers Project Registration Confirmation Page," complete with the license number of the designing architect or engineer. The Grant Recipient is responsible for recordkeeping, which documents full compliance with all requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act, Texas Administrative Code, and Texas Accessibility Standards.

Additionally, all communities must ensure that all their project activities follow all provisions of the Americans with Disabilities Act of 1990 (ADA).

4.2.4 Projects in a Floodplain

Grant Recipients completing projects in a floodplain must participate in the National Flood Insurance Program (NFIP). The Grant Recipient shall provide documentation to TDA prior to Grant Agreement termination which indicates that it has received approval from the Texas Water Development Board as the NFIP State Coordinating Agency that ordinances or orders, as appropriate, necessary for the Grant Recipient to be eligible to participate in the NFIP have been adopted.

4.2.5 Projects Requiring Designs/Plans/Specifications

The Grant Recipient shall receive and maintain a copy of the final project record drawing(s) and/or engineering schematic(s), as constructed using funds under the TxCDBG Grant Agreement.

- These maps must be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as CD, which are compatible with computer systems owned or readily available to the Grant Recipient.
- The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the Grant Recipient.
- Complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by the Grant Recipient in written form.
- Upon request, the Grant Recipient shall provide TDA a copy of all the electronic files and other data received. Additional information on the data and format requirements is contained in the TxCDBG Grant Agreement.

4.2.6 Projects Requiring Permanent Signage

Permanent signage identifying the location as a TxCDBG-funded project is required for any TxCDBG-funded public buildings, park areas, or other structures open to the public**.** Some examples of projects requiring permanent signage include community centers, parks/recreation facilities, fire stations, and significant improvements to existing facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include:

- Placement in a prominent visible public area that is not blocked or obscured,
- Constructed of permanent materials,
- Minimum size of 12" x 18" with lettering no smaller than one-half inch, and
- Required text: "**This project is funded by the Texas Department of Agriculture with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Program."**

4.2.7 Texas Capital Fund (TCF) Aggregate Benefit

The Grant Recipient shall submit a *TCF Aggregate Benefit Report* **(Form D8)** to TDA one year after the final inspection date identified on the Certificate of Construction Completion (COCC).

In addition to the jobs created or retained as a result of the TCF improvement(s) by the Company, any other business that accesses/uses the TCF funded infrastructure improvements within a period of one year following the completion of the improvement(s) must be asked to use their best faith efforts to employ LMI individuals for the majority of new jobs created. Specifically, if an additional benefiting business will create or retain jobs as a result of the public improvements funded by the Texas Capital Fund, the additional beneficiary will be required to exercise best faith efforts to fill 51% of all jobs created with people who qualify as low and moderate income.

The Grant Recipient shall provide each additional beneficiary business with a copy of these requirements, a copy of the LMI guidelines for the project area, and a complete summary of the proposed TCF infrastructure improvements with a map delineating existing and proposed infrastructure improvements.

4.2.8 Community Enhancement and FAST Fund Reporting

Grant Recipient shall submit a report detailing the ongoing services and or functions of the facility developed with TxCDBG grant funds. The initial report shall be submitted in TDA-GO by 12/31 of the year in which the Grant Agreement is determined to be *Grant Closed* and shall continue to be submitted annually for the subsequent four years.

Resources

Resource Number	Description	URL
	TxCDBG Guide to Meeting a National Program Objective	TDA Beneficiary Documentation page

*Note: these items will be updated as needed.