



*The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.*

# **CHAPTER 7—CONTRACT SPECIAL CONDITIONS**

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## **CHAPTER 7—CONTRACT SPECIAL CONDITIONS**

### **7.1 Introduction**

In addition to the standard federal, state, and program requirements, special conditions or permits may apply based on the specific project description or location. These special conditions are included in the Subrecipient Contract or Agreement. Please note that project activities included in this chapter may not pertain to every subrecipient agreement. Subrecipient must document proof of compliance with all applicable permitting provisions. In correspondence with appropriate agencies concerning the special condition or permit, subrecipient should reference the applicable CDBG-DR and/or CDBG-MIT grant contract number.

### **7.2 Reimbursement, Generally**

CDBG-DR funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance. Subrecipient shall ensure compliance with all such requirements.

### **7.3 Projects in a Floodplain**

Subrecipient completing projects in a floodplain must participate in the National Flood Insurance Program (NFIP). The subrecipient shall provide documentation to GLO-CDR prior to contract termination which indicates that it has received approval from the Texas Water Development Board as the NFIP State Coordinating Agency that appropriate ordinances or orders necessary for the subrecipient to be eligible to participate in the NFIP have been adopted. Documentation may also be required as part of the environmental process to document project eligibility. Where activities involve structures that are located in Special Flood Hazard Areas (SFHA), flood insurance may be required and documentation showing evidence of compliance submitted to GLO-CDR. See Subrecipient Agreement for additional requirements.

Additionally, if any property that is the subject of an activity under the grant contract is located within a floodplain, the following terms and conditions shall apply:

- Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
  - The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP") (44 CFR parts 59 through 79), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
  - The community is participating in the NFIP, or that flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.
- Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property



located in an area identified by FEMA as having special flood hazards, the subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.

- Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 515a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
  - The person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
  - The person failed to obtain and maintain flood insurance
- Subrecipients have a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of the homeowner's responsibility, to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. This notification should be in writing and should be acknowledged by a signed document.

The requirement to maintain flood insurance, at the federal level, is as follows:

**Housing:** Residential buildings in a Special Flood Hazard Area (100-year Floodplain) must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.

*Infrastructure (Public Facilities and Improvements):*

- Non-residential structures must be elevated at least two feet above the 100-year (or 1 percent annual chance) floodplain;
- Critical Actions within the 500-year (or .2 percent annual change) floodplain must be elevated or flood proofed the higher of the 55-year floodplain elevation or three feet above the 100-year floodplain elevation.

### **7.4 Projects Requiring Designs/Plans/Specifications**

The subrecipient shall receive and maintain copies in written and/or digital format of the project(s) final design record drawing(s) and/or engineering schematic(s), as constructed. A copy of the record drawings or as-built plans must be provided to the GLO as required by the applicable contract milestone. See executed subrecipient agreement for additional information.

### **7.5 Water System Improvements**

Prior to the GLO-CDR's release of funds for the construction of any water system improvements, subrecipient shall provide certification to GLO-CDR that plans, specifications, and related documents for the specified water system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.



Prior to construction, subrecipient shall provide documentation to the GLO-CDR that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.

Water Well Projects. Prior to subrecipient's submission of the Project Completion Report, the subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems. After the water well is in service for six (6) to nine (9) months, TCEQ will test the water and issue a permanent approval letter.

### **7.6 Sewer System Improvements**

Prior to the construction of any sewer system improvements, subrecipient shall provide certification that plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the Texas Commission on Environmental Quality (TCEQ) review requirements described in 30 Texas Administrative Code, Chapter 217, Subchapter D.

Prior to the construction of any sewer lines or additional service connections, the subrecipient shall provide notification of the start of construction on any sewer treatment plant or other system-related improvements included in the grant contract.

### **7.7 Wastewater Treatment Construction**

Prior to incurring costs for any wastewater treatment construction, subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, the subrecipient shall provide documentation to the GLO-CDR that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served has been issued by the TCEQ.

### **7.8 Septic System Improvements**

Subrecipient shall provide documentation that final plans, specifications, and installation of its septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.

Subrecipient shall mitigate all existing septic systems in accordance with 30 Texas Administrative Code, Chapter 285, Subchapter D, §285.36(b), which states, "All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director. All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter), which is free of organic and construction debris."

Prior to the selection of program recipients for proposed On-Site Sewer Facilities (OSSF), a subrecipient shall provide a copy of its proposed program guidelines to GLO-CDR for review. All



proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code, Chapter 285, Subchapter D.

### **7.9 Building Construction**

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the Texas Department of Licensing and Regulation (TDLR) for an accessibility plan review.

All subrecipients must ensure their project activities are in compliance with all provisions of the Americans with Disabilities Act of 1990 (ADA).

The subrecipient 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.

