CHAPTER 4
CONTRACT SPECIAL CONDITIONS

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CHAPTER 4
CONTRACT SPECIAL CONDITIONS

4.0 Introduction

In addition to the standard federal, state, and program requirements, special conditions may apply to the grant contract based on the specific project description or location. **Grant Recipients must document proof of compliance with all applicable provisions.** The special conditions are generally found in Exhibit D of the TxCDBG contract. In all correspondence with the appropriate agencies concerning the Grant Recipient's project, please be sure to reference the TxCDBG contract number.

4.1 Special Conditions - Pre Construction

4.1.1 Permit and Approval Certification

Beginning with contracts awarded in August 2013, the Grant Recipient must submit the *Certification of Pre-Construction Approvals* **(Form A401)** prior to the release of any TxCDBG construction funds, including reimbursement for materials or labor costs. This form is used to list all permits, authorizations, or other written approvals required by state or federal regulations other than TxCDBG requirements. Examples of these approvals 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 construction for building 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.

The chief local official and engineer must sign the form to certify that all applicable approvals are listed and have been obtained.

- The written approvals listed on the form must be included in the local files, but are not required to be submitted to TDA unless requested by TDA.
- If no such approvals are required, the submitted form should indicate "no state / federal agency approvals required".
- **Form A401** should be signed and submitted to TDA only once all required approvals have been obtained. Drafts indicating the approvals yet to be obtained may be kept locally and used for communication among the project team, but do not meet the submittal requirements.

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 under §1001.053, Texas Occupations Code, the Grant Recipient must document the exception through a letter certified by the chief local official.

4.1.2 Temporary Project Signage

All TxCDBG construction projects utilizing TxCDBG funding must have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the owner. A photo of this signage must be submitted to TDA prior to the release of construction funds.

Requirements of temporary signage include:

- placement in a prominent visible public area that is not blocked or obscured;
- construction of durable materials;
- minimum size of 12" x 18" with lettering no smaller than 1/2";
- Required text (or similar)*:
  "This project is funded by the Texas Department of Agriculture, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States 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 the TxCDBG contract or the version 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

TxCDBG funded projects that provide direct benefit to homeowners selected through an application process must receive approval for the proposed program guidelines prior to the selection of program recipients and prior to TDA's release of funds for such activities. The following documents must be submitted and approved by TDA prior to the release of any TxCDBG construction funds for direct benefit activities:

- Housing Rehabilitation Guidelines (**Form C2**)
- Housing Rehabilitation Work Write-ups and Cost Estimate Worksheet (first five units) (**Form C3**)
- Septic System Program Guidelines (Section C Part II).

If these guidelines were submitted with the application, the Grant Recipient is not required to resubmit the document.

4.1.4 Colonia Street Lighting Funds

TxCDBG-funded projects that include street improvements in colonia areas are required by state regulations to include adequate street lighting in the project. (Title 4 Texas Administrative Code (TAC), Part I, Chapter 30, Subchapter A, Division 3, Rule §30.55(f)). Prior to the release of any TxCDBG construction funds, the Grant Recipient must submit a written determination of whether or not 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 (Colonia Fund only)

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 contract prior to adoption and enforcement of the Model Subdivision Rules; however, any TxCDBG funds expended before the Grant Recipient is in compliance with this requirement will be disallowed and not eligible for reimbursement.

4.1.6 Projects involving First-Time Water or Sewer Service Beneficiaries

TDA requires that Grant Recipients re-survey first-time service beneficiaries prior to bidding construction to identify all households that will be connected, a list of those households refusing service, as well as identifying LMI households eligible for TxCDBG-funded yardlines. If a substantial number of proposed beneficiaries do not intend to connect to the TxCDBG-funded infrastructure, contact the TDA Contract Specialist before proceeding.

Prior to bidding construction for a project that includes first-time water or sewer service connections, the Grant Recipient must submit to TxCDBG a list of households that have committed to connecting to the project.

- The list must be signed by the chief elected official and must identify all occupied LMI households eligible for TxCDBG funded yardlines.
- The commitment from the household must be maintained in the local files and must be binding in nature – example: the system's standard request for service and payment of a nonrefundable deposit.
- No TxCDBG construction funds will be released until the list has been received.
- If fewer than 75% of the beneficiaries proposed in the application do not intend to connect to the TxCDBG funded infrastructure, the project may not proceed without written approval from TxCDBG.

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.

4.2.1 Water Well Projects

Prior to submission of the Project Completion Report (PCR) to TDA for the water system improvements described in Exhibit A, Performance Statement, of the TxCDBG contract, the Grant Recipient must submit a letter from TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to Title 30, TAC, Chapter 290–Rules and Regulations for Public Water Systems.

4.2.2 Septic System Replacement Projects

Prior to submission of the Project Completion Report for on-site sewer facilities improvements described in Exhibit A, Performance Statement, of the TxCDBG contract, the Grant Recipient must provide documentation that final plans, specifications, and installation of its sewer system improvements (septic systems) 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. (30 TAC 285.36).

4.2.3 Building, Parking Lot, and Sidewalk Projects

Prior to submission of the Project Completion Report for buildings, parking lots and/or sidewalks constructed or renovations using TxCDBG funds and described in Exhibit A, Performance Statement, of the TXCDBG contract, the Grant Recipient must submit documentation that the building, renovations, parking lots and/or sidewalk construction activities are in compliance with 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. Additionally, all communities must ensure that all their project activities are in compliance with 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 contract 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 contract.

- 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 <u>not</u> 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 contract.

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, in addition to commercial facilities funded through the TCF Real Estate program. 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;
- construction of permanent materials;
- minimum size of 12” x 18” with lettering no smaller than 1/2”;
- Required text:
  “This project is funded by the Texas Department of Agriculture, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program.”

4.2.7 Texas Capital Fund Aggregate Benefit

The Grant Recipient shall submit to TDA a *TCF Aggregate Benefit Report* (Form D8), submitted 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 percent 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 low and moderate income guidelines for the project area, and a complete summary of the proposed TCF infrastructure improvements with a map delineating existing and proposed infrastructure improvements.