### **7.10 Bridge Construction/Rehabilitation**

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction, and documentation of such approval must be provided to the GLO-CDR.

### **7.11 Disaster Shelters**

Subrecipient shall ensure that the primary purpose of the facility is to serve as a disaster shelter and that the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. Additionally, subrecipient shall prepare an emergency management plan or incorporate into a previously approved plan, identification of the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO-CDR.

### **7.12 Debris Removal**

Prior to beginning debris collection operations, subrecipient must address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction, and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary



debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>. Subrecipient disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO-CDR.

### **7.13 Use of Bonds**

Subrecipient must notify the GLO-CDR of its issuance and sale of bonds for completion of the project funded under CDBG-DR and provide associated documentation.

### **7.14 Direct Benefit Program Guidelines**

CDBG-DR and/or CDBG-MIT funded projects that provide direct benefit to homeowners selected through an application process must receive GLO-CDR approval for the proposed program guidelines prior to the selection of program recipients.

Where applicable, the guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation). Information regarding Program Guidelines can be found in the CDBG-DR Toolkit for Program Implementation and required Guidelines can be found on the GLO-CDR website by program; links to both are provided in [Resources](#)—Resource 7.1 and 7.2 at the end of the chapter.

### **7.15 Housing Rehabilitation or Reconstruction Assistance**

Prior to the selection of program recipients, subrecipient shall provide a copy of its proposed housing rehabilitation assistance program guidelines for GLO-CDR review and approval. The guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation).

The housing rehabilitation or reconstruction assistance provided by subrecipient shall be in the form of a three-year unsecured forgivable promissory Note at zero interest. Provided all terms and conditions under which the assistance was provided continue to be fulfilled, the Note will be forgiven at a rate of 33 percent per year, for the first two years, and 34 percent after the third year, until the applicant fulfills their note requirement (the requirements are defined in the promissory note document).

If the homeowner occupies the home for the full three-year term, the Note expires and no repayment is required, nor will any conditions be imposed relative to the disposition of the property. If any of the terms and conditions under which the assistance was provided are breached or if the property is sold, leased, transferred or vacated by the homeowner for any consecutive thirty (30) day period during the three-year Note term, the repayment provisions of the promissory note and DOT shall be enforced.



If, during the three-year Note term, the homeowner vacates the unit for any consecutive thirty (30) day period, the locality may forgive, as evidenced by the program director, city council, or commissioner court action, the remaining loan balance. Prior to forgiveness of all or any portion of the assistance provided, the request for forgiveness must be approved by the local governing body and be based on documented and justifiable conditions or circumstances that would result in an unnecessary hardship to the homeowner and the determination that the national objective of benefiting low to moderate-income persons was met. If the Homeowner passes away, the Promissory note is treated as if it is expired and the home can pass to the heirs either testate or intestate with no CDBG-DR program restrictions.

The national objective will be considered met only when the program director, city council, or county commissioners court determines that a low- to moderate-income person has occupied the rehabilitated or reconstructed home for a time sufficient to meet the national objective. If the national objective was not achieved, subrecipient is liable for repayment of an amount equal to the difference in the appraised value of the home prior to reconstruction and the sales price when the home is sold during the term of the three-year forgivable Note.

If the property is sold or transferred to a person other than an eligible LMI person, the remaining pro-rated balance of the DPL must be repaid by the subrecipient from the sales proceeds. Notwithstanding the preceding, subrecipient shall be held liable for any balance remaining over and above the sales proceeds. In all instances, upon completion of the three year note or repayment of the assistance (in full or in part), the subrecipient shall prepare and record a release of lien document in the land records of the applicable county.

Monitoring of the three-year Note is performed during and after the grant is closed. Subrecipient must utilize non-CDBG-DR funds to fulfill the monitoring obligations for its impacted recovered community.

The subrecipient will maintain a list of homeowners that do not maintain flood insurance as documented in their promissory note. This list shall include their full name, property location, and identification number such as Social Security Number, Driver's license, etc. This list will be retained for use in edibility verification by the subrecipient and a copy of the list shall be forwarded to the GLO. These applicants will not be allowed to receive future assistance.

### **7.16 Rental Housing Rehabilitation, Reconstruction, or New Construction Assistance**

Rental housing rehabilitation, reconstruction, or new construction assistance will be provided in the form of a grant at zero interest dependent upon the applicable Federal Register notice, Action Plan or Housing Guidelines. Provided all terms and conditions under which the assistance was provided continue to be fulfilled, the note will be forgiven on a pro-rated basis until the applicant fulfills their note requirement. Requirements are defined in the promissory note document.

The purpose of the program is to facilitate the rehabilitation, reconstruction, and/or new construction of affordable rental housing needs within the service area of the disaster event. A minimum of 51 percent of the multifamily units must be restricted during the affordability period for low to moderate income (LMI) persons. At a minimum, rents must comply with High HOME Investment Partnership (HOME) Rents and other existing Land Use Restriction Agreement (LURA)



restrictions, if applicable. HOME rent limits are defined by HUD and must equal the lesser of fair market rents or 30 percent of the adjusted income for people earning 65 percent of the AMFI.

### **7.17 Coastal Management**

Any project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

### **7.18 Project Signage**

Permanent signage identifying the location as a CDBG-DR and/or CDBG-MIT-funded project is required for any CDBG-DR and/or CDBG-MIT funded public building or facility. Some examples of projects requiring permanent signage include community centers, parks/recreation facilities, fire stations, and significant improvements to existing facilities such as Water/Wastewater facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include, at a minimum, the following:

- Placement in a prominent visible public-location;
- Formatted to fit the architectural design of the building or facility;
- Legible from at least three (3) feet of distance; and
- Minimum required text included in the grant contract.

Other than single family activities, all CDBG-DR and/or CDBG-MIT construction projects utilizing CDBG-DR and/or CDBG-MIT funding must have temporary signage displayed in a prominent location at the construction project site or along a major thoroughfare within the community.

Requirements of temporary signage include, at a minimum, the following:

- Minimum required text included in the subrecipient agreement and
- Evidence of sign placement must be submitted to GLO-CDR before the first construction draw.

Temporary signage may be reused for future CDBG-DR and/or CDBG-MIT projects.

Subrecipient should reference the executed subrecipient agreement for additional details.



## **7.19 Resources**

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see [www.recovery.texas.gov](http://www.recovery.texas.gov) for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>URL</b>
Resource 7.1	<a href="#">HUD CDBG-DR Toolkit for Program Implementation</a>	<a href="https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/">https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/</a>
	▪ <a href="#">Homeowner Rehabilitation Program Guidelines</a>	<a href="https://www.hudexchange.info/resources/documents/Disaster_Recovery_Homeowner_Rehab_Housing_Program_Guidelines.docx">https://www.hudexchange.info/resources/documents/Disaster_Recovery_Homeowner_Rehab_Housing_Program_Guidelines.docx</a>
	▪ <a href="#">Homebuyer Program Guidelines</a>	<a href="https://www.hudexchange.info/resources/documents/Disaster-Recovery-Homebuyer-Program-Assessment-Guide.docx">https://www.hudexchange.info/resources/documents/Disaster-Recovery-Homebuyer-Program-Assessment-Guide.docx</a>
	▪ <a href="#">Multifamily Rental Housing Program Guidelines</a>	<a href="https://www.hudexchange.info/resources/documents/Disaster-Recovery-Multifamily-Rental-Creating-Eligible-Rental-Projects.docx">https://www.hudexchange.info/resources/documents/Disaster-Recovery-Multifamily-Rental-Creating-Eligible-Rental-Projects.docx</a>
	▪ <a href="#">Buyout Program Guidelines</a>	<a href="https://www.hudexchange.info/resources/documents/Disaster_Recovery_Buyout_Program_Guidelines.docx">https://www.hudexchange.info/resources/documents/Disaster_Recovery_Buyout_Program_Guidelines.docx</a>
Resource 7.2	<a href="#">GLO-CDR Housing Program Guidelines:</a>	<a href="https://recovery.texas.gov/grant-administration/grant-implementation/housing/housing-guidelines/index.html">https://recovery.texas.gov/grant-administration/grant-implementation/housing/housing-guidelines/index.html</a>
	▪ <a href="#">Hurricane Harvey Housing Guidelines</a>	<a href="https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/harvey-housing-guidelines1.pdf">https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/harvey-housing-guidelines1.pdf</a>
	<a href="#">Hurricane Harvey City of Houston Housing Guidelines [March 10, 2022]</a>	<a href="https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-houston-housing-guidelines.pdf">https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-houston-housing-guidelines.pdf</a>



	<a href="#">GLO Harris County Harvey Housing Guidelines</a>	<a href="https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-harris-county-housing-guidelines.pdf">https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-harris-county-housing-guidelines.pdf</a>
	▪ <a href="#">2015-2016 Floods Housing Guidelines</a>	<a href="https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/15-16-housing-guidelines.pdf">https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/15-16-housing-guidelines.pdf</a>
	▪ <a href="#">Hurricane Ike and Dolly Round 2 Housing Guidelines</a>	<a href="https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/ike-and-dolly-round-2-housing-guidelines.pdf">https://recovery.texas.gov/documents/grant-administration/grant-implementation/housing/housing-guidelines/ike-and-dolly-round-2-housing-guidelines.pdf</a>

**\*Note:** Individuals have reported a better experience when using *Internet Explorer* or *Safari* to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#). If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

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**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).